

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 1692
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Transportation
5/15/2013
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties have raised concerns regarding issues arising from the implementation of recent legislation relating to the relationship between motor vehicle manufacturers and distributors and their franchised dealers and relating to the regulation of motor vehicle dealers, manufacturers, distributors, and representatives.

C.S.H.B. 1692 amends current law relating to the regulation of motor vehicles dealers, manufacturers, and distributors.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the board of the Texas Department of Motor Vehicles (TxDMV) in SECTION 8 (Section 2301.703, Occupations Code) and SECTION 10 (Section 2301.713, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2301.002, Occupations Code, by amending Subdivision (17-a) and adding Subdivision (17-b) to define "hearings examiner" and to make a nonsubstantive change for this section.

SECTION 2. Amends Subchapter C, Chapter 2301, Occupations Code, by adding Section 2301.104, as follows:

Sec. 2301.104. HEARINGS EXAMINERS. (a) Authorizes the Texas Department of Motor Vehicles (TxDMV) to employ a chief hearings examiner and one or more additional hearings examiners.

(b) Requires a hearings examiner to be licensed to practice law in this state.

SECTION 3. Amends Sections 2301.606(b) and (c), Occupations Code, as follows:

(b) Authorizes a manufacturer, converter, or distributor, in a hearing under this subchapter (Warranties: Rights of Vehicle Owners), rather than in a hearing before the director of the Motor Vehicle Division of TxDMV (director) under this subchapter, to plead and prove as an affirmative defense to a remedy under this subchapter that a nonconformity is the result of abuse, neglect, or unauthorized modification or alteration of the motor vehicle or does not substantially impair the use or market value of the motor vehicle.

(c) Prohibits an order issued under this subchapter from requiring, rather than prohibiting the director from issuing an order requiring, a manufacturer, converter, or distributor to make a refund or to replace a motor vehicle unless certain conditions are met.

SECTION 4. Amends Section 2301.607(c), Occupations Code, as follows:

(c) Requires TxDMV, if a final order is not issued before the 151st day after the date a complaint is filed under this subchapter, to provide written notice by certified mail to the

complainant and to the manufacturer, converter, or distributor of the expiration of the 150-day period and of the complainant's right to file a civil action, rather than requires the director, if the administrative law judge does not issue a proposal for decision and recommend to the director a final order before the 151st day after the date a complaint is filed under this subchapter, to provide written notice by certified mail to the complainant and to the manufacturer, converter, or distributor of the expiration of the 150-day period and of the complainant's right to file a civil action. Requires TxDMV, rather than the board of TxDMV (board), to extend the 150-day period if a delay is requested or caused by the person who filed the complaint.

SECTION 5. Amends Section 2301.608, Occupations Code, as follows:

Sec. 2301.608. ASSESSMENT OF COSTS FOR REPLACEMENT OR REFUND. (a) Requires that an order issued under this subchapter name the person responsible for paying the cost of any refund or replacement, rather than requires the director, in an order issued under this subchapter, to name the person responsible for paying the cost of any refund or replacement. Prohibits a manufacturer, converter, or distributor from causing a franchised dealer to directly or indirectly pay any money not specifically required by the order, rather than not specifically ordered by the director.

(b) Authorizes the final order, if the final order requires a manufacturer, converter, or distributor to make a refund or replace a motor vehicle under this subchapter, to require the franchised dealer to reimburse the owner, lienholder, manufacturer, converter, or distributor only for an item or option added to the vehicle by the dealer to the extent that the item or option contributed to the defect that served as the basis for the order, rather than authorizes the director, if the director orders a manufacturer, converter, or distributor to make a refund or replace a motor vehicle under this subchapter, to order the franchised dealer to reimburse the owner, lienholder, manufacturer, converter, or distributor only for an item or option added to the vehicle by the dealer to the extent that the item or option contributed to the defect that served as the basis for the order.

(c) Authorizes the final order, rather than the director, in a case involving a leased vehicle, to terminate the lease and apportion allowances or refunds, including the reasonable allowance for use, between the lessee and lessor of the vehicle.

SECTION 6. Amends Section 2301.609(a), Occupations Code, to entitle a party to a proceeding under this subchapter that is affected by a final order to judicial review of the order under the substantial evidence rule in a district court of Travis County, rather than to entitle a party to a proceeding before the director under this subchapter that is affected by a final order of the director to judicial review of the order under the substantial evidence rule in a district court of Travis County.

SECTION 7. Amends Section 2301.610(d), Occupations Code, as follows:

(d) Requires TxDMV, rather than the board, to maintain a toll-free telephone number to provide information to a person who requests information about a condition or defect that was the basis for repurchase or replacement by an order issued under this subchapter, rather than by an order of the director. Requires TxDMV, rather than the board, to maintain an effective method of providing information to a person who makes a request.

SECTION 8. Amends Section 2301.703, Occupations Code, by adding Subsection (c), to require the parties to a contested case under this chapter or Chapter 503 (Dealer's and Manufacturer's Vehicle License Plates), Transportation Code, other than a contested case in an action brought by TxDMV to enforce this chapter or Chapter 503, Transportation Code, to participate in mediation as provided by board rule before the parties are authorized to have a hearing in the case.

SECTION 9. Amends Section 2301.704, Occupations Code, as follows:

Sec. 2301.704. New heading: HEARINGS EXAMINER; ADMINISTRATIVE LAW JUDGE. (a) Requires that a hearing under this chapter, rather than subchapter, except as otherwise provided by this section, be held by an administrative law judge of the State Office of Administrative Hearings.

(a-1) Requires that a hearing under Section 2301.204 (Complaint Concerning Vehicle Defect) or Subchapter M (Warranties: Rights of Vehicle Owners) or Subchapter M be held by a hearings examiner.

(b) Provides that an administrative law judge and a hearings examiner have all of the board's power and authority as provided by this chapter to conduct hearings, including certain specific powers. Makes nonsubstantive changes.

(c) Requires a hearings examiner, in a contested case hearing under Section 2301.204 or Subchapter M, to issue a final order.

SECTION 10. Amends Section 2301.713, Occupations Code, as follows:

Sec. 2301.713. REHEARING. (a) Creates this subsection from existing text. Requires a party who seeks a rehearing of an order, except as otherwise provided by this section, to seek the rehearing in accordance with Chapter 2001 (Administrative Procedure), Government Code.

(b) Authorizes the board by rule to establish procedures to allow a party to a contested case to file a motion for rehearing.

(c) Requires that a motion for rehearing in a contested case under Section 2301.204 or Subchapter M be filed with and decided by the chief hearings examiner.

SECTION 11. Amends Section 503.009(b), Transportation Code, to provide that the procedures applicable to a hearing conducted under this section (Procedure for Certain Contested Cases) are those applicable to a hearing conducted as provided by Section 2301.606 (Conduct of Proceedings), rather than Section 2301.606(a) (relating to requiring the director under board rules to conduct hearings and issue final orders for the implementation and enforcement of this subchapter), Occupations Code.

SECTION 12. Repealer: Section 2301.606(a) (relating to requiring the director under board rules to conduct hearings and issue final orders for the implementation and enforcement of this subchapter), Occupations Code.

SECTION 13. Provides that the changes in law made by this Act apply only to a complaint filed or a proceeding commenced on or after the effective date of this Act. Provides that a complaint filed or a proceeding commenced before the effective date of this Act is governed by the law in effect on the date the complaint was filed or the proceeding was commenced, and the former law is continued in effect for that purpose.

SECTION 14. Provides that the changes in law made by this Act apply to a person who holds a license issued under Chapter 2301 (Sale or Lease of Motor Vehicles), Occupations Code, regardless of the date the license is issued or renewed.

SECTION 15. Effective date: January 1, 2014.