

- SUBJECT:** Regulating motor vehicles; authorizing a fee; creating offenses
- COMMITTEE:** Transportation — committee substitute recommended
- VOTE:** 10 ayes — Phillips, Martinez, Burkett, Y. Davis, Fletcher, Guerra, Harper-Brown, Lavender, Pickett, Riddle
- 0 nays
- 1 absent — McClendon
- WITNESSES:** For — (*Registered, but did not testify:* John R. Ames, Tax Assessor-Collector Association of Texas; Robert Braziel, Texas Automobile Dealers Association; Les Findeisen, Texas Motor Transportation Association)
- Against — None
- On — Randy Elliston, Texas Department of Motor Vehicles; (*Registered, but did not testify:* Jimmy Archer, Whitney Brewster, Carol Davis, William Harbeson, and Victor Vandergriff, TxDMV; Robert Bass, County Judges and Commissioners Association of Texas)
- BACKGROUND:** The 81st Legislature in 2009 passed HB 3097 by McClendon, et al. to create the Texas Department of Motor Vehicles (TxDMV) as a state agency separate from the Texas Department of Transportation (TxDOT).
- Government Code, sec. 418.016, allows the governor to suspend the provisions of any state regulatory statute if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.
- DIGEST:** HB 2741 would make various changes to motor vehicle registration, titling, and the Texas Department of Motor Vehicles.
- Offenses.** The bill would make it a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) for a person to manufacture, sell, or possess a fake registration insignia or make a copy or likeness of a fake registration insignia with intent to sell the copy or likeness. A violation or threatened violation could apply if it could be shown that a

violation had occurred or was likely to occur. It would be an affirmative defense to prosecution that the insignia was produced pursuant to a licensing agreement with the TxDMV.

The bill would make it a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) for a person to manufacture, sell, or possess a fake license plate or to make a copy or likeness of a fake license plate with intent to sell the copy or likeness. A violation or threatened violation could apply if it could be shown that a violation had occurred or was likely to occur. It would be an affirmative defense to prosecution that the license plate was produced pursuant to a licensing agreement with the department.

The bill would make it a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) for a person to manufacture, sell, offer to sell, or otherwise distribute a license plate flipper with criminal negligence. A license plate flipper would mean a device that could switch between license plates or hide a license plate from view.

The bill would make it a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) for a person to use, purchase, or possess a license plate flipper with criminal negligence.

The bill would make it an offense punishable by a fine between \$5 and \$200 for a person to violate any provision of chapter 504, Transportation Code, governing license plates, if the chapter prescribed no other penalty for the violation.

The changes in law made by the act would apply only to an offense committed on or after the effective date of the act.

Disabled parking placards. The bill would allow the department to issue a disabled parking placard valid for six months to a person with a permanent disability who was not a resident of the state. An applicant for a disabled parking placard would use a military identification number or an out-of-state driver's license number on his or her application. The bill would allow a peace officer to seize and destroy any improperly used disabled parking placards issued under this provision.

Rules during emergencies or disasters. Under Government Code, sec. 418.016, the governor could suspend the following in response to an

emergency or disaster declaration made by the president of the United States or the governor of another state:

- a registration requirement in an agreement entered into under the International Registration Plan;
- a temporary registration permit requirement;
- code regulating overweight or oversize vehicles;
- a motor carrier registration requirement;
- federal motor carrier or single state registration requirements; and
- a fuel tax requirement.

A motor vehicle owner could also obtain a title or registration through the county assessor-collector's office in a county bordering the one in which the owner resided if the governor had declared the owner's own county a disaster area, the neighboring county assessor-collector's office agreed, and the county met certain other requirements.

TxDMV could issue a special permit during a major disaster declared by the president of the United States for an overweight or oversize vehicle or load that would be used only to deliver relief supplies and which could easily be dismantled or divided. The permit would expire by the 120th day after the date of the major disaster declaration. The permit could have restrictions to ensure the safe operation of the permitted vehicle and reduce damage to roadways.

Deputies. The bill would require the board by rule to prescribe:

- the classification types of deputies performing titling and registration duties;
- the duties and obligations of deputies;
- the type and amount of any bonds that a county assessor-collector could require for a deputy to perform titling and registration duties; and
- the fees that may be charged or retained by deputies.

Under the bill, the commissioners court could approve a county assessor-collector to deputize an individual or business entity to perform titling and registration services in accordance with the board's rules.

By request of an appointed deputy, TxDMV could enter a contract to lease equipment to the deputy so he or she could use the automated registration and titling system. The department could require the deputy to post a bond equal to the value of the equipment. The deputy could install the

equipment as defined by the agreement.

Licensing. The bill would:

- allow the board of the TxDMV to determine by rule the information required for a dealer license application;
- allow the TxDMV to refund license fees from any funds, not just funds appropriated to the department for that purpose;
- remove a requirement for a person applying for a salvage vehicle dealer license to sign the form prescribed by the department; and
- change the definition of “license” under sec. 201.931, Transportation Code to only mean a license or permit for outdoor advertising issued under chapter 391 or 394 of Transportation Code.

Department liability, administration, hearings, and appeals. CSHB 2741 provides immunity from liability to the executive director of TxDMV, a board member, or a TxDMV employee for damages resulting from an official act or omission unless the act or omission constituted intentional or malicious malfeasance and established that the state’s liability for the indemnity was not affected.

The bill would authorize the executive director of TxDMV to authorize a business entity to perform a department function in accordance with certain rules. The bill also would require the board of TxDMV to establish by rule the classification types of businesses that were authorized to perform certain functions and the fees that could be charged by an authorized business.

Under the bill, citation for an appeal would have to be served on the executive director or their designee instead of the director. The bill would further specify the circumstances requiring the attorney general to bring in the name of the state a suit for an injunction or civil penalty for a person violating or threatening to violate the rules under chapter 503, Transportation Code or chapter 2301, Occupations Code.

The bill would require the department as a whole rather than the board of the TxDMV to maintain a toll-free telephone number and to provide information to a person who requests information about repurchase or replacement of a vehicle.

Rules for dealers, manufacturers, or distributors. The bill would

require a manufacturer or distributor to provide the TxDMV with its dealer warranty, preparation and delivery requirements on request rather than as an absolute requirement. These requirements placed on a dealer would be enforceable regardless of whether the manufacturer or distributor had filed those requirements with the department.

The bill would remove the time limit for a licensed person to give written notice of their participation in a new motor vehicle show or exposition.

Vehicle identification numbers. The bill would add a requirement for the TxDMV to assign a vehicle identification number to a frame and any trailer or semitrailer that didn't have a vehicle identification number, regardless of weight. Under the bill, only the department could issue vehicle identification numbers. The bill would add travel trailers, semitrailers, or a part of a travel trailer, semitrailer, trailer, or frame to the list of equipment for which a motor vehicle owner could apply for the assignment of a vehicle identification number that had been removed, altered, obliterated, or never assigned.

Titles. Under the bill, a justice of the peace or municipal court judge could not issue an order related to a title except if there was an issue concerning stolen property or a foreclosure of a mortgage or lien was involved. A county or district judge could not order TxDMV to change the type of title for:

- a nonrepairable vehicle titled after September 1, 2003; or
- a vehicle for which the department had issued a certificate of authority.

Under the bill, a person could obtain a bonded title by filing a bond with TxDMV if the applicant possessed the vehicle, there was no security interest on the vehicle, any lien on the vehicle was at least 10 years old, and the person provided a release of all liens with a bond. A late fee for transfers of title could not be more than \$250. The board by rule could set a fee for the issuance of a paper title, to cover the cost of administering the electronic title system.

Under the bill, titles with an optional rights of survivorship agreement would provide for the motor vehicle to be owned by the surviving owners when one or more of the owners died. The bill would allow an owner of a motor vehicle to operate or permit the operation of a vehicle on a public highway if the owner had applied for the title and registration of the

vehicle and obtained a receipt.

The department could issue a title for a trailer with a gross vehicle weight of up to 4,000 pounds if the other requirements for issuance of a title were met.

Refusal to issue, revocation, or suspension of title and appeal. The bill would allow a county to stamp an affidavit related to the rescindment, cancellation or revocation of an application for a title. An applicant aggrieved by a refusal, rescission, cancellation, suspension or revocation of an application could appeal only to the county or district court of the county of the applicant's residence.

License plates. The board could delegate any power related to dealer's and manufacturer's vehicle license plates, including the authority to issue a final order in a contested case hearing. An action taken under this delegation would be considered an action of the board and could not be appealed to the board. However, the board by rule could establish a procedure to allow parties to contested cases in which the final order was issued by a person delegated final order authority to file for a rehearing with the board. The bill would remove the requirement for an administrative law judge to give each party in a hearing about the sale or lease of motor vehicles a copy of the judge's proposal for a decision and the findings.

The bill would also:

- restrict issuance of specialty license plates to oil well servicing and drilling machinery;
- allow the department to extend issuance of specialty license plates for retirees from the merchant marine of the United States to current members of the merchant marine;
- restrict sec. 504.901, Transportation Code, governing transfer and removal of license plates, only to a passenger vehicle with a gross weight of 6,000 pounds or less and a light truck with a gross weight of 10,000 pounds or less; and
- change the provisions for dismissing a charge brought against a person using a wrong, fictitious, altered, or obscured license plate to require a person to show that the vehicle was issued a plate by the department that was attached to the vehicle, establishing that the vehicle was registered for the period during which the offense was committed.

Under the bill, the department could, but would not be required to issue specialty license plates in recognition of the Texas Aerospace Commission.

Electronic fund transfers and online systems. The bill would require a county assessor-collector that transfers money to the department to transfer the money electronically. Each county assessor-collector would have to process a registration renewal through an online system designated by the department.

The department could collect a fee for a person making a transaction using the state electronic Internet portal project. All fees would be allocated to the department to provide for the department's costs associated with administering the state electronic Internet portal project.

TxDMV could adopt rules to allow full and partial refunds for rejected titling and registration transactions.

Vehicle registration. The bill would:

- set new definitions for a “commercial motor vehicle” and “shipping weight” as related to vehicle registration;
- extend rules applying to vehicle registration to include temporary permits in lieu of registration;
- define the seating capacity of a bus, the weight of a passenger car, and the weight of a municipal bus or private bus as it related to vehicle registration;
- set fees for registering motor buses in alignment with current code regulating vehicles weighing more or less than 6,000 pounds and would remove references to code that no longer exists in statute;
- include registration fees for farm vehicles both more and less than 6,000 pounds;
- remove references to wire service agents from statute relating to vehicle registration and permits; and
- change part of the provisions for dismissing a charge brought for operation of a vehicle without registration to require the defendant to remedy the defect before their first court appearance in addition to paying the administrative fee of \$10 or less.

CSHB 2741 would also remove the requirement for a dealer to issue a buyer new registration documents for an entire registration year upon the

sale of a used motor vehicle. On the transfer of a vehicle to a dealer, if the transferor had paid for more than one year of registration, the department could credit the transferor for any time remaining on the registration in annual increments.

Motor carrier registration. The bill would allow the department to deny a registration to a motor carrier or business if the applicant was associated with a person with an unsatisfactory safety rating or multiple code violations.

The bill would not require the department to give notice or an opportunity for a hearing before a denial of application for registration, renewal of registration, or reinstatement of registration under chapter 643, Transportation Code, governing motor carrier registration. An applicant could appeal a denial by filing an appeal with the department by the 26th day after the date the department issued notice of the denial to the applicant.

Nonresident owners of trucks. The bill would require TxDMV to issue a receipt for a permit for nonresident owners of truck, truck-tractors, trailers, or semitrailers that would be required to be carried in the vehicle for which it was issued at all times instead of being attached to the vehicle in lieu of a regular license plate.

Contracts between counties. A county tax assessor-collector, with approval of the commissioners court of the county by order, could enter into a contract with one or more counties to perform mail-in or online registration or titling duties. These agreements could be terminated by a county that was party to the contract.

Neighborhood electric vehicles.

The bill would add rules regulating the operation of neighborhood electric vehicles. Under the bill, neighborhood electric vehicles would not have to be registered or carry liability insurance.

Permitting and overweight fees. The bill would restrict a county or municipality's ability to permit a bond, fee, or license for overweight vehicles on the state highway system. Under the bill, an overweight permit would become void if the owner or owner's representative failed to comply with a rule of the TxDMV board or with a condition placed on the permit by TxDMV.

Repeal. The bill would repeal portions of Occupations Code related to:

- the role of the director of TxDMV;
- the board's immunity from liability;
- rules for an application for a manufacturer's license; and
- the role of the director in the board's conduct for proceedings for certain hearings and final orders.

The bill would repeal sections of Transportation Code related to:

- the weight of vehicles for registration purposes;
- making a decision or final order for hearings under the TXDMV's Motor Vehicle Board final;
- an applicant swearing the truth on an application for a dealer number or wholesale auction number or for dealer's or manufacturer's license plates;
- full-service deputies;
- limited-service deputies;
- deputy assessor-collectors;
- acts by deputy assessor-collectors;
- defining the "commission" as the Texas Transportation Commission for permits;
- rules for an application for a permit to move a manufactured house; and
- department responsibilities and jurisdiction.

Enactment. To the extent of any conflict, the bill would prevail over another bill passed in the 83rd Legislature relating to nonsubstantive additions to and corrections in enacted codes.

The bill would take effect September 1, 2013, except for sec. 501.146 and sec. 504.202, Transportation Code, as amended by the bill and sec. 504.948, Transportation Code, as added by the bill, which would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, those sections would take effect September 1, 2013.

**SUPPORTERS
SAY:**

CSHB 2741 would clean up statute to bring it in line with TxDMV current practice. Whenever an agency transfers out of another department and becomes its own entity, it leaves behind inaccurate references in statute. The statutes governing TxDMV in the Occupations Code and Transportation Code were reorganized and updated in a previous legislative session to improve the agency's operations. CSHB 2741 would continue this process. The intent is not to change current policy but to bring statute in line with current practice.

The offenses created by the bill are necessary and appropriate for penalizing the manufacture, use, and sale of fake license plates, fake registration insignia, and license plate flippers. The penalties provided by the bill would be in line with penalties available for similar offenses in the Transportation Code, such as a third-degree felony penalty for falsification or forgery of the name of another person on a statement or application.

These offenses are serious and cost the state in lost registration and license plate revenue. The use of flippers on license plates makes it easier for criminals to evade law enforcement and encourages criminal behavior. Adding these offenses to statute would send a clear message that these behaviors were unacceptable.

The bill would provide disabled parking placards for disabled out-of-state drivers who were in the state for medical treatment and needed a short-term parking placard. The bill would not expand the use of placards for new populations and would include a safeguard against abuse by setting a short time frame for the placards' use and allowing peace officers to destroy placards used improperly.

**OPPONENTS
SAY:**

The offenses added by CSHB 2741 would cost the state in increased jail time and would criminalize Texans who might not realize that they possessed a fake license plate or registration sticker. Even though the bill would provide a defense to prosecution, it still would require to go through the court system if they owned a registration sticker or license plate produced through a licensing agreement with TxDMV.

The bill also could invite abuse of the disabled parking placard application process expanded to include out-of-state drivers. There already are too few spots for disabled drivers in Texas. Expanding the system would increase the number of placards in circulation and reduce spots for those who needed them most.