

SUBJECT: Continuing the Texas Department of Motor Vehicles

COMMITTEE: Transportation — committee substitute recommended

VOTE: 8 ayes — Canales, Bernal, Hefner, Leman, Ortega, Raney, Thierry, E. Thompson

0 nays

5 absent — Landgraf, Y. Davis, Goldman, Krause, Martinez

SENATE VOTE: On final passage, April 11 — 31-0

WITNESSES: *On House companion bill, HB 1541:*

For — (*Registered, but did not testify:* Jeff Martin, Texas Independent Automobile Dealers Association; Mark Borskey, Texas Recreational Vehicle Association)

Against — Stephen Palacios, Bexar County Tax Assessor; David DeLeon and Richard Salas, Bexar County Tax Office; Howard Hickman

On — Ruben Gonzalez, County of El Paso Tax Collector; Shay Luedeke, Tax Assessor-Collector Association of Texas; Robert Braziel, Texas Automobile Dealers Association; (*Registered, but did not testify:* Bryan Wilson, Automobile Burglary and Theft Prevention Authority, Texas Department of Motor Vehicles; Morgan Constantino and Steven Ogle, Sunset Advisory Commission; Whitney Brewster and Corrie Thompson, Texas Department of Motor Vehicles)

BACKGROUND: The 81st Legislature enacted HB 3097 by McClendon in 2009, creating the Texas Department of Motor Vehicles (TxDMV) and transferring the Automobile Burglary and Theft Prevention Authority (ABTPA) to the department. The mission of TxDMV is to serve, protect, and advance state residents and industries with quality motor vehicle services.

Functions. TxDMV provides title, registration, and license plate services.

The department also regulates motor vehicle sales, authorizes motor carriers to operate in the state, issues oversize and overweight permits, and investigates complaints against motor vehicle licensees and motor carriers.

Governing structure. The department is governed by a board of nine members appointed by the governor. Board members serve six-year terms and consist of two licensed franchised dealers, one licensed independent dealer, one licensed manufacturer or distributor, one county tax assessor-collector, one member from a county or city law enforcement agency, one member from the motor carrier industry, and two public members.

Funding. In fiscal 2017, TxDMV received \$1.8 billion in total revenue from fees, mostly vehicle title and registration fees, of which 85 percent was deposited to the State Highway Fund. The department operated with a budget of about \$130 million from the TxDMV fund in fiscal 2017. More than half of department expenditures were spent on vehicles titles and registration.

Staffing. The department employed 698 staff in fiscal 2017, including about 500 in the Austin headquarters and the remaining allocated among 16 regional service centers.

Automobile Burglary and Theft Prevention Authority. ABTPA has its own six-member board appointed by the governor. The authority is administratively attached to TxDMV and is staffed by the department. A portion of the \$2 fee on car insurance policies is appropriated to TxDMV to fund ABTPA.

ABTPA's board awards competitive grants to local law enforcement agencies or multijurisdictional task forces based on automobile burglary and theft rates. A total of \$13.4 million in grant funding was awarded to 24 agencies and task forces in fiscal 2017.

TxDMV would be discontinued on September 1, 2019, if not continued in statute.

DIGEST:

CSSB 604 would continue the Texas Department of Motor Vehicles (TxDMV) and adopt certain policy recommendations from the Sunset Advisory Commission revising registration and titling system regulations, specifying contested cases management, eliminating or consolidating certain licenses, renaming and codifying rules of the Automobile Burglary and Theft Prevention Authority, and requiring independent dealer training. The bill also would require a study regarding alternatively fueled vehicles.

TxDMV would be continued until September 1, 2031.

Registration and titling. CSSB 604 would revise the registration and titling system by requiring counties to use electronic systems, specifying how counties could contract for services, establishing risk-based monitoring rules, and adding other regulations.

County contracting requirements. CSSB 604 would require a county tax assessor-collector who awarded a contract to a full service deputy for the performance of registration and titling services to comply with standard state contracting practices as if the assessor-collector were a state agency, including requirements related to:

- purchase methods and competitive bidding;
- determining the best value for the county;
- contracting standards and oversight; and
- contract management.

A contract would have to specify an expiration date and renewal or extension terms and include performance criteria and measures necessary to evaluate the deputy.

An assessor-collector would have to monitor and evaluate the performance of a deputy awarded a contract and use that information in determining whether to renew or extend a contract or award a new contract.

Each county tax assessor-collector who entered into a contract before the

bill's effective date would have to rebid the contract using the above standards no later than March 31, 2020. TxDMV would have to provide guidance and recommendations to assist assessor-collectors in rebidding contracts.

Automated registration and titling system. CSSB 604 would allow TxDMV to adopt rules and policies for the maintenance and use of its automated registration and titling system (RTS). TxDMV would have sole authority to determine access to the system.

TxDmv would have to implement a training program by December 1, 2019, providing information on the RTS and identification of fraudulent activity related to registration and titling. The bill would require TxDMV to require a person providing registration and titling services to complete the training.

By March 1, 2020, TxDMV, in coordination with county tax assessor-collectors, would have to develop, adopt, and implement rules creating clear criteria for the suspension or denial of access to the RTS if an assessor-collector suspected abuse, fraud, or waste relating to the system by an employee or deputy.

Audits and investigations. CSSB 604 would allow TxDMV to audit or perform a compliance review of a person performing registration and titling services, investigate any provision of state functions related to registration or titling, and access any records needed to conduct the audit, review, or investigation.

A county tax assessor-collector could audit, perform a compliance review of, or investigate a person providing registration or titling services in the county and access any records needed to conduct the audit, review, or investigation. TxDMV's authority to conduct an audit or review would not be limited by a similar audit or review conducted by an assessor-collector.

The comptroller, in coordination with TxDMV, could include in a regular audit of state revenue collection the review of processes relating to a

county's collection and remittance of revenue included in an audit.

Risk-based monitoring. The bill would require TxDMV by rule to establish a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling to efficiently allocate resources and personnel.

Online registration system. CSSB 604 would require each county assessor-collector to make available to motor vehicle dealers the electronic system designed by TxDMV allowing a dealer to submit a title and registration application online in the name of the vehicle purchaser. Assessor-collectors would have to make this system available to dealers by September 1, 2020.

Contested cases and rulemaking. CSSB 604 would require the TxDMV board to adopt rules and policies establishing standards for reviewing a contested case. The rules and policies would have to:

- specify the role of division personnel in managing contested cases before the board or a person delegated power from the board, including advising on procedural matters;
- specify appropriate conduct and discussion by the board or a person delegated power regarding proposals for decision issued by administrative law judges;
- specify clear expectations limiting arguments and discussion to evident in the record held by the administrative law judge;
- address ex parte communications; and
- distinguish between using industry expertise and representing or advocating for an industry.

Automobile Burglary and Theft Prevention Authority. CSSB 604 would rename the Automobile Burglary and Theft Prevention Agency the Motor Vehicle Crime Prevention Authority and transfer the provisions of law regarding the authority to the Transportation Code.

The bill would specify that the authority could enter into contracts in its

own name with the recipients of grants for certain purposes, including grants to help increase the clearance rate of fraud-related motor vehicle crimes. The authority, in consultation with TxDMV, would have to annually update standard performance measures for each category of grants.

Money appropriated to TxDMV for authority purposes would have to help address fraud-related motor vehicle crime, as well as other purposes of the authority. Certain across-the-board Sunset recommendations, such as board member training requirements, would apply to the authority.

Representative license eliminated. CSSB 604 would eliminate the representative's license for a person who was an agent or employee of a manufacturer, distributor, or converter and performed a duty relating to promoting the distribution or sale of new motor vehicles or contracts dealers. A representative's license would expire on the bill's effective date.

Single salvage vehicle license. The bill would eliminate the salvage vehicle agent license and the classification and endorsement system under a salvage vehicle dealer license. Instead, the holder of a salvage vehicle dealer license could perform any of the activities of a salvage vehicle dealer, including:

- buying or selling salvage motor vehicles and nonrepairable motor vehicles that had been issued a salvage or nonrepairable vehicle title, respectively;
- engaging in the business of selling such vehicles at auction;
- offering or negotiating to sell such vehicles between license holders, or acting as the agent or representative for those license holders; and
- acquiring and repairing more than five salvage motor vehicles in a year for operation on a public highway.

A salvage vehicle agent license would expire on the bill's effective date.

Instead of expiring a year after issuance, a salvage vehicle dealer license

would be valid for a period prescribed by the TxDMV board. The board would have to prorate the license fee to reflect the term of the license if it prescribed a term for a period other than one year.

Enforcement. The bill would allow the TxDMV board, after notice and opportunity for a hearing, to issue a cease and desist order to a person without a license who violated Occupations Code ch. 2302 regarding salvage vehicle operations or related rules.

If, after a proceeding under Occupations Code ch. 2301 regarding the sale or lease of motor vehicles, the TxDMV board determined that a person violated that chapter or a rule, the board could order the person to pay a refund to the buyer or lessee of the motor vehicle that was the subject of the proceeding.

The bill would allow TxDMV to order a motor carrier that violated Transportation Code ch. 643, regarding motor carrier registration requirements or a related rule to pay a refund to a consumer who paid the motor carrier to transport household goods.

Provisions amending Occupations Code chs. 2301 and 2302 would not affect the validity of a proceeding pending before a court or other governmental entity on the bill's effective date. The bill would not affect an offense or violation committed before the effective date.

Independent dealer training. CSSB 604 would require TxDMV by rule to establish education and training requirements for an applicant for an original or renewal general distinguishing number who proposed to be an independent motor vehicle dealer. Applicants would be required to establish that they completed the education and training.

Alternatively fueled vehicles study. CSSB 604 would require TxDMV, using existing funds, to organize a study on:

- the impact of the alternatively fueled vehicles industry on the state;
- options available for collecting fees from owners of those vehicles

- to replace the loss of revenue from motor fuel taxes; and
- the feasibility and desirability of establishing a fee for those vehicles.

The study would be conducted by TxDMV, the Public Utility Commission, the Texas Department of Transportation, the Department of Public Safety, and the Texas Commission on Environmental Quality.

The bill would specify what the study was required to examine, including, but not limited to, the current revenue generated from motor fuel taxes, the net revenue generated by fees and taxes paid by owners of alternatively fueled and conventional vehicles, and alternative methods to determine and collect road use fees.

By December 1, 2020, TxDMV would have to prepare and submit to the governor, lieutenant governor, House speaker, and the Legislature a written report including the results of the study and legislative recommendations.

This provision would expire September 1, 2021.

Other provisions. CSSB 604 would adopt several across-the-board Sunset recommendations, including provisions regarding board member training, board membership, complaints, and alternative dispute resolution.

The board member training program would include the types of board rules, interpretations, and enforcement actions that could implicate federal antitrust law by limiting competition or impacting prices charged by persons in the professions regulated by the board.

The bill would repeal provisions of law exempting an advisory committee established by TxDMV from being required to provide balanced representation between the industry and consumers.

The bill would take effect September 1, 2019.

SUPPORTERS
SAY:

CSSB 604 would continue the Texas Department of Motor Vehicles (TxDMV) for 12 years, as the agency has largely accomplished the Legislature's goals for improved performance, according to the Sunset Advisory Commission. TxDMV is needed to continue to provide motor vehicle services and regulate industries that can harm the public.

The bill also would adopt certain Sunset recommendations relating to title and registration systems, clarifying rules on contested cases, removing unnecessary licenses, allowing for better enforcement practices, and other recommendations for the department.

County contracting requirements. By requiring counties to use standard state contracting processes when contracting full-service deputies for registration and title services, CSSB 604 would ensure that counties followed basic, good-government practices when outsourcing state services. This would provide better oversight, enhance security, and improve competition and transparency. The bill also would require TxDMV to assist counties and would give counties enough time to rebid existing deputy contracts.

Online registration system. The bill would require TxDMV to ensure that the electronic registration and title service for automobile dealers, known as webDEALER, was available to dealers in all counties by September 1, 2020. This would ensure that the state's investment in the system was available statewide to provide more efficiency in registering and titling a vehicle on behalf of a buyer. Dealers would not be required to use webDEALER but would have the option.

Automated registration and titling system. CSSB 604 would include a Sunset recommendation to clarify TxDMV's authority to control access to the registration and titling system (RTS). This clarification would allow the department to adopt rules for the RTS, such as user access, to adhere to best practices and protect against cybersecurity threats. The bill also would allow TxDMV to suspend access to the RTS upon suspicion of fraud, providing greater protections.

Contested cases and rulemaking. The bill would adopt a Sunset recommendation to require the TxDMV board to adopt rules and policies to establish clear standards for handling contested cases. To address findings that the board was industry-oriented, the rules would have to include the distinction between the proper use of board member expertise and advocating for the motor vehicle industry.

Licenses. CSSB 604 would eliminate unnecessary and burdensome licenses, including the representative and salvage agent licenses, and consolidate the salvage vehicle dealer license by removing the different classifications of salvage dealer licenses. TxDMV received no complaints about a licensed representative or salvage agent in fiscal 2017. The endorsement system for salvage licenses is unnecessarily complex, and licensees may need to hold multiple endorsements to operate their businesses. The bill would relieve administrative and industry burdens by removing and consolidating these licenses.

Motor vehicle shows and exhibitions. The bill should not remove the requirement for a motor vehicle licensee to give notice to and seek approval from TxDMV before a motor vehicle show or exhibition off dealership premises. Current law provides for good policing of the industry and allows the department to know what happens at offsite locations.

Deceptive advertising enforcement. CSSB 604 should not be changed to include language on prohibited advertising practices. Allowing dealers to cure an advertising violation before imposing a penalty gives a good opportunity for the dealer to respond to a warning without being penalized. A dealer would be penalized upon a second occurrence of the same type of violation. Motor vehicle advertising is highly regulated, with technical advertising rules that dealers and others must follow. Current practices serve the industry well.

OPPONENTS
SAY:

While the Texas Department of Motor Vehicles (TxDMV) should be continued, CSSB 604 would burden county tax assessor-collectors by

requiring counties to follow certain state contracting standards and to use webDEALER and by giving TxDMV sole authority over the automated registration and titling system. The bill also would not include important Sunset recommendations that would remove administrative burdens and better protect the public.

County contracting requirements. The bill would require counties to use state standards when contracting with full-service deputies for titling and registration services, which would be unnecessary and burdensome. Counties currently follow state laws governing contracting under the Local Government Code, which is more appropriate than those governing state contracting guidelines. Local contracting decisions should stay at the local level.

Online registration system. The bill should allow, rather than require, county tax assessor-collectors to make available to motor vehicle dealers the webDEALER electronic system designed by TxDMV to permit a dealer to submit a title and registration application online. Tax assessor-collectors should determine whether to approve dealers based on information such as the dealer's volume, ability, and experience. Without this discretion, there is potential for fraud or abuse of the system.

The webDEALER system is not in demand in all counties. Compliance would be costly, could hurt certain counties, and could cause private offices to close. Some report that using the system could cost millions of dollars, which can be challenging to find or justify in a small county budget. Counties should retain discretion in how they offer dealers titling and registration services.

Automated registration and titling system. CSSB 604 would give TxDMV sole authority to determine access to the registration and titling system (RTS), which could lead to arbitrary effects upon counties and both limited and full-service deputies contracted for registration and title services. The bill should include county tax assessor-collectors within that system authority, establishing a process to jointly determine access and revocation of access to RTS.

Motor vehicle shows and exhibitions. The Legislature should put language back in the bill as engrossed by the Senate that would remove the unnecessary approval process for auto shows and exhibitions. Under current law, a motor vehicle licensee cannot participate in motor vehicles shows or exhibitions, such as an ongoing vehicle display of a car at a shopping mall, without written notice and approval from TxDMV. This is an unnecessary bureaucratic process that offers no substantial consumer benefits and is duplicative with laws prohibiting vehicle sales activities from being conducted outside a dealership. TxDMV also may investigate alleged violations at a show or exhibition without this requirement. Application denials are rare. In fiscal 2017, more than 3,000 applications were approved but only one complaint was received. This approval process should be repealed to relieve administrative burdens.

Deceptive advertising enforcement. CSSB 604 would not contain a Sunset recommendation allowing TxDMV to better enforce regulations meant to prevent deceptive or misleading motor vehicle advertisements in the state. Under current law, a motor vehicle licensee could violate advertising rules without being subject to an enforcement action beyond a warning and opportunity to cure the violation. Sunset's recommendation was to remove the statutory requirement that TxDMV allow a licensee to cure each type of advertising violation once before assessing a penalty. Such violations include bait advertisements, such as offers intended to shift a consumer's interest from the advertised product to a more expensive one, or creating any impression that a used vehicle is new. If the bill included this recommendation, TxDMV could have more flexibility and an additional tool for enforcement over those advertising violations.

OTHER
OPPONENTS
SAY:

CSSB 604 improperly would continue the Texas Department of Motor Vehicles (TxDMV), which is inefficient and dominated by the industry it purports to regulate. TxDMV's functions should be transferred back to the Texas Department of Transportation or related agencies.