

BILL ANALYSIS

Senate Research Center

C.S.H.B. 1595
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State Affairs
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Committee Report (Substituted)

DIGEST

Currently, Article 4413(36), V.T.C.S., provides for the licensing of motor vehicle dealers, manufacturers, distributors, lessors, and lease facilitators, and regulates the legal relations between and among these licensees and between any of these licensees and the purchasers of motor vehicles. This bill will replace the Texas Motor Vehicle Commission with the Texas Motor Vehicle Board and provide additional regulations regarding motor vehicle dealers and manufacturers.

PURPOSE

As proposed, C.S.H.B. 1595 replaces the Texas Motor Vehicle Commission with the Texas Motor Vehicle Board and provides additional regulations regarding motor vehicle dealers and manufacturers.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.03, Article 4413(36), V.T.C.S. (Texas Motor Vehicle Commission Code), to define "board," "director," "executive director," and "general distinguishing number." Redefines "dealer," "franchised dealer," "lessor," "licensee," "nonfranchised dealer," and "retail sale." Makes conforming changes.

SECTION 2. Amends Section 2.01, Article 4413(36), V.T.C.S., as follows:

Sec. 2.01. New heading: TEXAS MOTOR VEHICLE BOARD. Provides that the Motor Vehicle Board of the Texas Department of Transportation (board), in conducting the policy-making and regulatory functions and duties imposed on the board by this Act, whether mandatory or discretionary, and unless otherwise provided by this Act, is an independent entity withing the Texas Department of Transportation (department) and is not an advisory body to the department. Requires the board, rather than the Texas Motor Vehicle Commission, to carry out the functions and duties conferred by this Act. Makes conforming changes.

SECTION 3. Amends Section 2.02, Article 4413(36), V.T.C.S., to provide that the executive director of the department (executive director) is a member of the board ex officio. Authorizes the executive director to attend a meeting of the board and to confer with and advise the board, the chairman of the board, or the director of the board. Prohibits the executive director from voting on a matter coming before the board and is not counted in the determination of a quorum at a meeting of the board. Provides that, except as provided by this subsection, the provisions of this Act relating to members of the board do not apply to the executive director. Sets forth the membership of the board.

SECTION 4. Amends Section 2.03, Article 4413(36), V.T.C.S., to provide that, notwithstanding the terms of Subsection (b), the office of a member appointed to the board pursuant to the terms of Section 2.02(c)(1) is not vacated by virtue of the fact that the member, or a person related to the member within the first degree by consanguinity or affinity, as determined under Article 5996h, V.T.C.S., subsequently acquires an interest in a dealership. Makes conforming changes.

SECTION 5. Amends Section 2.04, Article 4413(36), V.T.C.S., to require the members of the board to hold office for terms of six years, with the terms of three, rather than two, members expiring on January 31 of each odd-numbered year. Makes a conforming change.

SECTION 6. Amends Section 2.07, Article 4413(36), V.T.C.S., to make a conforming change.

SECTION 7. Amends Section 2.08, Article 4413(36), V.T.C.S., to provide that a majority of the board constitutes a quorum to transact business, except that a member appointed under Section 2.02 is not counted in the calculation of a quorum for purposes of the determination of an issue with respect to which the member is prohibited from voting. Prohibits a member of the board appointed pursuant to Section 2.02(c) from voting on an issue involving a dispute in which both a dealer and a manufacturer are named parties. mcc

SECTION 8. Amends Section 2.08A(c), Article 4413(36), V.T.C.S., to make conforming changes.

SECTION 9. Amends Section 2.09, Article 4413(36), V.T.C.S., as follows:

Sec. 2.09. New heading: DIRECTOR; STAFF; CONTRACTS; INDEMNITY. Provides that an employee of the board is subject to dismissal if the employee has an interest in or is related within the first degree by consanguinity or affinity to a person who has an interest in a business that leases motor vehicles. Authorizes the director of the board, or a designee, to take certain actions regarding certain contracts or agreements. Makes conforming changes.

SECTION 10. Amends Section 2.09B, Article 4413(36), V.T.C.S., by adding Subsection (e), to prohibit a member of the board from voting on an issue coming before the board for determination if that issue directly affects the member or if the issue directly affects an entity in which the member has a financial interest.

SECTION 11. Amends Section 3.01(a), Article 4413(36), V.T.C.S., to make conforming and standard recodification changes.

SECTION 12. Amends Subchapter C, Article 4413(36), V.T.C.S., by adding Section 3.01A, as follows:

Sec. 3.01A. INTERACTION WITH DEPARTMENT. Requires the board, in coordination with the department, to develop and implement policies that clearly delineate the policy-making responsibilities of the board and the management responsibilities of the department. Authorizes the department, by agreement with the board, to provide personnel and services to the board as needed to carry out purposes, powers, and duties of the board. Authorizes the board to delegate authority to personnel as needed.

SECTION 13. Amends Section 3.03(b), Article 4413(36), V.T.C.S., to make conforming and standard recodification changes.

SECTION 14. Amends Section 3.04, Article 4413(36), V.T.C.S., as follows:

Sec. 3.04. New heading: DELEGATION OF BOARD POWERS. Makes conforming changes.

SECTION 15. Amends Section 3.05, Article 4413(36), V.T.C.S., to prohibit the board, notwithstanding Subsection (a) of this section or another provision of this Act or board rule, from initiating a proceeding alleging a violation of this Act or a board rule relating to advertising until the board has notified the licensee involved of the alleged violation and given the licensee an opportunity to cure the violation without further proceedings or liability. Makes conforming changes.

SECTION 16. Amends Section 3.06, Article 4413(36), V.T.C.S., to make conforming and standard recodification changes.

SECTION 17. Amends Section 3.07, Article 4413(36), V.T.C.S., to require an order or

decision to include a separate finding of fact with respect to each specific issue the board is required by law to consider in reaching a decision, and set forth additional findings of fact and conclusions of law on which the order or decision is based. Makes conforming changes.

SECTION 18. Amends Article 4413(36), V.T.C.S., by adding Section 3.07A, as follows:

Sec. 3.07A. MEDIATION. Defines "mediation." Sets forth regulations regarding the use of mediation in a dispute between a franchised dealer and a manufacturer or distributor.

SECTION 19. Amends Section 3.08, Article 4413(36), V.T.C.S., to define "contested case." Requires a hearing to be convened, rather than conducted, at the time and place stated in the hearing notice. Deletes a provision requiring the hearing to be rescheduled and an amended notice given if the hearing is not convened at the time and place stated in the hearing notice. Authorizes any hearing to be recessed until a time and place certain without further notice if the time and place is announced openly before the hearing is recessed. Authorizes the hearing to be recessed to a time and place certain by giving advance notice as required by Chapter 2001, Government Code, if the time and place determined for resumption of the hearing is not announced openly before the hearing is recessed. Requires the examiner, in all contested cases, to serve on all parties a copy of the examiner's proposal for decision and recommended order. Authorizes the board to consider only the materials timely submitted in its review of the case. Makes conforming and standard recodification changes.

SECTION 20. Amends Section 3.09, Article 4413(36), V.T.C.S., as follows:

Sec. 3.09. New heading: PROCEDURAL SUPREMACY. Makes a standard recodification change.

SECTION 21. Amends Section 4.01, Article 4413(36), V.T.C.S., by amending Subsection (b) and adding Subsections (c) and (d), to redefine "license." Provides that, notwithstanding the terms of this Act, a franchised dealer is not required to have a lessor license or lease facilitator license to engage in any capacity in the business of leasing motor vehicles that the dealer owns and is licensed by this Act to sell. Provides that a manufacturer or distributor that directly or indirectly reimburses another person to perform warranty repair services on a vehicle is engaged in business in this state whether or not the manufacturer sells or offers for sale new motor vehicles in this state.

SECTION 22. Amends Section 4.02(a), Article 4413(36), V.T.C.S., to make conforming and standard recodification changes.

SECTION 23. Amends Section 4.03, Article 4413(36), V.T.C.S., by adding Subsection (e) and by redesignating Subsection (e) as Subsection (f), to provide that the terms and conditions of a franchise agreement are subject to the terms of this Act. Provides that a term or condition of a franchise agreement inconsistent with the terms of this Act is not enforceable.

SECTION 24. Amends Section 4.03A, Article 4413(36), V.T.C.S., to make conforming and standard recodification changes.

SECTION 25. Amends Section 4.05(a), Article 4413(36), V.T.C.S., to require the annual license fee to be \$100 for licenses issued for each location separate from the person's dealership at which a franchised dealer offers no motor vehicle for sale, but performs warranty service on vehicles the dealer is franchised and licensed to sell. Redesignates subsequent subsections.

SECTION 26. Amends Section 4.06, Article 4413(36), V.T.C.S., to provide that, notwithstanding the terms of Subsection (d), the relocation of a dealership is not subject to protest by a franchised dealer if certain conditions are met. Deletes existing text regarding the relocation of a dealership. Makes conforming changes.

SECTION 27. Amends Section 5.01, Article 4413(36), V.T.C.S., to make a nonsubstantive change.

SECTION 28. Amends Section 5.01A, Article 4413(36), V.T.C.S., to delete a provision prohibiting a dealer from operating as a dealer without a currently valid license or general distinguishing number issued by the board. Redesignates subsequent subsections.

SECTION 29. Amends Article 4413(36), V.T.C.S., by adding Section 5.01B, as follows:

Sec. 5.01B. TRANSFER OF OWNERSHIP BY DEALER; REJECTION; HEARING. Sets forth regulations regarding the transfer of ownership by a dealer, rejection of the transfer, and hearings.

SECTION 30. Amends Section 5.02(b), Article 4413(36), V.T.C.S., to provide that it is unlawful for a manufacturer, distributor, or representative to take certain actions regarding offering of a line-make and requiring compensation for court costs, attorney's fees or other expenses in certain circumstances. Makes conforming changes.

SECTION 31. Amends Section 6.02, Article 4413(36), V.T.C.S., to make conforming changes.

SECTION 32. Amends Section 6.03, Article 4413(36), V.T.C.S., to make conforming changes.

SECTION 33. Amends Section 6.06, Article 4413(36), V.T.C.S., by adding Subsection (g), to provide that a writ of error is allowed from the supreme court for an appeal from an interlocutory order described by Section 51.014(3) or 51.014(6), Civil Practice and Remedies Code, in a civil involving a licensee. Requires the writ of error to be given precedence by the supreme court over other writs of error. Provides that the right to writ of error appeal is without prejudice to the right of any party to seek relief by application for leave to file petition for writ of mandamus with respect to the order.

SECTION 34. Amends Sections 6.07(e), (g), and (j), Article 4413(36), V.T.C.S., to make conforming and standard recodification changes.

SECTION 35. Amends Sections 7.01(a), (c), and (d), Article 4413(36), V.T.C.S., to make conforming and nonsubstantive changes.

SECTION 36. (a) Authorizes a person who, on June 7, 1995, held both a motor home dealer's license and a motor home manufacturer's license issued pursuant to the terms of the Article 4413(36), V.T.C.S., to hold both a motor home dealer's license and motor home manufacturer's license as those terms are defined by Article 4413(36), V.T.C.S., notwithstanding the terms of Section 5.02(b)(25), Article 4413(36), V.T.C.S.

(b) Provides that Subsection (a) of this section authorizes a person to operate as a manufacturer and a dealer of no vehicle or type of vehicle except a motor home as that term is defined by Article 4413(36), V.T.C.S.

SECTION 37. Sets forth regulations regarding the terms of members appointed to the board as a result of the increase in the size of the board.

SECTION 38. Makes application of this Act prospective.

SECTION 39. Emergency clause.
Effective date: upon passage.

SUMMARY OF COMMITTEE CHANGES

SECTION 3.

Amends Section 2.02(c), Article 4413(36), V.T.C.S., to set forth the membership of the board.

SECTION 4.

Amends Section 2.03, Article 4413(36), V.T.C.S., to set forth regulations regarding a member who subsequently acquires an interest in a dealership. Makes conforming changes.

SECTION 5.

Amends Section 2.04, Article 4413(36), V.T.C.S., to set forth the terms of members of the board.

SECTION 7.

Amends Section 2.08, Article 4413(36), V.T.C.S., to set forth regulations regarding a quorum and voting.

SECTION 10.

Amends Section 2.09B, Article 4413(36), V.T.C.S., to set forth regulations regarding voting.

SECTION 18.

Adds Section 3.07A, Article 4413(36), V.T.C.S., to set forth regulations regarding mediation.

SECTION 23.

Amends Section 4.03, Article 4413(36), V.T.C.S., to set forth regulations regarding the terms of a franchise agreement.

SECTION 26.

Amends Section 4.06, Article 4413(36), V.T.C.S., to set forth regulations regarding relocation of a dealership. Makes conforming changes.

SECTION 29.

Adds Section 5.01B, Article 4413(36), V.T.C.S., to set forth regulations regarding transfer of ownership of a dealer, rejection of the transfer, and a hearing.

SECTION 30.

Amends Section 5.02(b), Article 4413(36), V.T.C.S., to set forth regulations regarding unlawful acts by a manufacturer, distributor, or representative.

SECTION 33.

Amends Section 6.06, Article 4413(36), V.T.C.S., to set forth regulations regarding a writ of error.

SECTION 37.

Sets forth regulations regarding terms of members.

SECTION 38.

Makes application of this Act prospective.