

BILL ANALYSIS

Senate Research Center

H.B. 1665
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State Affairs
4/18/2001
Committee Report (Amended)

DIGEST AND PURPOSE

Currently, the Motor Vehicle Board (board) of the Texas Department of Transportation is the state's licensor of manufacturers, distributors, dealers, lessors, and lease facilitators. The board's power and authority is established through the Texas Motor Vehicle Commission Code. Changes in the motor vehicle industry have resulted in the need for certain parts of the code to be updated. H.B. 1665 makes language changes relating to the redesignation of the Texas Motor Vehicle Commission as the board; modifications to the duties and authority of the board; and modifications to the regulation of the sale of motor vehicles.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Department of Transportation is expressly granted to the Motor Vehicle Board of the Texas Department of Transportation in SECTION 6 (Section 3.03, Article 4413(36), V.T.C.S.) of this bill.

Rulemaking authority is expressly granted to the Motor Vehicle Board of the Texas Department of Transportation in SECTION 9 (Section 4.01, Article 4413(36), V.T.C.S.) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.03, Article 4413(36), V.T.C.S., to redefine "converter" and "franchised dealer."

SECTION 2. Amends Section 2.03, Article 4413(36), V.T.C.S., by amending Subsections (b) and (c) and adding Subsection (d), to provide that the office of a member is automatically vacated and requires that vacancy to be filled as any other vacancy, if certain conditions exist. Provides that the office of a member appointed to the Motor Vehicle Board of the Texas Department of Transportation (board) pursuant to the terms of Section 2.02(b)(1), rather than 2.02(c)(1), of this Act is not vacated by virtue of the fact that the member, or person related to the member within the first degree by consanguinity or affinity, as determined under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code, subsequently acquires an interest in a dealership. Provides that notwithstanding the terms of this section, a person is not disqualified to be appointed to or serve on the board because that person, or another person, owns, directly or indirectly, shares of stock in a publicly traded company that manufactures or distributes motor vehicles, if the ownership interest is not substantial.

SECTION 3. Amends Section 2.08(d), Article 4413(36), V.T.C.S., to make a conforming change.

SECTION 4. Amends Section 2.12(c), Article 4413(36), V.T.C.S., to require the board, rather than the Texas Transportation Commission (commission) of the Texas Department of Transportation (department), with regard to each complaint filed by the board for the purpose of enforcing this Act, rather than with the commission, to keep certain information.

SECTION 5. Amends Section 3.01(a), Article 4413(36), V.T.C.S., to provide that the board has the

exclusive, rather than general, original jurisdiction to regulate those aspects, rather than all aspects, of the distribution, sale, and leasing of motor vehicles as governed by this Act and to do all things, whether specifically designated in this Act or implied herein, or necessary or convenient to the exercise of this power and jurisdiction, including a certain jurisdiction.

SECTION 6. Amends Section 3.03, Article 4413(36), V.T.C.S., as follows:

Sec. 3.03. New Heading: GENERAL BOARD POWERS. Requires the board, rather than the commission, to have, and authorizes the board, in its discretion and notwithstanding any other provisions of law that is inconsistent with this Act, to exercise the powers set forth in this Act. Requires the board to have all other powers necessary, incidental, or convenient to carry out its duties and effectuate its express powers and duties. Provides that the board has the authority to enforce its order. Provides that the authority vested in the board by this section includes the authority to enter an order requiring that a person pay costs and expenses of a party in connection with an order entered pursuant to the authority of Section 5.02(b)(16); perform an act other than the payment of money; or refrain from performing an act. Authorizes the board, rather than the department, to adopt rules applicable to proceedings, hearings, and enforcement proceedings in an action brought pursuant to this subsection.

SECTION 7. Amends Section 3.05(a), Article 4413(36), V.T.C.S., to provide that notwithstanding other provisions of this Act, the board is not required to pay a filing fee when filing a complaint or other enforcement action.

SECTION 8. Amends Section 3.08, Article 4413(36), V.T.C.S., by adding Subsection (k), to prohibit a licensee, except as provided by this subsection, from filing an action with the board after the expiration of four years after the date the action accrues. Authorizes the limitations period provided by this subsection to be extended for a period not to exceed 180 days on a showing that the failure timely to commence an action was caused by reliance on fraudulent statements or inducements made by a party for the purpose of inducing a party to refrain from bringing an action. Provides that this subsection does not apply to certain actions.

SECTION 9. Amends Section 4.01(a), Article 4413(36), V.T.C.S., to authorize the board to issue a duplicate license for any license it issues, charge a fee for the issuance of a duplicate license, and adopt rules applicable to the issuance of a duplicate license. Makes conforming changes.

SECTION 10. Amends Section 4.02(a), Article 4413(36), V.T.C.S., to provide that notwithstanding other law or rule, a request for an application is confidential, is not an open record, and is not available for public inspection.

SECTION 11. Amends Section 4.03(c), Article 4413(36), V.T.C.S., to require each application to include a statement regarding the manufacturer's compliance with Sections 5.02, 5.02A, 5.02B, and 5.02C of this Act. Makes a conforming change.

SECTION 12. Amends Section 4.05(a), Article 4413(36), V.T.C.S., to set forth the annual fees for certain enumerated licenses.

SECTION 13. Amends Section 4.06(a), Article 4413(36), V.T.C.S., to authorize the board to deny an application for a license, revoke or suspend an outstanding license, or place on probation a person whose license has been suspended, or reprimand a licensee, for certain enumerated reasons.

SECTION 14. Amends Section 5.02(b), Article 4413(36), V.T.C.S., to provide that it is unlawful for any manufacturer, distributor, or representative to, notwithstanding the terms of any franchise agreement, fail to pay to a dealer or any lienholder in accordance with their respective interest after the termination of a franchise certain calculated dealer costs.

SECTION 15. Amends Section 5.02C, Article 4413(36), V.T.C.S., by adding a new Subsection (e) and renumbering all subsequent subsections, to provide that for purposes of determining compliance with Subsection (d)(2), the price of a dealership and the other terms and conditions of a contract for the sale of a dealership are reasonable if the purchaser is a franchised dealer who meets certain criteria.

SECTION 16. Amends Article 4413(36), V.T.C.S., by adding Section 5.02D, as follows:

Sec. 5.02D. CERTAIN TIME LIMITS TOLLED UNDER CERTAIN CIRCUMSTANCES. Provides that a time limit relating to board proceedings imposed on the board or on a dealer by the terms of this Act is tolled during the pendency of mandatory mediation proceedings required by this Act or by a franchise agreement.

SECTION 17. Amends Section 5.04(b), Article 4413(36), V.T.C.S., to redefine “make” under certain conditions.

SECTION 18. Effective date: upon passage or September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

Committee Amendment No. 1.

SECTION 1. Amends the previously proposed redefinition of “converter.”

SECTIONS 2 - 8. No change.

SECTION 9. Amends previously proposed changes to provisions regarding the issuance of a duplicate license.

Adds a new SECTION 10 and renumbers previously proposed SECTIONS 10 - 13 as SECTIONS 11 - 14 with no change.

Adds a new SECTION 15 and renumbers previously proposed SECTION 14 as SECTION 16 with no change.

Adds a new SECTION 17 and renumbers previously proposed SECTION 15 as SECTION 18 with no change.