

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2926
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Business & Commerce
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Committee Report (Substituted)

DIGEST AND PURPOSE

The Texas Parks and Wildlife Marine Theft Special Investigation Unit has discovered that only 1,102 of 1,577 active, licensed dealers in Texas reported payment of sales tax between 2000 and 2001. This represents lost revenue to the state. C.S.H.B. 2926 requires dealers, distributors, and manufacturers to obtain a license for each business location and establishes the structure governing the required fee, display, and duration of the license, and rules governing the license; establishes an appeal process regarding a certificate of title; and requires that employees of the Parks and Wildlife Department or a peace officer to be allowed to perform certain inspections of a vessel at a dealer's, distributor's, or manufacturer's place of business during business hours.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Parks and Wildlife Commission in SECTION 4 (Section 31.032, Parks and Wildlife Code), SECTION 5 (Section 31.039, Parks and Wildlife Code), SECTION 7 (Section 31.0412, Parks and Wildlife Code), and SECTION 10 (Section 31.0465, Parks and Wildlife Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 31.003, Parks and Wildlife Code, by amending Subdivision (7) and adding Subdivision (16) to redefine "dealer" and to define "distributor," respectively.

SECTION 2. Amends Subchapter A, Chapter 31, Parks and Wildlife Code, by adding Section 31.007, as follows:

Sec. 31.007. DEALER REQUIREMENTS. Requires a dealer to perform certain acts.

SECTION 3. Amends Section 31.021, Parks and Wildlife Code, as follows:

Sec. 31.021. REQUIRED NUMBERING. (a) Requires each vessel, rather than undocumented vessel, on the water of this state to be numbered in accordance with the provisions of this chapter unless specifically exempted.

(b) Authorizes no person to operate or give permission for the operation of any vessel or to dock, moor, or store a vessel owned by the person on the water of this state unless certain conditions exist.

SECTION 4. Amends Section 31.032, Parks and Wildlife Code, as follows:

Sec. 31.032. NUMBERING ON BOW. (a) Creates this subsection from existing text. Requires the owner of a vessel to paint on or attach to each side of the vessel near the bow the identification number and a validation decal in the manner prescribed by the Texas Parks and Wildlife Department (TPWD).

(b) Provides that the owner of a vessel required to be numbered under this subchapter and documented by the United States Coast Guard is not required to attach an identification number as required by Subsection (a).

(c) Requires the Texas Parks and Wildlife Commission (TPWC) to adopt rules for the placement of the validation decal in an alternate location for antique boats. Defines “antique boat.”

SECTION 5. Amends Section 31.039, Parks and Wildlife Code, as follows:

Sec. 31.039. New heading: PUBLIC RECORDS; FEES. (a) Provides that all ownership records of TPWD made or kept under this chapter are public records.

(b) Authorizes TPWC to by rule charge a fee for access to ownership records and other records made or kept under this chapter.

SECTION 6. Amends Section 31.041, Parks and Wildlife Code, as follows:

Sec. 31.041. New heading: DEALER'S, DISTRIBUTOR'S, AND MANUFACTURER'S LICENSE. (a) Prohibits a person from engaging in business in this state as a dealer, distributor, or manufacturer unless the person holds a license issued under this section. Requires a dealer to have a license for each place of business owned and operated by the person.

(b) Requires TPWC to establish the form and manner for display of a license issued under this section.

(c) Requires TPWD to issue a dealer, distributor, or manufacturer number to each dealer, distributor, or manufacturer licensed under this section in the manner provided by Section 31.031(b).

(d) Authorizes a dealer, distributor, or manufacturer of vessels in this state to use the dealer's, distributor's, or manufacturer's number for vessels the dealer, distributor, or manufacturer wishes to show, demonstrate, or test on the water of this state instead of securing a certificate of number for each vessel. Requires the number to be attached to any vessel that the dealer, distributor, or manufacturer sends temporarily on the water. Provides that for purposes of this subsection, “show, demonstrate, or test” does not include the use of a vessel for recreational purposes or for participation in a contest or event.

(e) Redesignated from Subsection (b). Requires the application for a license, rather than number, under this section to state that the applicant is a dealer, distributor, or manufacturer within the meaning of this chapter, and requires the facts stated on the application to be sworn before an officer authorized to administer oaths. Requires an application submitted by a dealer to be accompanied by certain photographs of the business. Includes a “distributor” as an entity required to submit an application with a copy of a tax permit. Provides that the two-year fee for a dealer's, distributor's, or manufacturer's number is \$500, rather than \$45 or an amount set by TPWC, whichever amount was more. Prohibits a license, rather than number, from being issued until the provisions of this section have been satisfied.

(f) Redesignated from Subsection (c). Makes conforming changes.

(g) Redesignated from Subsection (d). Makes conforming changes. Deletes text regarding securing a certificate of number or title before making a transfer.

SECTION 7. Amends Subchapter B, Chapter 31, Parks and Wildlife Code, by adding Sections 31.0411, 31.0412, and 31.0413, as follows:

Sec. 31.0411. TERM OF LICENSE; TRANSFER. (a) Provides that except as provided by Subsection (b), a license issued under Section 31.041 is valid for two years from the date of issuance and prohibits it from being transferred to another person.

(b) Provides that a license issued under Section 31.041 in the name of a business remains valid for the business location specified on the license if a change of ownership or business name occurs.

(c) Authorizes a license issued under Section 31.041 to be transferred to a new address if certain conditions exist.

Sec. 31.0412. LICENSING RULES. Authorizes TPWC to adopt rules regarding licenses issued under Section 31.041, including certain rules.

Sec. 31.0413. EXEMPTION FROM DEALER LICENSING REQUIREMENTS. Provides that the dealer licensing provisions of this subchapter do not apply to the sale of a canoe, kayak, punt, rowboat, rubber raft, paddleboat, or other vessel that is less than 12 feet in length and has a horsepower rating of five horsepower or less or to the sale of an outboard motor with a manufacturer's rating of five horsepower or less.

SECTION 8. Amends Section 31.042(b), Parks and Wildlife Code, to provide a list of certain causes for cancellation of certificates and voiding of numbers, not including the issuance of a marine document by the Bureau of Custom for the same vessel.

SECTION 9. Amends Subchapter B, Chapter 31, Parks and Wildlife Code, by adding Section 31.044, as follows:

Sec. 31.044. INSPECTIONS. Prohibits a dealer, distributor, or manufacturer from refusing to allow TPWD or a peace officer to inspect a vessel, outboard motor, or records relating to the possession, origination, ownership, or transfer of a vessel or outboard motor at a dealership or distributor's or manufacturer's place of business during normal business hours.

SECTION 10. Amends Subchapter B-1, Chapter 31, Parks and Wildlife Code, by adding Section 31.0465, as follows:

Sec. 31.0465. APPEAL REGARDING CERTIFICATE OF TITLE; BOND; RULES. (a) Authorizes an applicant for a certificate of title under Section 31.046 to appeal TPWD's refusal to issue the title by filing a bond with TPWD as provided by this section.

(b) Requires a bond filed under this section to follow certain procedures.

(c) Authorizes TPWD to issue the certificate of title to the person filing the bond if the applicant proves to the satisfaction of TPWD that certain conditions exist.

(d) Provides that a person described by Subsection (b)(5) has a right of action to recover on the bond for a breach of a condition of the bond described by Subsection (b)(5). Prohibits the aggregate liability of the surety to all persons from exceeding the amount of the bond.

(e) Provides that a bond filed under this section expires on the third anniversary of the date the bond became effective. Requires TPWD to return an expired bond to the person who filed the bond unless TPWD has been notified of a pending action to recover on the bond.

(f) Requires TPWD, on return of a bond under Subsection (e), to issue a certificate of title to the person to whom the bond is returned.

(g) Authorizes TPWC, in addition to the situation described by Subsection (c), by rule, to define acceptable situations in which certificates of title may be issued after the filing of a bond under this section.

SECTION 11. Amends Section 31.049(c), Parks and Wildlife Code, to require the original certificate, if there is a lien on the vessel or outboard motor, to be sent to the first lienholder and a copy to be retained by TPWD. Deletes text regarding a duplicate original certificate being sent to the owner.

SECTION 12. Amends Section 31.053, Parks and Wildlife Code, by adding Subsection (f), to require a person who is not licensed as a dealer, distributor, or manufacturer under this chapter to obtain a certificate of number or certificate of title to a vessel or outboard motor in the person's name before transferring the certificate of number or certificate of title.

SECTION 13. Amends Section 31.127(a), Parks and Wildlife Code, to provide that a person who violates or fails to comply with any provision of this chapter, or who violates or fails to comply with a proclamation of TPWC entered under this chapter or a city ordinance or order of a commissioners court or a political subdivision of the state made or entered under this chapter, commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

SECTION 14. (a) Requires TPWC, not later than January 1, 2004, to adopt any rules necessary to implement this Act.

(b) Provides that a person is not required to be licensed under Section 31.041, Parks and Wildlife Code, as amended by this Act, until March 1, 2004. Provides that before that date, the person is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 15. Effective date: September 1, 2003.