

BILL ANALYSIS

Senate Research Center
82R9927 TRH-F

S.B. 1401
By: Williams
Transportation & Homeland Security
4/4/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

During the 81st Legislature, the Texas Department of Motor Vehicles (TxDMV) was created in order to separate the administrative management of permitting and registration of vehicles and trucks from the infrastructure development functions in the Texas Department of Transportation (TxDOT). Generally, the purpose of separating the functions of TxDMV and TxDOT was to increase the efficiency and effectiveness of both agencies in the service of Texas' transportation needs.

During its two-year existence, TxDMV has identified several areas of improvement that can be addressed through organizational and functional changes to the agency. S.B. 1401 seeks to implement an array of changes needed to update the governance, organization, duties, and functions of the current structure of TxDMV.

The bill would accomplish several goals, such as defining roles within TxDMV; describing the duties of the board of directors, the powers of the board and director, and the delegation of certain powers; clarifying those licenses and permits that must be processed by TxDMV; and outlining TxDMV's authority over licensing, permitting, and fee collection processes. It sets forth the provisions and conditions under which TxDMV will be allowed to receive donations and contributions, and establishes certain types of rulemaking authority, including how the board may delegate certain powers to the director and staff in regard to contested case hearings, how the board may collect fees for TxDMV goods and services provided by TxDMV or for the administration of any TxDMV program, how TxDMV can protect and use intellectual property and publications, and how to process and issue applications for licenses, among other rulemaking authority granted.

As proposed, S.B. 1401 amends current law relating to the organization, governance, duties, and functions of the Texas Department of Motor Vehicles.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the board of the Texas Department of Motor Vehicles (board; TxDMV) in SECTION 3 (Section 2301.154, Occupations Code), SECTION 28 (Sections 1001.008, 1001.009, and 1001.010, Transportation Code), SECTION 33 (Section 1001.102, Transportation Code), and SECTION 34 (Section 1003.005, Transportation Code) of this bill.

Rulemaking authority is expressly granted to TxDMV in SECTION 28 (Section 1001.007, Transportation Code) of this bill.

Rulemaking authority previously granted to the Texas Motor Vehicle Commission is transferred to the board in SECTION 10 (Section 2301.301, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2301.002, Occupations Code, by adding Subdivisions (1-a) and (14-a) to, respectively, define "ambulance manufacturer" and "fire-fighting vehicle manufacturer," and amending Subdivisions (11), (16), (23), and (32) to redefine "distributor," "franchised dealer," "motor vehicle," and "towable recreational vehicle."

SECTION 2. Amends Section 2301.153(a), Occupations Code, to provide that the board of the Texas Department of Motor Vehicles (board; TxDMV), notwithstanding any other provision of law, has all powers necessary, incidental, or convenient to perform a power or duty expressly granted under this chapter, including the power to enter an order requiring a person to perform or refrain from certain actions, including requiring a person to repurchase property under Section 2301.465 (Payment to Franchised Dealer Following Termination of Franchise) and pay costs and expenses of a party in connection with an order entered under that section.

SECTION 3. Amends Section 2301.154, Occupations Code, as follows:

Sec. 2301.154. DELEGATION OF POWERS. (a) Creates this subsection from existing text. Makes no further changes.

(b) Authorizes the board by rule to delegate any power relating to a contested case hearing, other than the power to issue a final order, to:

- (1) one or more of the board's members;
- (2) the executive director of TxDMV (executive director);
- (3) the director of the Motor Vehicle Division of TxDMV (director); or
- (4) one or more of the TxDMV's employees.

(c) Authorizes the board by rule to delegate the authority to issue a final order in a contested case hearing to:

- (1) one or more of the board's members;
- (2) the executive director; or
- (3) the director of a division within TxDMV designated by the board or the executive director to carry out the requirements of this chapter.

(d) Authorizes the board by rule to delegate any power relating to a complaint investigation to any person employed by TxDMV.

SECTION 4. Amends Section 2301.252(b), Occupations Code, as follows:

(b) Provides that, for purposes of this section:

- (1) the make of a conversion, rather than the make of a conversion, ambulance, or fire-fighting vehicle, is that of the chassis manufacturer;
- (2) the make of a motor home is that of the motor home manufacturer;
- (3) the make of an ambulance is that of the ambulance manufacturer; and
- (4) the make of a fire-fighting vehicle is that of the fire-fighting vehicle manufacturer.

Makes a nonsubstantive change.

SECTION 5. Amends Section 2301.257(a), (b), and (c), Occupations Code, as follows:

(a) Replaces references to the board with TxDMV.

(b) Replaces references to the director with TxDMV.

(c) Requires a franchised dealer to apply for a separate license under this section for each separate and distinct dealership showroom as determined by TxDMV, rather than the board.

SECTION 6. Amends Section 2301.258, Occupations Code, to replace references to the board with TxDMV.

SECTION 7. Amends Section 2301.261(a), Occupations Code, to replace references to the board with TxDMV.

SECTION 8. Amends Section 2301.262(a), Occupations Code, to replace references to the board with TxDMV.

SECTION 9. Amends Sections 2301.264(c) and (d), Occupations Code, to replace references to the board with TxDMV.

SECTION 10. Amends Sections 2301.301(a), (b), (c), and (e), Occupations Code, as follows:

(a) Replaces a reference to the Texas Motor Vehicle Commission (commission) with the board.

(b) Replaces a reference to the director with TxDMV.

(c) Authorizes the board, rather than the commission, by rule to implement a system under which licenses expire on various dates during the year. Requires that the fee for a license, for a year in which the license expiration date is changed, rather than if a license is issued or renewed for a term that is less than the period set under Subsection (a), be prorated so that the license holder pays only that portion of the fee that is allocable to the number of months during which the license is valid.

(e) Replaces references to the commission with TxDMV.

SECTION 11. Amends Section 2301.302, Occupations Code, as follows:

Sec. 2301.302. NOTICE OF LICENSE EXPIRATION. Requires TxDMV, rather than the board, to notify each person licensed under this chapter of the date of license expiration and the amount of the fee required for license renewal. Requires that the notice be sent, rather than mailed, at least 30 days before the date of license expiration.

SECTION 12. Amends Section 2301.351, Occupations Code, as follows:

Sec. 2301.351. GENERAL PROHIBITION. Prohibits a dealer from:

(1) violating a board rule;

(2) aiding or abetting a person who violates this chapter, Chapter 503 (Dealer's and Manufacturer's Vehicle License Plates), Transportation Code, or a rule adopted under those chapters; or

(3) using false, deceptive, or misleading advertising relating to the sale or lease of motor vehicles.

SECTION 13. Amends Sections 2301.358(a) and (c), Occupations Code, as follows:

(a) and (c) Replaces references to the board with TxDMV.

SECTION 14. Amends Section 2301.401(a), Occupations Code, to replace a reference to the board with TxDMV.

SECTION 15. Amends Section 2301.454(a), Occupations Code, to replace a reference to the board with TxDMV.

SECTION 16. Amends Section 2301.476(c), Occupations Code, as follows:

(c) Prohibits a manufacturer or distributor, except as provided by this section, from directly or indirectly:

- (1) owning an interest in a franchised or nonfranchised dealer or dealership;
- (2) operating or controlling a franchised or nonfranchised dealer or dealership; or
- (3) acting in the capacity of a franchised or nonfranchised dealer.

SECTION 17. Amends Section 2301.601(2), Occupations Code, to redefine "owner."

SECTION 18. Amends Sections 2301.611(a) and (c), Occupations Code, to replace references to the board with TxDMV.

SECTION 19. Amends Section 2301.613(a), Occupations Code, to replace references to the board with TxDMV.

SECTION 20. Amends Section 2301.711, Occupations Code, as follows:

Sec. 2301.711. **ORDERS AND DECISIONS.** Deletes existing designation of Subsection (a). Requires that an order or decision of the board:

- (1) include a separate finding of fact with respect to each specific issue the board is required by law to consider in reaching a decision;
- (2) set forth additional findings of fact and conclusions of law on which the order or decision is based;
- (3) give the reasons for the particular actions taken;
- (4) be signed by the presiding officer or assistant presiding officer for the board;
- (5) be attested to by the director; and
- (6) have the seal affixed to it.

Deletes existing designation of Subsection (b). Deletes existing text requiring that the order or decision except as provided by Subchapter M (Warranties: Rights of Vehicle Owners), be signed by the presiding officer or assistant presiding officer for the board, be attested to by the director, and have the seal affixed to it. Makes nonsubstantive changes.

SECTION 21. Amends Section 2301.803(c), Occupations Code, to authorize a person affected by a statutory stay imposed by this chapter to request a hearing, rather than initiate a proceeding before the board, to modify, vacate, or clarify the extent and application of the statutory stay.

SECTION 22. Amends Section 503.011, Transportation code, to replace references to the commission with the board.

SECTION 23. Amends Section 503.027(a), Transportation Code, as follows:

(a) Requires a dealer if the dealer consigns for sale more than five vehicles in a calendar year from a location other than the location for which the dealer holds a general distinguishing number to also hold a general distinguishing number for the consignment location unless the consignment location is a wholesale motor vehicle auction, rather than requiring that a location to which a person consigns the vehicles, if the person consigns

for sale more than five vehicles in a calendar year from a location other than the location for which the person holds a wholesale motor vehicle auction general distinguishing number or a dealer general distinguishing number, to have a general distinguishing number for that location.

SECTION 24. Amends Section 503.033(g), Transportation Code, to provide that this section does not apply to the a person licensed as a franchised motor vehicle dealer by TxDMV, rather than TxDMV's Motor Vehicle Board.

SECTION 25. Amends Section 503.039, Transportation Code, as follows:

Sec. 503.039. PUBLIC MOTOR VEHICLE AUCTIONS. (a) Creates this subsection from existing text. Prohibits a motor vehicle from being the subject of a subsequent sale at a public auction, rather than at an auction, by a holder of a dealer's general distinguishing number unless equitable or legal title has passed to the selling dealer, rather than the holder of a dealer's general distinguishing number, before the transfer of title to the subsequent buyer.

(b) Creates this subsection from existing text. Requires the holder of a dealer's general distinguishing number who sells a motor vehicle at a public auction to transfer the certificate of title for that vehicle to the buyer before the 21st day after the date of the sale.

SECTION 26. Amends Section 1001.001, Transportation Code, by adding Subdivision (3) to define "executive director."

SECTION 27. Amends Section 1001.004, Transportation Code, as follows:

Sec. 1001.004. DIVISIONS. Requires the executive director, rather than the board, to reorganize TxDMV into divisions to accomplish TxDMV's functions and the duties assigned to TxDMV. Deletes existing text relating to divisions for administration, motor carriers, motor vehicle board, and vehicle titles and registration.

SECTION 28. Amends Subchapter A, Chapter 1001, Transportation Code, by adding Sections 1001.007, 1001.008, 1001.009, 1001.010, and 1001.011, as follows:

Sec. 1001.007. PROTECTION AND USE OF INTELLECTUAL PROPERTY AND PUBLICATIONS. (a) Authorizes TxDMV to:

(1) apply for, register, secure, hold, and protect under the laws of the United States, any state, or any nation a patent, copyright, mark, or other evidence of protection or exclusivity issued in or for an idea, publication, or other original innovation fixed in a tangible medium, including:

- (A) a literary work;
- (B) a logo;
- (C) a service mark;
- (D) a study;
- (E) a map or planning document;
- (F) a graphic design;
- (G) a manual;
- (H) automated systems software;

(I) an audiovisual work; or

(J) a sound recording;

(2) enter into an exclusive or nonexclusive license agreement with a third party for the receipt of a fee, royalty, or other thing of monetary or nonmonetary value for the benefit of TxDMV;

(3) waive or reduce the amount of a fee, royalty, or other thing of monetary or nonmonetary value to be assessed if TxDMV determines that the waiver will:

(A) further the goals and missions of TxDMV; and

(B) result in a net benefit to the state; and

(4) adopt and enforce rules necessary to implement this section.

(b) Requires that money collected by TxDMV under this section be deposited to the credit of the state highway fund for use by TxDMV in supporting TxDMV's operations and the administration of TxDMV's functions.

Sec. 1001.008. DONATIONS AND CONTRIBUTIONS. (a) Authorizes the board, except as provided by Subsection (b), for the purpose of carrying out its functions and duties, to accept a donation or contribution in any form, including real or personal property, money, materials, or services.

(b) Prohibits the board from accepting a donation or contribution from an entity or association of entities that it regulates.

(c) Authorizes the board by rule to delegate acceptance of donations or contributions under \$500, or not otherwise required to be acknowledged in an open meeting, to the executive director.

Sec. 1001.009. COLLECTION OF FEES FOR DEPARTMENT GOODS AND SERVICES. (a) Authorizes the board to adopt rules regarding the method of collection of a fee for any goods sold or services provided by TxDMV or for the administration of any TxDMV program.

(b) Provides that goods sold and services provided under Subsection (a) include TxDMV publications and the issuance of licenses, permits, and registrations.

(c) Authorizes the rules adopted under Subsection (a) to:

(1) authorize the use of electronic funds transfer or a valid debit or credit card issued by a financial institution chartered by a state, the United States, or a nationally recognized credit organization approved by TxDMV; and

(2) require the payment of a discount or service charge for a credit card payment in addition to the fee.

(d) Requires that revenue generated from the collection of discount or service charges under Subsection (c) be deposited to the credit of the state highway fund for use by TxDMV in supporting TxDMV's operations and the administration of TxDMV's functions.

(e) Provides that the requirements of Subchapters I (Texasonline Project), J (Texas Project Delivery Framework), and K (Electronic System for Occupational Licensing Transactions), Chapter 2054, Government Code, and Sections 2054.111

(Use of Texasonline Project) and 2054.113 (Duplication with Texasonline), Government Code, do not apply to TxDMV.

Sec. 1001.010. **AUTHORITY TO CONTRACT.** (a) Authorizes TxDMV to enter into an interlocal contract with one or more local governments in accordance with Chapter 791 (Interlocal Cooperation Contracts), Government Code.

(b) Requires the board by rule to adopt policies and procedures consistent with applicable state procurement practices for soliciting and awarding a contract under this section.

Sec. 1001.011. **EDUCATIONAL CAMPAIGNS AND TRAINING.** Authorizes TxDMV to conduct public service educational campaigns related to its functions.

SECTION 29. Amends Subchapter B, Chapter 1001, Transportation Code, by adding Section 1001.0221, as follows:

Sec. 1001.0221. **BOARD; DUTIES.** (a) Requires the board to oversee and coordinate the development of TxDMV and to ensure that all components of the motor vehicle industry function as a system.

(b) Requires the board to carry out its policy-making functions in a manner that protects the interests of the public and industry, maintains a safe and sound motor vehicle industry, and increases the economic prosperity of the state.

SECTION 30. Amends Section 1001.023, Transportation Code, as follows:

Sec. 1001.023. **CHAIR AND VICE CHAIR; DUTIES.** (a) Provides that the chair serves at the pleasure of the governor. Provides that the vice chair, rather than a chair or vice chair, serves at the pleasure of the board.

(b) Requires the chair to perform certain actions, including appointing a member of the board to act in the absence of the chair and vice chair, rather than in the chair's absence.

SECTION 31. Amends Section 1001.031, Transportation Code, by amending Subsection (a) and adding Subsections (a-1) and (f), as follows:

(a) Authorizes, rather than requires, the board to establish advisory committees to make recommendations to the board or the executive director, rather than to establish separate committees for the motor carrier, motor vehicles, and vehicle titles and registration divisions, to make recommendations to the board or the executive director on the operation of the applicable division.

(a-1) Provides that Section 2110.002, Government Code, does not apply to an advisory committee established under this section.

(f) Requires that the meetings of an advisory committee be made accessible to the public in person or through electronic means.

SECTION 32. Amends Subchapter C, Chapter 1001, Transportation Code, by adding Section 1001.0411, as follows:

Sec. 1001.0411. **EXECUTIVE DIRECTOR; DUTIES.** (a) Requires the board to appoint an executive director to serve at the pleasure of the board. Requires the executive director to perform all duties assigned by the board.

(b) Authorizes the executive director to delegate duties or responsibilities as the executive director considers appropriate, provided the delegation does not conflict with applicable law or a resolution of the board.

SECTION 33. Amends Chapter 1001, Transportation Code, by adding Subchapter D, as follows:

SUBCHAPTER D. ELECTRONIC ISSUANCE OF LICENSES

Sec. 1001.101. DEFINITIONS. Defines "digital signature" and "license" in this subchapter.

Sec. 1001.102. APPLICATION FOR AND ISSUANCE OF LICENSE. Authorizes the board by rule to provide for the filing of a license application and the issuance of a license by electronic means.

Sec. 1001.103. DIGITAL SIGNATURE. (a) Provides that a license application received by TxDMV is considered signed if a digital signature is transmitted with the application and intended by the applicant to authenticate the license in accordance with Subsection (b).

(b) Authorizes TxDMV to only accept a digital signature used to authenticate a license application under procedures that:

(1) comply with any applicable rules of another state agency having jurisdiction over TxDMV use or acceptance of a digital signature; and

(2) provide for consideration of factors that may affect a digital signature's reliability, including whether a digital signature is unique to the person using it, capable of independent verification, under the sole control of the person using it, and transmitted in a manner that makes it infeasible to change the data in the communication or digital signature without invalidating the digital signature.

SECTION 34. Amends Chapter 1003, Transportation Code, by adding Section 1003.005, as follows:

Sec. 1003.005. DELEGATION OF POWER. (a) Authorizes the board by rule to delegate any power relating to a contested case hearing, other than the power to issue a final order, to:

- (1) one or more of the board's members;
- (2) the executive director;
- (3) the director of a division of TxDMV; or
- (4) one or more of TxDMV's employees.

(b) Authorizes the board by rule to delegate the authority to issue a final order in a contested case hearing to:

- (1) one or more of the board's members;
- (2) the executive director; or
- (3) the director of a division within TxDMV designated by the board or the executive director to carry out the requirements of this chapter.

(c) Authorizes the board by rule to delegate any power relating to a complaint investigation to any person employed by TxDMV.

SECTION 35. Amends Section 264.502(b), Family Code, to require the members of the child fatality review team committee who serve under Subsections (a)(1) (relating to a person appointed by and representing the state registrar of vital statistics), (2) (relating to a person appointed by and representing the commissioner of the Department of Family and Protective Services), (3) (relating to a person appointed by and representing the Title V director of the Department of State Health Services) to select certain additional committee members, including a representative of the Texas Department of Transportation, rather than TxDMV.

SECTION 36. Amends Section 2054.111, Government Code, by adding Subsection (h) to provide that this section does not apply to the TxDMV.

SECTION 37. Amends Section 2054.113(a), Government Code, to provide that this section does not apply to a state agency that is a university system or institution of higher education as defined by Section 61.003 (Definitions), Education Code, or TxDMV. Makes nonsubstantive changes.

SECTION 38. Amends Section 2110.002, Government Code, by adding Subsection (c) to provide that this section does not apply to an advisory committee established by TxDMV.

SECTION 39. (a) Repealers: (1) Section 2054.270 (Motor Vehicle Registrations), Government Code;

(2) Sections 2301.105 (Career Ladder Program; Performance Evaluations), 2301.106 (Equal Opportunity Policy; Report), and 2301.206 (Public Participation), Occupations Code; and

(3) Sections 503.033(c) (relating to certain acceptable surety obligations), 1001.031(c) (relating to representing motor vehicle manufacturers and the recreational vehicle industry) and (d) (relating to representing the motor transportation industry), and 1004.003 (Public Representation on Advisory Body), Transportation Code.

(b) Repealer: Section 6.03(c) (relating to preference to certain employees when filling certain positions), Chapter 933 (H.B. 3097), Acts of the 81st Legislature, Regular Session, 2009.

SECTION 40. Effective date: September 1, 2011.