

BILL ANALYSIS

C.S.S.B. 1035
By: Williams
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

County tax assessor-collectors report that current law regulating vehicle title service companies only in certain counties creates a patchwork effect that allows companies engaging in unlawful operations to simply move to another county when their operations are discovered. C.S.S.B. 1035 seeks to address this situation by creating a statewide licensing requirement along with uniform regulations and enforcement policies at the Texas Department of Motor Vehicles without removing the authority for counties to regulate vehicle title service companies and their runners under county permit requirements in addition to state license requirements.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Motor Vehicles in SECTIONS 9 and 11 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the board of the Texas Department of Motor Vehicles in SECTION 9 of this bill.

ANALYSIS

C.S.S.B. 1035 amends the Transportation Code to prohibit, effective January 1, 2012, a person from acting as a motor vehicle title service or as a title service runner unless that person holds a permit issued by the county, if required by the county where the titles are required to be filed, and a license issued by the Texas Department of Motor Vehicles (TxDMV).

C.S.S.B. 1035 establishes the purpose and provides for the liberal construction of provisions relating to a permit issued by a county and a license issued by TxDMV to a motor vehicle title service or a title service runner. The bill establishes fees and records requirements applicable to such a permit and license. The bill grants the board of TxDMV and a county that regulates motor vehicle title services certain powers. The bill establishes criminal and civil penalties that are applicable to a violation of a law or rule relating to a permit and a license. The bill exempts from its provisions relating to a permit and a license a state or federally chartered bank or credit union and an auctioneer licensed under state law.

C.S.S.B. 1035 makes provisions applicable to the licensing of a motor vehicle title service or an agent of that service operating in certain counties, effective January 1, 2012, instead applicable to the permitting of a motor vehicle title service or a title service runner in a county that requires such permits. The bill requires a permit application to include, in addition to certain established content, an affirmation of the truth of the information contained in the application signed and sworn to before an officer authorized to administer oaths and, if the application is for a motor vehicle title service permit, an affirmation that all acts of a motor vehicle title service's employees, agents, contractors, or title service runners are acts of the motor vehicle title service for the purposes of the law relating to county permitting of motor vehicle title services.

C.S.S.B. 1035 requires a permit fee to be deposited in the general fund for the county tax

assessor-collector and sheriff to use for the administration and enforcement of the county's motor vehicle title service and title service runner permitting program. The bill requires the county tax assessor-collector to provide written notice of denial, suspension, or revocation of a permit. The bill authorizes a county attorney, in addition to the district attorney, of the county in which the motor vehicle title service is operating to bring an action to enjoin the operation of the service or a title service runner if the service or runner is found to have committed one or more violations of applicable law. The bill makes conforming changes.

C.S.S.B. 1035 adds provisions that are effective January 1, 2012, and are applicable to any motor vehicle title service operating in Texas. The bill requires an applicant for a state motor vehicle title service license or a title service runner license to apply on a form prescribed by TxDMV and requires the form to be signed by the applicant and accompanied by the application fee. The bill requires an applicant for a title service license to demonstrate that the location for which the applicant requests the license is an established and permanent place of business and provides criteria under which a location is considered to be an established and permanent place of business. The bill requires the applicant to demonstrate that the applicant intends to remain regularly and actively engaged in the business specified in the application for a certain period of time and that the applicant or a bona fide employee of the applicant will be at the location to transact title services and available to the public or TxDMV at that location during reasonable and lawful business hours.

C.S.S.B. 1035 requires TxDMV by rule to adopt fees for an original and renewal license for motor vehicle title services and title service runners and specifies the maximum amounts of such fees and for late renewal. The bill requires the fees to be deposited to the credit of the state highway fund. The bill specifies that provisions of law relating to the use of dedicated revenue in relation to management of funds in the treasury do not apply to money received by TxDMV and deposited to the credit of the state highway fund in such a manner. The bill authorizes TxDMV to refund from funds appropriated to TxDMV for that purpose a fee collected under the bill's provisions that is not due or that exceeds the amount due.

C.S.S.B. 1035 prohibits TxDMV from issuing or renewing a motor vehicle title service license unless the applicant provides to TxDMV satisfactory proof that the applicant has purchased a properly executed surety bond in the amount of \$25,000 with a good and sufficient surety authorized by the Texas Department of Insurance in effect for at least the term of the license. The bill includes provisions relating to the requirements of a surety bond, recovery against such a bond, and the liability of a surety.

C.S.S.B. 1035 requires the board of TxDMV by rule to set the term of a license issued under the bill's provisions and specifies the conditions under which a person is authorized to renew a license by paying a late fee in addition to a renewal fee. The bill requires the holder of a motor vehicle title service license to maintain records as required by TxDMV rule and provides for the inspection of records.

C.S.S.B. 1035 authorizes TxDMV to deny, suspend, revoke, or reinstate a license issued under the bill's provisions. The bill requires TxDMV to adopt rules that establish grounds for such actions in relation to such a license, and rules that establish procedures for disciplinary action. The bill authorizes TxDMV to adopt rules that allow for the incorporation of findings made by a county that has denied, suspended, revoked, or reinstated a permit under provisions of law relating to county permitting of motor vehicle title services. The bill specifies that procedures established under the bill's provisions relating to denial, suspension, revocation, or reinstatement of a license are subject to the Administrative Procedure Act. The bill requires TxDMV to provide written notice of denial, suspension, or revocation of a license.

C.S.S.B. 1035 authorizes the board of TxDMV, if it appears to the board that a person is violating the bill's provisions or a board rule or order and after notice, to require the person engaged in the conduct to appear and show cause why a cease and desist order should not be

issued prohibiting the conduct described in the notice. The bill specifies the conditions under which an interlocutory cease and desist order is authorized to be granted with or without bond or other undertaking. The bill specifies that a such a proceeding is governed by the bill's provisions and the board's rules, and the Administrative Procedure Act, relating to a contested case, to the extent that that act is not in conflict with such provisions and rules. The bill includes provisions relating to the effect of an interlocutory cease and desist order and the issuance of a permanent cease and desist order.

C.S.S.B. 1035 authorizes the attorney general or a district attorney of the county in which the motor vehicle title service is operating to bring an action to enjoin the operation of such a service or a title service runner if the license holder or a runner of the service while in the scope of the runner's employment is found to have committed one or more violations of or to have been convicted of more than one offense under the bill's provisions. The bill authorizes the court, if the court grants such relief, to enjoin the person from maintaining or participating in the business of a motor vehicle title service for a period of time as determined by the court, or to declare the place where the person's business is located to be closed for any use relating to the business of the motor vehicle title service for as long as the person is enjoined from participating in that business.

C.S.S.B. 1035 sets out provisions relating to complaint investigation and disposition in relation to enforcement of the bill's provisions. The bill specifies the persons and the agents of such persons who are exempt from licensing and other requirements established under the bill's provisions. The bill specifies that the Motor Vehicle Records Disclosure Act does not prohibit the disclosure of a person's photographic image to TxDMV or a county tax assessor-collector. The bill requires TxDMV, not later than November 1, 2011, to adopt rules and forms to administer the bill's provisions relating to state licensing of motor vehicle title services. The bill defines "board," "motor vehicle documents," "motor vehicle title service," "title service license holder," "title service record," and "title service runner" and provides for the meaning of "motor vehicle" by reference for purposes of a license. The bill redefines "motor vehicle title service" and "title service runner" for purposes of a county permit. The bill redefines "title documents" as "motor vehicle documents" and "title service license holder" as "title service permit holder" for purposes of a county permit.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 1035 contain provisions not included in the original exempting from provisions relating to county permitting and state licensing of motor vehicle title services a state or federally chartered bank or credit union and an auctioneer licensed under state law. The substitute differs from the original in nonsubstantive ways.