

By: Gutierrez

H.B. No. 1692

Substitute the following for H.B. No. 1692:

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C.S.H.B. No. 1692

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the regulation of motor vehicle dealers, manufacturers,
3 and distributors.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 2301.002, Occupations Code, is amended
6 by amending Subdivision (17-a) and adding Subdivision (17-b) to
7 read as follows:

8 (17-a) "Hearings examiner" means a person employed by
9 the department to preside over hearings under this chapter.

10 (17-b) "Independent mobility motor vehicle dealer"
11 means a nonfranchised dealer who:

12 (A) holds a general distinguishing number issued
13 by the board under Chapter 503, Transportation Code;

14 (B) holds a converter's license issued under this
15 chapter;

16 (C) is engaged in the business of buying,
17 selling, or exchanging mobility motor vehicles and servicing or
18 repairing the devices installed on mobility motor vehicles at an
19 established and permanent place of business in this state; and

20 (D) is certified by the manufacturer of each
21 mobility device that the dealer installs, if the manufacturer
22 offers that certification.

23 SECTION 2. Subchapter C, Chapter 2301, Occupations Code, is
24 amended by adding Section 2301.104 to read as follows:

1 Sec. 2301.104. HEARINGS EXAMINERS. (a) The department may
2 employ a chief hearings examiner and one or more additional
3 hearings examiners.

4 (b) A hearings examiner must be licensed to practice law in
5 this state.

6 SECTION 3. Sections 2301.606(b) and (c), Occupations Code,
7 are amended to read as follows:

8 (b) In a hearing [~~before the director~~] under this
9 subchapter, a manufacturer, converter, or distributor may plead and
10 prove as an affirmative defense to a remedy under this subchapter
11 that a nonconformity:

12 (1) is the result of abuse, neglect, or unauthorized
13 modification or alteration of the motor vehicle; or

14 (2) does not substantially impair the use or market
15 value of the motor vehicle.

16 (c) An order issued under this subchapter may not require
17 [~~The director may not issue an order requiring~~] a manufacturer,
18 converter, or distributor to make a refund or to replace a motor
19 vehicle unless:

20 (1) the owner or a person on behalf of the owner has
21 mailed written notice of the alleged defect or nonconformity to the
22 manufacturer, converter, or distributor; and

23 (2) the manufacturer, converter, or distributor has
24 been given an opportunity to cure the alleged defect or
25 nonconformity.

26 SECTION 4. Section 2301.607(c), Occupations Code, is
27 amended to read as follows:

1 (c) If a final order is not issued [~~the administrative law~~
2 ~~judge does not issue a proposal for decision and recommend to the~~
3 ~~director a final order~~] before the 151st day after the date a
4 complaint is filed under this subchapter, the department [~~director~~]
5 shall provide written notice by certified mail to the complainant
6 and to the manufacturer, converter, or distributor of the
7 expiration of the 150-day period and of the complainant's right to
8 file a civil action. The department [~~board~~] shall extend the
9 150-day period if a delay is requested or caused by the person who
10 filed the complaint.

11 SECTION 5. Section 2301.608, Occupations Code, is amended
12 to read as follows:

13 Sec. 2301.608. ASSESSMENT OF COSTS FOR REPLACEMENT OR
14 REFUND. (a) An order issued under this subchapter must [~~In an~~
15 ~~order issued under this subchapter, the director shall~~] name the
16 person responsible for paying the cost of any refund or
17 replacement. A manufacturer, converter, or distributor may not
18 cause a franchised dealer to directly or indirectly pay any money
19 not specifically required [~~ordered~~] by the order [~~director~~].

20 (b) If the final order requires [~~director orders~~] a
21 manufacturer, converter, or distributor to make a refund or replace
22 a motor vehicle under this subchapter, the final order [~~director~~]
23 may require [~~order~~] the franchised dealer to reimburse the owner,
24 lienholder, manufacturer, converter, or distributor only for an
25 item or option added to the vehicle by the dealer to the extent that
26 the item or option contributed to the defect that served as the
27 basis for the order.

1 (c) In a case involving a leased vehicle, the final order
2 [~~director~~] may terminate the lease and apportion allowances or
3 refunds, including the reasonable allowance for use, between the
4 lessee and lessor of the vehicle.

5 SECTION 6. Section 2301.609(a), Occupations Code, is
6 amended to read as follows:

7 (a) A party to a proceeding [~~before the director~~] under this
8 subchapter that is affected by a final order [~~of the director~~] is
9 entitled to judicial review of the order under the substantial
10 evidence rule in a district court of Travis County.

11 SECTION 7. Section 2301.610(d), Occupations Code, is
12 amended to read as follows:

13 (d) The department [~~board~~] shall maintain a toll-free
14 telephone number to provide information to a person who requests
15 information about a condition or defect that was the basis for
16 repurchase or replacement by an order issued under this subchapter
17 [~~of the director~~]. The department [~~board~~] shall maintain an
18 effective method of providing information to a person who makes a
19 request.

20 SECTION 8. Section 2301.703, Occupations Code, is amended
21 by adding Subsection (c) to read as follows:

22 (c) The parties to a contested case under Section 2301.204
23 or Subchapter M must participate in mediation as provided by board
24 rule before the parties may have a hearing in the case.

25 SECTION 9. Section 2301.704, Occupations Code, is amended
26 to read as follows:

27 Sec. 2301.704. HEARINGS EXAMINER; ADMINISTRATIVE LAW

1 JUDGE. (a) Except as otherwise provided by this section, a [A]
2 hearing under this chapter [~~subchapter~~] must be held by an
3 administrative law judge of the State Office of Administrative
4 Hearings.

5 (a-1) A hearing under Section 2301.204 or Subchapter M must
6 be held by a hearings examiner.

7 (b) An administrative law judge and a hearings examiner have
8 [~~has~~] all of the board's power and authority as provided by [~~under~~]
9 this chapter to conduct hearings, including the power to:

- 10 (1) hold a hearing;
- 11 (2) administer an oath;
- 12 (3) receive pleadings and evidence;
- 13 (4) issue a subpoena to compel the attendance of a
14 witness;
- 15 (5) compel the production of papers and documents;
- 16 (6) issue an interlocutory order, including a cease
17 and desist order in the nature of a temporary restraining order or a
18 temporary injunction;
- 19 (7) make findings of fact and conclusions of law; and
- 20 (8) issue a proposal for decision and recommend a
21 final order.

22 (c) In a contested case hearing under Section 2301.204 or
23 Subchapter M, a hearings examiner shall issue a final order.

24 SECTION 10. Section 2301.713, Occupations Code, is amended
25 to read as follows:

26 Sec. 2301.713. REHEARING. (a) Except as otherwise provided
27 by this section, a [A] party who seeks a rehearing of an order shall

1 seek the rehearing in accordance with Chapter 2001, Government
2 Code.

3 (b) The board by rule may establish procedures to allow a
4 party to a contested case to file a motion for rehearing.

5 (c) A motion for rehearing in a contested case under Section
6 2301.204 or Subchapter M must be filed with and decided by the chief
7 hearings examiner.

8 SECTION 11. Section 503.009(b), Transportation Code, is
9 amended to read as follows:

10 (b) The procedures applicable to a hearing conducted under
11 this section are those applicable to a hearing conducted as
12 provided by Section 2301.606 [~~2301.606(a)~~], Occupations Code.

13 SECTION 12. Section 2301.606(a), Occupations Code, is
14 repealed.

15 SECTION 13. The changes in law made by this Act apply only
16 to a complaint filed or a proceeding commenced on or after the
17 effective date of this Act. A complaint filed or a proceeding
18 commenced before the effective date of this Act is governed by the
19 law in effect on the date the complaint was filed or the proceeding
20 was commenced, and the former law is continued in effect for that
21 purpose.

22 SECTION 14. The changes in law made by this Act apply to a
23 person who holds a license issued under Chapter 2301, Occupations
24 Code, regardless of the date the license is issued or renewed.

25 SECTION 15. This Act takes effect January 1, 2014.