

1-1 By: Gutierrez (Senate Sponsor - Patrick) H.B. No. 1692
1-2 (In the Senate - Received from the House May 6, 2013;
1-3 May 7, 2013, read first time and referred to Committee on
1-4 Transportation; May 16, 2013, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
1-6 May 16, 2013, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	<u>X</u>			
1-10	<u>X</u>			
1-11	<u>X</u>			
1-12	<u>X</u>			
1-13	<u>X</u>			
1-14			<u>X</u>	
1-15	<u>X</u>			
1-16	<u>X</u>			
1-17	<u>X</u>			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 1692 By: Patrick

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to the regulation of motor vehicle dealers, manufacturers,
1-22 and distributors.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 2301.002, Occupations Code, is amended
1-25 by amending Subdivision (17-a) and adding Subdivision (17-b) to
1-26 read as follows:

1-27 (17-a) "Hearings examiner" means a person employed by
1-28 the department to preside over hearings under this chapter.

1-29 (17-b) "Independent mobility motor vehicle dealer"
1-30 means a nonfranchised dealer who:

1-31 (A) holds a general distinguishing number issued
1-32 by the board under Chapter 503, Transportation Code;

1-33 (B) holds a converter's license issued under this
1-34 chapter;

1-35 (C) is engaged in the business of buying,
1-36 selling, or exchanging mobility motor vehicles and servicing or
1-37 repairing the devices installed on mobility motor vehicles at an
1-38 established and permanent place of business in this state; and

1-39 (D) is certified by the manufacturer of each
1-40 mobility device that the dealer installs, if the manufacturer
1-41 offers that certification.

1-42 SECTION 2. Subchapter C, Chapter 2301, Occupations Code, is
1-43 amended by adding Section 2301.104 to read as follows:

1-44 Sec. 2301.104. HEARINGS EXAMINERS. (a) The department may
1-45 employ a chief hearings examiner and one or more additional
1-46 hearings examiners.

1-47 (b) A hearings examiner must be licensed to practice law in
1-48 this state.

1-49 SECTION 3. Sections 2301.606(b) and (c), Occupations Code,
1-50 are amended to read as follows:

1-51 (b) In a hearing [~~before the director~~] under this
1-52 subchapter, a manufacturer, converter, or distributor may plead and
1-53 prove as an affirmative defense to a remedy under this subchapter
1-54 that a nonconformity:

1-55 (1) is the result of abuse, neglect, or unauthorized
1-56 modification or alteration of the motor vehicle; or

1-57 (2) does not substantially impair the use or market
1-58 value of the motor vehicle.

1-59 (c) An order issued under this subchapter may not require
1-60 [~~The director may not issue an order requiring~~] a manufacturer,

2-1 converter, or distributor to make a refund or to replace a motor
2-2 vehicle unless:

2-3 (1) the owner or a person on behalf of the owner has
2-4 mailed written notice of the alleged defect or nonconformity to the
2-5 manufacturer, converter, or distributor; and

2-6 (2) the manufacturer, converter, or distributor has
2-7 been given an opportunity to cure the alleged defect or
2-8 nonconformity.

2-9 SECTION 4. Section 2301.607(c), Occupations Code, is
2-10 amended to read as follows:

2-11 (c) If a final order is not issued [~~the administrative law~~
2-12 ~~judge does not issue a proposal for decision and recommend to the~~
2-13 ~~director a final order~~] before the 151st day after the date a
2-14 complaint is filed under this subchapter, the department [~~director~~]
2-15 shall provide written notice by certified mail to the complainant
2-16 and to the manufacturer, converter, or distributor of the
2-17 expiration of the 150-day period and of the complainant's right to
2-18 file a civil action. The department [~~board~~] shall extend the
2-19 150-day period if a delay is requested or caused by the person who
2-20 filed the complaint.

2-21 SECTION 5. Section 2301.608, Occupations Code, is amended
2-22 to read as follows:

2-23 Sec. 2301.608. ASSESSMENT OF COSTS FOR REPLACEMENT OR
2-24 REFUND. (a) An order issued under this subchapter must [~~In an~~
2-25 ~~order issued under this subchapter, the director shall~~] name the
2-26 person responsible for paying the cost of any refund or
2-27 replacement. A manufacturer, converter, or distributor may not
2-28 cause a franchised dealer to directly or indirectly pay any money
2-29 not specifically required [~~ordered~~] by the order [~~director~~].

2-30 (b) If the final order requires [~~director orders~~] a
2-31 manufacturer, converter, or distributor to make a refund or replace
2-32 a motor vehicle under this subchapter, the final order [~~director~~]
2-33 may require [~~order~~] the franchised dealer to reimburse the owner,
2-34 lienholder, manufacturer, converter, or distributor only for an
2-35 item or option added to the vehicle by the dealer to the extent that
2-36 the item or option contributed to the defect that served as the
2-37 basis for the order.

2-38 (c) In a case involving a leased vehicle, the final order
2-39 [~~director~~] may terminate the lease and apportion allowances or
2-40 refunds, including the reasonable allowance for use, between the
2-41 lessee and lessor of the vehicle.

2-42 SECTION 6. Section 2301.609(a), Occupations Code, is
2-43 amended to read as follows:

2-44 (a) A party to a proceeding [~~before the director~~] under this
2-45 subchapter that is affected by a final order [~~of the director~~] is
2-46 entitled to judicial review of the order under the substantial
2-47 evidence rule in a district court of Travis County.

2-48 SECTION 7. Section 2301.610(d), Occupations Code, is
2-49 amended to read as follows:

2-50 (d) The department [~~board~~] shall maintain a toll-free
2-51 telephone number to provide information to a person who requests
2-52 information about a condition or defect that was the basis for
2-53 repurchase or replacement by an order issued under this subchapter
2-54 [~~of the director~~]. The department [~~board~~] shall maintain an
2-55 effective method of providing information to a person who makes a
2-56 request.

2-57 SECTION 8. Section 2301.703, Occupations Code, is amended
2-58 by adding Subsection (c) to read as follows:

2-59 (c) The parties to a contested case under this chapter or
2-60 Chapter 503, Transportation Code, other than a contested case in an
2-61 action brought by the department to enforce this chapter or Chapter
2-62 503, Transportation Code, must participate in mediation as provided
2-63 by board rule before the parties may have a hearing in the case.

2-64 SECTION 9. Section 2301.704, Occupations Code, is amended
2-65 to read as follows:

2-66 Sec. 2301.704. HEARINGS EXAMINER; ADMINISTRATIVE LAW
2-67 JUDGE. (a) Except as otherwise provided by this section, a [A]
2-68 hearing under this chapter [~~subchapter~~] must be held by an
2-69 administrative law judge of the State Office of Administrative

3-1 Hearings.
3-2 (a-1) A hearing under Section 2301.204 or Subchapter M must
3-3 be held by a hearings examiner.
3-4 (b) An administrative law judge and a hearings examiner have
3-5 [has] all of the board's power and authority as provided by [under]
3-6 this chapter to conduct hearings, including the power to:
3-7 (1) hold a hearing;
3-8 (2) administer an oath;
3-9 (3) receive pleadings and evidence;
3-10 (4) issue a subpoena to compel the attendance of a
3-11 witness;
3-12 (5) compel the production of papers and documents;
3-13 (6) issue an interlocutory order, including a cease
3-14 and desist order in the nature of a temporary restraining order or a
3-15 temporary injunction;
3-16 (7) make findings of fact and conclusions of law; and
3-17 (8) issue a proposal for decision and recommend a
3-18 final order.
3-19 (c) In a contested case hearing under Section 2301.204 or
3-20 Subchapter M, a hearings examiner shall issue a final order.
3-21 SECTION 10. Section 2301.713, Occupations Code, is amended
3-22 to read as follows:
3-23 Sec. 2301.713. REHEARING. (a) Except as otherwise provided
3-24 by this section, a [A] party who seeks a rehearing of an order shall
3-25 seek the rehearing in accordance with Chapter 2001, Government
3-26 Code.
3-27 (b) The board by rule may establish procedures to allow a
3-28 party to a contested case to file a motion for rehearing.
3-29 (c) A motion for rehearing in a contested case under Section
3-30 2301.204 or Subchapter M must be filed with and decided by the chief
3-31 hearings examiner.
3-32 SECTION 11. Section 503.009(b), Transportation Code, is
3-33 amended to read as follows:
3-34 (b) The procedures applicable to a hearing conducted under
3-35 this section are those applicable to a hearing conducted as
3-36 provided by Section 2301.606 [~~2301.606(a)~~], Occupations Code.
3-37 SECTION 12. Section 2301.606(a), Occupations Code, is
3-38 repealed.
3-39 SECTION 13. The changes in law made by this Act apply only
3-40 to a complaint filed or a proceeding commenced on or after the
3-41 effective date of this Act. A complaint filed or a proceeding
3-42 commenced before the effective date of this Act is governed by the
3-43 law in effect on the date the complaint was filed or the proceeding
3-44 was commenced, and the former law is continued in effect for that
3-45 purpose.
3-46 SECTION 14. The changes in law made by this Act apply to a
3-47 person who holds a license issued under Chapter 2301, Occupations
3-48 Code, regardless of the date the license is issued or renewed.
3-49 SECTION 15. This Act takes effect January 1, 2014.

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