

**OCCUPATIONS CODE**  
**TITLE 14. REGULATION OF MOTOR VEHICLES AND TRANSPORTATION**  
**SUBTITLE A. REGULATIONS RELATED TO MOTOR VEHICLES**  
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## SUBCHAPTER A. GENERAL PROVISIONS

### **Section 2301.001. Construction; Purpose**

The distribution and sale of motor vehicles in this state vitally affects the general economy of the state and the public interest and welfare of its citizens. This chapter shall be liberally construed to accomplish its purposes, including the exercise of the state's police power to ensure a sound system of distributing and selling motor vehicles through:

- (1) licensing and regulating manufacturers, distributors, converters, and dealers of motor vehicles; and
- (2) enforcing this chapter as to other persons to provide for compliance with manufacturer's warranties and to prevent fraud, unfair practices, discrimination, impositions, or other abuse of the people of this state.

### **Section 2301.002. Definitions**

In this chapter:

(1) "Ambulance" means a vehicle that is used exclusively to transport or to provide emergency medical care to an injured or ill person and that includes:

- (A) a driver's compartment;
- (B) a compartment to accommodate an emergency medical care technician or paramedic and two injured or ill persons in a position that permits one of the injured or ill persons to be given intensive life-support during transit;
- (C) equipment and supplies for emergency care of an injured or ill person at the location of the person or at the scene of an injury-producing incident as well as in transit;
- (D) two-way radio communication capability; and
- (E) equipment for light rescue or extrication procedures.

(1-a) "Ambulance manufacturer" means a person other than the manufacturer of a motor vehicle chassis who, before the retail sale of the motor vehicle, performs modifications on the chassis that result in the finished product being classified as an ambulance.

(2) "Board" has the meaning assigned by Section 2301.005.

(3) "Broker" means a person who, for a fee, commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale of a new motor vehicle, other than a person who is:

- (A) a franchised dealer or a bona fide employee of a franchised dealer acting for the franchised dealer;
- (B) a representative or a bona fide employee of a representative acting for the representative;
- (C) a distributor or a bona fide employee of a distributor acting for the distributor;  
or

(D) the owner of the vehicle at any point in the transaction.

(4) "Chassis manufacturer" means a person who manufactures and produces the frame on which the body of a motor vehicle is mounted.

(5) "Conversion" means a motor vehicle, other than a motor home, ambulance, or fire-fighting vehicle, that:

(A) has been substantially modified by a person other than the manufacturer or distributor of the chassis of the motor vehicle; and

(B) has not been the subject of a retail sale.

(6) "Converter" means a person who before the retail sale of a motor vehicle:

(A) assembles, installs, or affixes a body, cab, or special equipment to a chassis; or

(B) substantially adds, subtracts from, or modifies a previously assembled or manufactured motor vehicle other than a motor home, ambulance, or fire-fighting vehicle.

(7) "Dealer" means a person who holds a general distinguishing number issued by the board under Chapter 503, Transportation Code.

(8) "Dealership" means the physical premises and business facilities on which a franchised dealer operates the dealer's business, including the sale and repair of motor vehicles. The term includes premises or facilities at which a person engages only in the repair of a motor vehicle if the repair is performed under a franchise and a motor vehicle manufacturer's warranty.

(9) "Department" means the Texas Department of Motor Vehicles.

(10) "Director" means the director of the division.

(11) "Distributor" means a person, other than a manufacturer, who:

(A) distributes or sells new motor vehicles to a franchised dealer; or

(B) enters into franchise agreements with franchised dealers, on behalf of the manufacturer.

(12) "Division" means the department division that regulates the distribution and sale of motor vehicles.

(13) "Executive director" means the executive director of the department.

(14) "Fire-fighting vehicle" means a motor vehicle the only purposes of which are to transport firefighters to the scene of a fire and to provide equipment to fight the fire, and that is built on a truck chassis with a gross carrying capacity of at least 10,000 pounds, to which the following have been permanently affixed or mounted:

(A) a water tank with a combined capacity of at least 500 gallons; and

(B) a centrifugal water pump with a capacity of at least 750 gallons per minute at 150 pounds per square inch net pump pressure.

(14-a) "Fire-fighting vehicle manufacturer" means a person other than the manufacturer of a motor vehicle chassis who, before the retail sale of the motor vehicle, performs

modifications on the chassis that result in the finished product being classified as a fire-fighting vehicle.

(15) "Franchise" means one or more contracts between a franchised dealer as franchisee and a manufacturer or a distributor as franchisor, including a written communication from a franchisor to a franchisee in which a duty is imposed on the franchisee, under which:

- (A) the franchisee is granted the right to sell and service new motor vehicles manufactured or distributed by the franchisor or only to service motor vehicles under the contract and a manufacturer's warranty;
- (B) the franchisee is a component of the franchisor's distribution system as an independent business;
- (C) the franchisee is substantially associated with the franchisor's trademark, tradename, and commercial symbol;
- (D) the franchisee's business substantially relies on the franchisor for a continued supply of motor vehicles, parts, and accessories; or
- (E) any right, duty, or obligation granted or imposed by this chapter is affected.

(16) "Franchised dealer" means a person who:

- (A) holds a franchised motor vehicle dealer's license issued by the board under this chapter and Chapter 503, Transportation Code; and
- (B) is engaged in the business of buying, selling, or exchanging new motor vehicles and servicing or repairing motor vehicles under a manufacturer's warranty at an established and permanent place of business under a franchise in effect with a manufacturer or distributor.

(17) "General distinguishing number" means a dealer license issued by the board under Chapter 503, Transportation Code.

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

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

- (A) holds a general distinguishing number issued by the board under Chapter 503, Transportation Code;
- (B) holds a converter's license issued under this chapter;
- (C) is engaged in the business of buying, selling, or exchanging mobility motor vehicles and servicing or repairing the devices installed on mobility motor vehicles at an established and permanent place of business in this state; and
- (D) is certified by the manufacturer of each mobility device that the dealer installs, if the manufacturer offers that certification.

(18) "License holder" means a person who holds a license or general distinguishing number issued by the board under this chapter or Chapter 503, Transportation Code.

(19) "Manufacturer" means a person who manufactures or assembles new motor vehicles.



(20) "Manufacturer's statement of origin" means a certificate on a form prescribed by the department showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser.

(20-a) "Mobility motor vehicle" means a motor vehicle that is designed and equipped to transport a person with a disability and that:

(A) has a chassis that contains:

- (i) a permanently lowered floor or lowered frame; or
- (ii) a permanently raised roof and raised door;

(B) contains at least one of the following:

- (i) an electronic or mechanical wheelchair, scooter, or platform lift that enables a person to enter or exit the vehicle while occupying a wheelchair or scooter;
- (ii) an electronic or mechanical wheelchair ramp; or
- (iii) a system to secure a wheelchair or scooter to allow for a person to be safely transported while occupying the wheelchair or scooter; and

(C) is installed as an integral part or permanent attachment to the motor vehicle's chassis.

(21) "Motor home" means a motor vehicle that is designed to provide temporary living quarters and that:

(A) is built on a motor vehicle chassis as an integral part of or a permanent attachment to the chassis; and

(B) contains at least four of the following independent life support systems that are permanently installed and designed to be removed only for repair or replacement and that meet the standards of the American National Standards Institute, Standards for Recreational Vehicles:

- (i) a cooking facility with an on-board fuel source;
- (ii) a gas or electric refrigerator;
- (iii) a toilet with exterior evacuation;
- (iv) a heating or air conditioning system with an on-board power or fuel source separate from the vehicle engine;
- (v) a potable water supply system that includes at least a sink, a faucet, and a water tank with an exterior service supply connection; or
- (vi) a 110-125 volt electric power supply.

(22) "Motor home manufacturer" means a person other than the manufacturer of a motor vehicle chassis who, before the retail sale of the motor vehicle, performs modifications on the chassis that result in the finished product being classified as a motor home.

(23) "Motor vehicle" means:

(A) a fully self-propelled vehicle having two or more wheels that has as its primary purpose the transport of a person or persons, or property, on a public highway;

(B) a fully self-propelled vehicle having two or more wheels that:

(i) has as its primary purpose the transport of a person or persons or property;

(ii) is not manufactured for use on public streets, roads, or highways; and

(iii) meets the requirements for a certificate of title;

(C) an engine, transmission, or rear axle, regardless of whether attached to a vehicle chassis, manufactured for installation in a vehicle that has:

(i) the transport of a person or persons, or property, on a public highway as its primary purpose; and

(ii) a gross vehicle weight rating of more than 16,000 pounds; or

(D) a towable recreational vehicle.

(23-a) "New mobility motor vehicle" means a mobility motor vehicle that has not been the subject of a retail sale, regardless of the mobility motor vehicle's mileage.

(24) "New motor vehicle" means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.

(25) "Nonfranchised dealer" means a person who holds an independent motor vehicle dealer's general distinguishing number, an independent mobility motor vehicle dealer's general distinguishing number, or a wholesale motor vehicle dealer's general distinguishing number issued by the board under Chapter 503, Transportation Code.

(26) "Party" means a person or agency named or admitted as a party and whose legal rights, duties, or privileges are to be determined by the board after an opportunity for adjudicative hearing.

(27) "Person" means a natural person, partnership, corporation, association, trust, estate, or any other legal entity.

(27-a) "Property use agreement" means a contract, other than a franchise, between a franchised dealer and a manufacturer, distributor, or representative that grants the manufacturer, distributor, or representative the right to regulate the franchised dealer's use of the dealership and other facilities covered by the franchise.

(28) "Relocate" means to transfer an existing dealership operation to facilities at a different location, including a transfer that results in a consolidation or dualing of an existing dealer's operation.

(29) "Representative" means a person who:

(A) is or acts as an agent or employee for a manufacturer, distributor, or converter; and

(B) performs any duty in this state relating to promoting the distribution or sale of new motor vehicles or contacts dealers in this state on behalf of a manufacturer, distributor, or converter.

(30) "Retail sale" means any sale of a motor vehicle other than:

(A) a sale in which the purchaser acquires a vehicle for resale; or

(B) a sale of a vehicle that is operated in accordance with Section 503.061, Transportation Code.

(31) "Rule":

(A) means a statement by the board of general applicability that:

(i) implements, interprets, or prescribes law or policy; or

(ii) describes the procedure or practice requirements of the board;

(B) includes the amendment or repeal of a prior rule; and

(C) does not include a statement regarding only the internal management or organization of the board and not affecting the rights of a person not connected with the board.

(32) "Towable recreational vehicle" means a nonmotorized vehicle that:

(A) was originally designed and manufactured primarily to provide temporary human habitation in conjunction with recreational, camping, or seasonal use;

(B) meets the requirements to be issued a certificate of title and registration by the department as a travel trailer through a county tax assessor-collector;

(C) is permanently built on a single chassis;

(D) contains at least one life support system; and

(E) is designed to be towable by a motor vehicle.

*(33) Repealed by Acts 2009, 81st Leg., ch. 933 (H.B. 3097), §§ 2U.02, 3I.10, effective September 1, 2009.*

(34) "Vehicle lease" means a transfer of the right to possess and use a motor vehicle for a term of more than 180 days in return for consideration.

(35) "Vehicle lease facilitator" means a person, other than a franchised dealer, a vehicle lessor, or a bona fide employee of a franchised dealer or vehicle lessor, who:

(A) holds the person out to any other person as a "motor vehicle leasing company" or "motor vehicle leasing agent," or uses a similar title, to solicit or procure another person to enter into an agreement to become the lessee of a motor vehicle that is not, and will not be, titled in the name of or registered to the facilitator;

(B) otherwise solicits another person to enter into an agreement to become a lessee of a motor vehicle that is not, and will not be, titled in the name of or registered to the facilitator; or

(C) is otherwise engaged in the business of securing lessees or prospective lessees of a motor vehicle that is not, and will not be, titled in the name of or registered to the facilitator.

(36) "Vehicle lessor" means a person who, under a lease, transfers to another person the right to possession and use of a motor vehicle titled in the name of the lessor.

(37) "Warranty work" means parts, labor, and any other expenses incurred by a franchised dealer in complying with the terms of a manufacturer's or distributor's warranty.

### **Section 2301.003. Effect on Agreements**

- (a) The terms and conditions of a franchise are subject to this chapter.
- (b) An agreement to waive the terms of this chapter is void and unenforceable. A term or condition of a franchise inconsistent with this chapter is unenforceable.

### **Section 2301.004. Chapter Exclusive**

Unless otherwise specifically provided by law not in conflict with this chapter, all aspects of the distribution and sale of motor vehicles are governed exclusively by this chapter.

### **Section 2301.005. Title Changes**

- (a) A reference in law, including a rule, to the Texas Motor Vehicle Commission or to the board means the board of the Texas Department of Motor Vehicles.
- (b) A reference in law, including a rule, to the executive director of the Texas Motor Vehicle Commission means the executive director of the Texas Department of Motor Vehicles.
- (c) A reference in law, including a rule, to the Texas Motor Vehicle Commission Code means this chapter.
- (d) A reference in law other than this chapter to a dealer licensed by the Texas Motor Vehicle Commission or a dealer licensed by the Motor Vehicle Board of the Texas Department of Transportation means a franchised dealer.
- (e) A reference in this chapter to a rule or to a board rule means a rule adopted by the commission, except that all board rules that were in effect on June 1, 2005, remain in effect until amended or repealed by the commission.

### **Section 2301.006. Brokers Prohibited**

A person may not act as, offer to act as, or claim to be a broker.

### **Section 2301.007. Towing Vehicle by License Holder**

Notwithstanding any other law, a person licensed under this chapter does not commit an offense by employing a person to tow a disabled vehicle to or from the premises for

which the person is licensed regardless of whether the person employed to tow the vehicle:

- (1) holds a certificate issued by a state agency authorizing the person to engage in the business of towing vehicles for hire; or
- (2) commits an offense by towing the vehicle.

## **SUBCHAPTER B. MOTOR VEHICLE BOARD [REPEALED]**

**Sections 2301.051 to 2301.060.** *Repealed by Acts 2005, 79<sup>th</sup> Leg., ch. 281, § 7.06(1), eff. June 14, 2005.*

## **SUBCHAPTER C. DIRECTOR AND OTHER DIVISION PERSONNEL**

**Section 2301.101.** *Repealed by Acts 2013, 83<sup>rd</sup> Leg., ch. 1135, § 140(1), eff. September 1, 2013.*

**Section 2301.102.** *Repealed by Acts 2005, 79<sup>th</sup> Leg., ch. 281, § 7.06(2), eff. June 14, 2005.*

### **Section 2301.103. Personnel**

A division employee is subject to dismissal if the employee has an interest in or is related within the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to a person who has an interest in a business that manufactures, distributes, converts, sells, or leases motor vehicles.

### **Section 2301.104. Hearings Examiners**

- (a) The department may employ a chief hearings examiner and one or more additional hearings examiners.
- (b) A hearings examiner must be licensed to practice law in this state.

**Sections 2301.105 and 2301.106.** *Repealed by Acts 2011, 82<sup>nd</sup> Leg., ch. 1290, § 44(a)(2), eff. September 1, 2011.*

## **SUBCHAPTER D. BOARD POWERS AND DUTIES**

### **Section 2301.151. General Jurisdiction of Board**

(a) The board has the exclusive original jurisdiction to regulate those aspects of the distribution, sale, or lease of motor vehicles that are governed by this chapter, including the original jurisdiction to determine its own jurisdiction.

(b) The board may take any action that is specifically designated or implied under this chapter or that is necessary or convenient to the exercise of the power and jurisdiction granted under Subsection (a).

### **Section 2301.152. General Duties of Board**

(a) In accordance with this chapter, the board shall:

- (1) administer this chapter;
- (2) establish the qualifications of license holders;
- (3) ensure that the distribution, sale, and lease of motor vehicles is conducted as required by this chapter and board rules;
- (4) provide for compliance with warranties; and
- (5) prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles.

(b) In addition to the duties delegated to the board under this chapter, the board shall enforce and administer Chapter 503, Transportation Code.

### **Section 2301.153. General Powers of Board**

(a) Notwithstanding any other provision of law, the board has all powers necessary, incidental, or convenient to perform a power or duty expressly granted under this chapter, including the power to:

- (1) initiate and conduct proceedings, investigations, or hearings;
- (2) administer oaths;
- (3) receive evidence and pleadings;
- (4) issue subpoenas to compel the attendance of any person;
- (5) order the production of any tangible property, including papers, records, or other documents;
- (6) make findings of fact on all factual issues arising out of a proceeding initiated under this chapter;
- (7) specify and govern appearance, practice, and procedures before the board;
- (8) adopt rules and issue conclusions of law and decisions, including declaratory decisions or orders;
- (9) enter into contracts;
- (10) execute instruments;
- (11) retain counsel;
- (12) use the services of the attorney general and institute and direct the conduct of legal proceedings in any forum;
- (13) obtain other professional services as necessary and convenient;

- (14) impose a sanction for contempt;
- (15) assess and collect fees and costs, including attorney's fees;
- (16) issue, suspend, or revoke licenses;
- (17) prohibit and regulate acts and practices in connection with the distribution and sale of motor vehicles or warranty performance obligations;
- (18) issue cease and desist orders in the nature of temporary or permanent injunctions;
- (19) impose a civil penalty;
- (20) enter an order requiring a person to:
  - (A) repurchase property under Section 2301.465 and pay costs and expenses of a party in connection with an order entered under that section;
  - (B) perform an act other than the payment of money; or
  - (C) refrain from performing an act; and
- (21) enforce a board order.

(b) The board may inspect the books and records of a license holder in connection with the performance of its duties under this chapter.

#### **Section 2301.154. Delegation of Powers**

(a) The director may delegate any of the director's powers to one or more of the division's employees.

(b) The board by rule may delegate any power relating to a contested case hearing brought under this chapter or Chapter 503, Transportation Code, 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; or
- (4) one or more of the department's employees.

(c) The board by rule may delegate the authority to issue a final order in a contested case hearing brought under this chapter or Chapter 503, Transportation Code, to:

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

(d) The board by rule may delegate any power relating to a complaint investigation to any person employed by the department.

(e) An action taken by a person to whom a power or other authority is delegated under Subsection (b) or (c), including the issuance of an order, is considered an action of the board and may not be appealed to the board.

**Section 2301.155. Rules**

The authority to adopt rules under this chapter is vested in the board. In accordance with this chapter and the rules, decisions, and orders of the board, the board shall adopt rules as necessary or convenient to administer this chapter and to govern practice and procedure before the board.

**Section 2301.156. Deposit of Revenue**

Notwithstanding any other law to the contrary, all money collected by the board under this chapter shall be deposited in the state treasury to the credit of the Texas Department of Motor Vehicles fund.

**Section 2301.157.** *Repealed by Acts 2013, 83<sup>rd</sup> Leg., ch. 1135, § 140(1), eff. September 1, 2013.*

**Sections 2301.158 and 2301.159.** *Repealed by Acts 2005, 79<sup>th</sup> Leg., ch. 281, § 7.06(2), eff. June 14, 2005.*

**Section 2301.160. Tolling of Time Limit During Mediation**

A time limit relating to a board proceeding that is imposed by this chapter on the board or on a dealer is tolled during the pendency of mediation required by this chapter or by a franchise agreement.

**SUBCHAPTER E.  
PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

**Section 2301.201. Public Interest Information**

- (a) The director or the director's designee shall prepare information describing the functions of the board and the procedures by which complaints or protests are filed with and resolved by the board.
- (b) The board shall make the information available to the public and appropriate state agencies.

**Section 2301.202. Complaints; Records**

- (a) The board shall provide to a person who files a complaint, and to each person that is the subject of the complaint, information about the board's policies and procedures relating to complaint investigation and resolution.
  - (b) The board shall keep an information file about each complaint filed with the board that the board has authority to resolve. The board shall keep the following information for each complaint filed by the board for the purpose of enforcing this chapter:
    - (1) the date the complaint is filed;
    - (2) the name of the person filing the complaint;



- (3) the subject matter of the complaint;
- (4) each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) if the board does not take action on the complaint, an explanation of the reasons that action was not taken.

(c) If a written complaint is filed with the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an ongoing board investigation.

### **Section 2301.203. Complaint Investigation and Disposition**

(a) If the board has reason to believe, through receipt of a complaint or otherwise, that a violation of this chapter or a rule, order, or decision of the board has occurred or is likely to occur, the board shall conduct an investigation unless it determines that the complaint is frivolous or for the purpose of harassment.

(b) If the investigation establishes that a violation of this chapter or a rule, order, or decision of the board has occurred or is likely to occur, the board shall initiate proceedings as it determines appropriate to enforce this chapter or its rules, orders, and decisions.

(c) The board may not file a complaint alleging a violation of this chapter or a board rule relating to advertising until the board has notified the license holder involved of the alleged violation and given the license holder an opportunity to cure the violation without further proceedings or liability.

### **Section 2301.204. Complaint Concerning Vehicle Defect**

(a) The owner of a motor vehicle or the owner's designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer's, converter's, or distributor's warranty agreement applicable to the vehicle.

(b) The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty.

(c) The owner may also invoke the board's jurisdiction by sending a copy of the complaint to the board.

(d) A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.

### **Section 2301.205. Notice of Complaint Procedure**

(a) A franchised dealer shall provide notice of the complaint procedures provided by Section 2301.204 and Subchapter M to each person to whom the dealer sells a new motor vehicle.

- (b) The board may require its approval of the contents of the notice required by Subsection (a) or may prescribe the contents of the notice.
- (c) The failure to provide notice as required by this section is a violation of this chapter.

**Section 2301.206.** *Repealed by Acts 2011, 82<sup>nd</sup> Leg., ch. 1290, § 44(a)(2), eff. September 1, 2011.*

## **SUBCHAPTER F. LICENSE REQUIREMENTS**

### **Section 2301.251. License Required: Generally**

(a) Unless a person holds a license issued under this chapter authorizing the activity, the person may not:

- (1) engage in business as, serve in the capacity of, or act as a dealer, manufacturer, distributor, converter, representative, vehicle lessor, or vehicle lease facilitator in this state; or
- (2) perform or offer to perform repair services on a motor vehicle under a franchise and a motor vehicle manufacturer's warranty, regardless of whether the person sells or offers to sell motor vehicles at the same location.

(b) A franchised dealer must have both a franchised motor vehicle dealer's general distinguishing number issued under Chapter 503, Transportation Code, and a license issued under this chapter.

(c) A manufacturer or distributor that directly or indirectly reimburses another person to perform warranty repair services on a vehicle is engaged in business in this state regardless of whether the manufacturer sells or offers for sale new motor vehicles in this state.

### **Section 2301.252. License Required: Sale of New Motor Vehicles**

(a) A person may not engage in the business of buying, selling, or exchanging new motor vehicles unless the person:

- (1) holds a franchised dealer's license issued under this chapter for the make of new motor vehicle being bought, sold, or exchanged; or
- (2) is a bona fide employee of the holder of a franchised dealer's license.

(b) For purposes of this section:

- (1) the make of a conversion 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.

### **Section 2301.253. License Required: Vehicle Lease Facilitators**

Unless a person holds a vehicle lease facilitator license and complies with this chapter, the person may not:

- (1) act in the capacity of or engage in the business of a vehicle lease facilitator;
- (2) hold the person out to any other person as a "leasing company," "leasing agent," "lease facilitator," or similar title, directly or indirectly engaged in the business of a vehicle lease facilitator; or
- (3) otherwise engage in the solicitation or procurement of a prospective lessee for a motor vehicle that is not titled in the name of and registered to the person.

### **Section 2301.254. License Not Required for Certain Vehicle Lessors or Vehicle Lease Facilitators**

(a) A person is not required to obtain a license to act as a vehicle lessor or a vehicle lease facilitator if the person is:

- (1) a state or federally chartered financial institution or a regulated subsidiary of the financial institution; or
- (2) a trust or other entity that owns an interest in a vehicle lease and the vehicle that is the subject of the lease, if the lease covering the vehicle is initiated, managed, serviced, and administered by a licensed vehicle lessor.

(b) A franchised dealer is not required to have a vehicle lessor or vehicle lease facilitator license to engage in any capacity in the business of leasing a motor vehicle that the dealer owns and is licensed under this chapter to sell.

### **Section 2301.255. Nonfranchised Dealers; General Distinguishing Number**

(a) A nonfranchised dealer may not operate as a dealer unless the person holds a general distinguishing number. A nonfranchised dealer is not required to obtain an additional license under this chapter.

(b) For purposes of a nonfranchised dealer, a reference to a license in this chapter means a general distinguishing number.

### **Section 2301.256. Review of New Applications**

A new application for a license under this chapter shall be reviewed and may be investigated to determine compliance with this chapter.

### **Section 2301.257. Application for Dealer's License**

(a) An application for a dealer's license must be on a form prescribed by the department. The application must include:

- (1) the information required by Chapter 503, Transportation Code; and

- (2) information the board determines by rule is necessary to determine the applicant's qualifications to adequately serve the public.
- (b) If a material change occurs in the information included in an application for a dealer's license, the dealer shall notify the department of the change within a reasonable time. The department shall prescribe a form for the disclosure of the change.
- (c) A franchised dealer must apply for a separate license under this section for each separate and distinct dealership showroom as determined by the department. Before changing a location, a dealer must obtain a new license for that location.
- (d) The act of filing an application under this section or a form prescribed under this section does not establish the applicant as a franchised dealer.

**Section 2301.2575. Request for Dealer's License Application Confidential**

Notwithstanding any other law or rule, a request for an application for a dealer's license is confidential, is not an open record, and is not available for public inspection.

**Section 2301.258. General Requirements for Application for Manufacturer's, Distributor's, Converter's, or Representative's License**

An application for a manufacturer's, distributor's, converter's, or representative's license must be on a form prescribed by the department. The application must include information the department determines necessary to fully determine the qualifications of an applicant, including financial resources, business integrity and experience, facilities and personnel for serving franchised dealers, and other information the department determines pertinent to safeguard the public interest and welfare.

**Section 2301.259. Application for Manufacturer's License**

- (a) An applicant for a manufacturer's license must provide a list of each distributor or representative acting for the applicant and each dealer franchised to sell the applicant's products in this state and their respective locations. An applicant for or holder of a manufacturer's license must inform the board of a change to the list not later than the 15th day after the date of the change. Information submitted under this subsection becomes a part of the application.
- (b) *Repealed by Acts 2013, 83<sup>rd</sup> Leg., ch. 1135, § 140(1), eff. September 1, 2013.*
- (c) An application for a manufacturer's license must include a statement regarding the manufacturer's compliance with Subchapter I and Sections 2301.451--2301.476.
- (d) An application for a manufacturer's license must specify:
- (1) the preparation and delivery obligations of the manufacturer's franchised dealers before delivery of a new motor vehicle to a retail purchaser; and
  - (2) the schedule of compensation to be paid to a franchised dealer for the work and service performed under Subdivision (1).

### **Section 2301.260. Application for Distributor's License**

- (a) An application for a distributor's license must disclose:
  - (1) the manufacturer for whom the distributor will act;
  - (2) whether the manufacturer is licensed in this state;
  - (3) the persons in this state who will be responsible for compliance with the warranty covering the motor vehicles to be sold;
  - (4) the terms of the contract under which the distributor will act for the manufacturer; and
  - (5) the franchised dealers with whom the distributor will do business.
- (b) An applicant for a distributor's license that has a responsibility under a warranty agreement must include a statement regarding the manufacturer's compliance with Subchapter I and Sections 2301.451-2301.476.
- (c) An applicant for or holder of a distributor's license must inform the board of a change in the information provided under this section not later than the 15th day after the date of the change. Information submitted under this subsection becomes a part of the application.

### **Section 2301.261. Application for Vehicle Lessor's License**

- (a) An application for a vehicle lessor's license must:
  - (1) be on a form prescribed by the department;
  - (2) contain evidence of compliance with Chapter 503, Transportation Code, if applicable; and
  - (3) state other information required by the department.
- (b) This chapter does not require a separate license for each employee of a vehicle lessor.

### **Section 2301.262. Application for Vehicle Lease Facilitator License**

- (a) An application for a vehicle lease facilitator license must be on a form prescribed by the department and contain the information required by the department.
- (b) This chapter does not require a separate license for each employee of a vehicle lease facilitator.

### **Section 2301.263. License Issued Subject to New Law and Rules**

A license issued under this chapter is subject to each provision of this chapter and board rule in effect on the date the license is issued and each provision of this chapter and board rule that takes effect during the term of the license.

### **Section 2301.264. License Fees**

(a) The annual fees for a license issued under this chapter are:

(1) \$ 900 for a manufacturer or distributor, plus \$ 20 for each dealer franchised by the manufacturer or distributor;

(2) for a franchised dealer:

(A) \$ 175, if the dealer sold fewer than 201 new motor vehicles during the preceding calendar year;

(B) \$ 275, if the dealer sold more than 200 but fewer than 401 new motor vehicles during the preceding calendar year;

(C) \$ 400, if the dealer sold more than 400 but fewer than 801 new motor vehicles during the preceding calendar year;

(D) \$ 500, if the dealer sold more than 800 but fewer than 1,201 new motor vehicles during the preceding calendar year;

(E) \$ 625, if the dealer sold more than 1,200 but fewer than 1,601 new motor vehicles during the preceding calendar year;

(F) \$ 750, if the dealer sold more than 1,600 new motor vehicles during the preceding calendar year; and

(G) \$ 100 for each location separate from the dealership at which the dealer does not offer motor vehicles for sale but performs warranty service work on vehicles the dealer is franchised and licensed to sell;

(3) \$ 100 for a representative;

(4) \$ 375 for a converter;

(5) for a vehicle lessor:

(A) \$ 175, if the lessor leased 200 or fewer motor vehicles during the preceding calendar year;

(B) \$ 275, if the lessor leased more than 200 but fewer than 401 motor vehicles during the preceding calendar year;

(C) \$ 400, if the lessor leased more than 400 but fewer than 801 motor vehicles during the preceding calendar year;

(D) \$ 500, if the lessor leased more than 800 but fewer than 1,201 motor vehicles during the preceding calendar year;

(E) \$ 625, if the lessor leased more than 1,200 but fewer than 1,601 motor vehicles during the preceding calendar year; and

(F) \$ 750, if the lessor leased more than 1,600 motor vehicles during the preceding calendar year; and

(6) \$ 375 for a vehicle lease facilitator.

(b) A person who fails to apply for a license required under this chapter or fails to pay a fee within the required time must pay a penalty equal to 50 percent of the amount of the fee for each 30 days after the date the license is required or the fee is due.

(c) The department may prorate the fee for a representative's license to allow the representative's license and the license of the manufacturer or distributor who employs the representative to expire on the same day.

(d) The department may refund a fee collected under this chapter that is not due or that exceeds the amount due.

(e) The fee for an amendment to a license under this chapter is \$ 25.

(f) The fee for a duplicate license under this chapter is \$ 50.

### **Section 2301.265. Service of Process on License Holder**

Obtaining a license under this chapter constitutes doing business in this state. A license holder who fails to designate an agent for service of process is considered to have designated the secretary of state as the agent for receipt of service of process.

### **Section 2301.266. Duplicate License**

The board may:

- (1) issue a duplicate license for any license the board issues;
- (2) charge a fee for the issuance of a duplicate license; and
- (3) adopt rules applicable to the issuance of a duplicate license.

## **SUBCHAPTER G. LICENSE EXPIRATION AND RENEWAL**

### **Section 2301.301. License Term and Renewal**

(a) Licenses issued under this chapter are valid for the period prescribed by the board.

(b) The department may issue a license for a term of less than the period prescribed under Subsection (a) to coordinate the expiration dates of licenses held by a person that is required to obtain more than one license to perform activities under this chapter.

(c) The board by rule may implement a system under which licenses expire on various dates during the year. For a year in which a license expiration date is changed, the fee for the license shall 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. On renewal of the license on the new expiration date, the entire license renewal fee is payable.

(d) A license renewal may be administratively granted unless a protest is made to the board.

(e) If the board prescribes the term of a license under this chapter for a period other than one year, the board shall prorate the applicable annual fee required under this chapter as necessary to reflect the term of the license.

### **Section 2301.302. Notice of License Expiration**

The department shall notify each person licensed under this chapter of the date of license expiration and the amount of the fee required for license renewal. The notice shall be sent at least 30 days before the date of license expiration.

### **Section 2301.303. Renewal of Dealer's License**

A dealer shall renew the dealer's license on an application prescribed by the department. The department shall include in the renewal application a request for disclosure of material changes described by Section 2301.257.

### **Section 2301.304. Procedure for Renewal of Certain Licenses**

The holder of a manufacturer's, distributor's, converter's, or representative's license may apply for a renewal of the license by complying with the application process specified by this chapter and board rule.

## **SUBCHAPTER H. DEALERS**

### **Section 2301.351. General Prohibition**

A dealer may not:

- (1) violate a board rule;
- (2) aid or abet a person who violates this chapter, Chapter 503, Transportation Code, or a rule adopted under those chapters; or
- (3) use false, deceptive, or misleading advertising relating to the sale or lease of motor vehicles.

### **Section 2301.352. Prohibition: Requiring Additional Equipment After Retail Sale**

A franchised dealer may not require as a condition of the sale and delivery of a new motor vehicle a retail purchaser of the vehicle to purchase special features, equipment, parts, or accessories that the purchaser did not order or desire and that were not already installed on the vehicle at the time of sale.

### **Section 2301.353. Prohibition: Performance of Obligation Under Agreement with Manufacturer**

A franchised dealer may not fail to perform an obligation placed on:

- (1) the selling dealer in connection with the preparation and delivery of a new motor vehicle for retail sale as provided in the manufacturer's preparation and delivery agreements that are applicable to the vehicle; or
- (2) the dealer in connection with the manufacturer's warranty agreements.



### **Section 2301.354. Use of Signs**

- (a) A franchised dealer may not operate without appropriate signs that:
  - (1) are readily and easily visible to the public; and
  - (2) identify the dealer's place of business and the products the dealer offers for sale.
- (b) To the extent of a conflict between this section and another law, including an ordinance, this section prevails.
- (c) If a dispute arises under this section:
  - (1) the board has exclusive jurisdiction to determine whether a sign complies with this section; and
  - (2) the board shall uphold an ordinance of a home-rule municipality and protect a franchised dealer from retribution by a manufacturer or distributor for complying with the ordinance.

### **Section 2301.355. Use of Multiple Locations**

- (a) A franchised dealer may conduct business at more than one location, except that the dealer may establish and maintain a separate location for the display and sale of new motor vehicles only if expressly authorized by the dealer's franchise and license.
- (b) A franchised dealer must hold a separate license for each separate and distinct dealership as required by Section 2301.257.

### **Section 2301.356. Notice of Certain Proposed Changes**

A licensed dealer shall promptly notify the board of any proposed change in its ownership, location, franchise, or any other matter the board by rule may require.

### **Section 2301.357. Prohibited Fee**

- (a) A franchised dealer may not directly or indirectly pay a fee to a vehicle lessor or a vehicle lease facilitator.
- (b) For purposes of Subsection (a), an adjustment in the purchase price paid for the lease or leased vehicle is not a fee. This subsection does not authorize a fee for referring leases or prospective lessees.

### **Section 2301.358. Vehicle Show or Exhibition**

- (a) A person who holds a license issued under this chapter may not participate in a new motor vehicle show or exhibition unless:
  - (1) the person provides the department with written notice before the date the show or exhibition opens; and
  - (2) the department grants written approval.

(b) A person who holds a license issued under this chapter may not sell or offer for sale a new motor vehicle at a show or exhibition, but dealership personnel may be present to aid in showing and exhibiting new motor vehicles.

(c) This section does not prohibit the sale of a towable recreational vehicle, motor home, ambulance, fire-fighting vehicle, or tow truck at a show or exhibition if:

- (1) the show or exhibition is approved by the department; and
- (2) the sale is not otherwise prohibited by law.

(d) A rule adopted by the board regulating the off-site display or sale of towable recreational vehicles must include a provision that authorizes the display and sale of towable recreational vehicles at a private event in a trade area that would not otherwise qualify for the private event under the application of general participation requirements for organized dealer shows and exhibitions.

### **Section 2301.359. Transfer of Ownership by Dealer**

(a) A dealer must notify the manufacturer or distributor of a vehicle the dealer is franchised to sell of the dealer's decision to assign, sell, or otherwise transfer a franchise or a controlling interest in the dealership to another person. The notice is the application by the dealer for approval by the manufacturer or distributor of the transfer.

(b) Notice under Subsection (a) must:

- (1) be in writing and include the prospective transferee's name, address, financial qualifications, and business experience; and
- (2) be sent by certified mail, return receipt requested.

(c) The notice must be accompanied by:

- (1) a copy of pertinent agreements regarding the proposed assignment, sale, or transfer;
- (2) completed application forms and related information generally used by the manufacturer or distributor in reviewing prospective dealers, if the forms are on file with the board; and
- (3) the prospective transferee's written agreement to comply with the franchise to the extent that the franchise is not in conflict with this chapter.

(d) Not later than the 60th day after the date of receipt of a notice and application under this section, a manufacturer or distributor shall determine whether a dealer's prospective transferee is qualified and shall send a letter by certified mail, return receipt requested, informing the dealer of the approval or the unacceptability of the prospective transferee. If the prospective transferee is not acceptable, the manufacturer or distributor shall include a statement setting forth the material reasons for the rejection.

(e) A manufacturer or distributor may not unreasonably withhold approval of an application filed under Subsection (a).

(f) An application filed under this section is approved unless rejected by the manufacturer or distributor in the manner provided by this section.

(g) In determining whether to approve an application filed under Subsection (a), a manufacturer or distributor may consider:

(1) the prospective transferee's financial and operational performance as a franchised dealer, if the prospective transferee is or has been a franchised dealer;

(2) the prospective transferee's moral character; or

(3) the extent to which a prospective transferee satisfies any criteria developed by the manufacturer or distributor and made available to the prospective transferee, specifically to determine the business experience and financial qualifications of a prospective transferee.

(h) A manufacturer or distributor may consider the criteria developed under Subsection (g)(3) only if the criteria are in writing, are reasonable, and are uniformly applied in similar situations.

(i) It is unreasonable for a manufacturer or distributor to reject a prospective transferee who is of good moral character and who satisfies the criteria developed under Subsection (g)(3).

#### **Section 2301.360. Review By Board Following Denial of Transfer**

(a) A dealer whose application is rejected under Section 2301.359 may file a protest with the board. A protest filed under this section is a contested case.

(b) In a protest under this section, the board must determine whether the rejection was reasonable under the criteria described by Section 2301.359. The burden is on the manufacturer or distributor to prove that the prospective transferee is not qualified under the criteria. The board shall enter an order holding that the prospective transferee either is qualified or is not qualified.

(c) If the board's order is that the prospective transferee is qualified, the dealer's franchise is amended to reflect the change in franchisee, and the manufacturer or distributor shall accept the transfer for all purposes.

(d) If the board's order is that the prospective transferee is not qualified, the board may include in the order:

(1) specific reasons why the prospective transferee is not qualified; and

(2) specific conditions under which the prospective transferee would be qualified.

(e) If the board's order that a prospective transferee is not qualified includes specific conditions under which the prospective transferee would be qualified, the board may retain jurisdiction of the dispute for a time certain to allow the dealer and prospective transferee to meet the conditions.

#### **Section 2301.361. Independent Mobility Motor Vehicle Dealer**

(a) Notwithstanding any other law or rule, an independent mobility motor vehicle dealer may:

- (1) purchase or otherwise acquire a new motor vehicle with a lowered floor or frame or a raised roof and door to fit or equip the motor vehicle for retail sale as a mobility motor vehicle;
  - (2) display a new mobility motor vehicle to a person with a disability to fit or equip the vehicle as a mobility motor vehicle for the person; and
  - (3) sell or arrange for the sale and delivery of a new mobility motor vehicle to a purchaser at the independent mobility motor vehicle dealer's place of business if the transaction occurs through or by a franchised dealer of the motor vehicle's chassis line make.
- (b) An independent mobility motor vehicle dealer who purchased or acquired a new motor vehicle from a franchised dealer to equip the vehicle as a mobility motor vehicle may not advertise the vehicle for sale until the vehicle is fitted or equipped as a mobility motor vehicle.
- (c) An independent mobility motor vehicle dealer may not sell or offer to sell a new motor vehicle other than a new mobility motor vehicle.

#### **Section 2301.362. Offsite Sales**

- (a) Except as provided by Subsections (b) and (c) and Sections 2301.358(c) and (d), a dealer may only sell or offer to sell a motor vehicle from an established and permanent place of business:
- (1) that is approved by the division; and
  - (2) for which a general distinguishing number has been issued.
- (b) A dealer may sell or offer to sell a motor vehicle online through an advertisement on the Internet to a buyer who never personally appears at the dealer's established and permanent place of business.
- (c) A dealer may sell, offer to sell, including by consignment, or exchange at a public auction an antique motor vehicle that is at least 25 years of age or a special interest vehicle that is at least 12 years of age or that has been the subject of a retail sale.
- (d) For purposes of this section, "special interest vehicle" has the meaning assigned by Section 683.077, Transportation Code.

#### **Section 2301.363. Required Notice**

A dealer that sells or exchanges a motor home or a towable recreational vehicle subject to inspection under Chapter 548, Transportation Code, shall notify the buyer in writing at the time of the sale or exchange that the motor vehicle is subject to inspection requirements.

**SUBCHAPTER I.**  
**WARRANTIES: REIMBURSEMENT OF DEALER**

**Section 2301.401. Warranty, Preparation, and Delivery Requirements**

(a) On request, a manufacturer or distributor shall provide to the department a copy of the current requirements the manufacturer or distributor imposes on its dealers with respect to the dealer's:

- (1) duties under the manufacturer's or distributor's warranty; and
- (2) vehicle preparation and delivery obligations.

(b) Warranty or preparation and delivery requirements placed on a dealer by a manufacturer are not enforceable unless the requirements are reasonable.

**Section 2301.402. Rate of Compensation**

(a) A manufacturer or distributor shall fairly and adequately compensate its dealers for warranty work.

(b) A manufacturer or distributor may not pay or reimburse a dealer an amount of money for warranty work that is less than the amount the dealer charges a retail customer for similar nonwarranty work.

(c) In computing the amount of money a dealer charges a retail customer under Subsection (b), the manufacturer or distributor shall use the greater of:

- (1) the average labor rate charged during the preceding six months by the dealer on 100 sequential nonwarranty repair orders, exclusive of routine maintenance; or
- (2) the average labor rate charged for 90 consecutive days during the preceding six months by the dealer for nonwarranty repairs, exclusive of routine maintenance.

**Section 2301.403. Adjustment of Warranty Labor Rate**

(a) A dealer may request an adjustment in the dealer's warranty labor rate. The request must be sent to the manufacturer or distributor by certified mail, return receipt requested, and must state the requested rate and include information reasonably necessary to enable the manufacturer or distributor to adequately evaluate the request.

(b) Not later than the 60th day after the date of receipt of a request under this section, the manufacturer or distributor shall provide written notice to the requesting dealer of the approval or disapproval of the request. If the request is disapproved, the manufacturer or distributor shall state the reasons for the disapproval.

(c) A requesting dealer may file a protest with the board if the manufacturer or distributor:

- (1) disapproves the request; or
- (2) fails to respond within the time required by this section.

(d) After a protest is filed, the board may uphold the manufacturer's or distributor's decision only if the manufacturer or distributor proves by a preponderance of the evidence that the disapproval of the request or failure to respond was reasonable.

(e) If the board does not determine that the disapproval of the request or failure to respond was reasonable, the board shall order the requested rate into effect as of the 60th day after the receipt of the request by the manufacturer or distributor.

(f) Except by agreement of the parties, a warranty labor rate established under this subchapter may not be adjusted more often than once a year.

#### **Section 2301.404. Time for Payment**

(a) A manufacturer or distributor shall pay a dealer's claim for reimbursement for warranty work or dealer preparation and delivery work not later than the 30th day after the date of approval of the claim.

(b) A claim that is not disapproved before the 31st day after the date of receipt is considered approved.

(c) If a claim is disapproved, the manufacturer or distributor shall provide the dealer written notice of the reasons for the disapproval.

#### **Section 2301.405. Charge Back to Dealer**

(a) A manufacturer or distributor may not charge back to a dealer money paid by the manufacturer or distributor to satisfy a claim approved and paid under this subchapter unless the manufacturer or distributor shows that:

(1) the claim was false or fraudulent;

(2) repair work was not properly performed or was unnecessary to correct a defective condition; or

(3) the dealer who made the claim failed to substantiate the claim as provided by the manufacturer's or distributor's requirements that were enforceable under Section 2301.401 at the time the claim was filed.

(b) A manufacturer or distributor may not audit a claim filed under this subchapter after the first anniversary of the date the claim is submitted unless the manufacturer or distributor has reasonable grounds to suspect that the claim was fraudulent.

#### **Section 2301.406. Prohibited Requirements for Payment**

A manufacturer or distributor may not require, as a prerequisite to the payment of a claim for reimbursement, that a dealer file a statement of actual time spent in performance of labor, unless actual time is the basis for reimbursement.

**SUBCHAPTER J.**  
**MANUFACTURERS, DISTRIBUTORS, AND REPRESENTATIVES**

**Section 2301.451. Prohibition: Items Not Ordered**

A manufacturer, distributor, or representative may not require or attempt to require a franchised dealer to order, accept delivery of, or pay anything of value, directly or indirectly, for a motor vehicle or an appliance, part, accessory, or any other commodity unless the dealer voluntarily ordered or contracted for the item.

**Section 2301.452. Delivery of Motor Vehicle or Part**

(a) A manufacturer, distributor, or representative shall deliver in a reasonable quantity and within a reasonable time to a franchised dealer who holds a franchise for a motor vehicle sold or distributed by the manufacturer, distributor, or representative any new motor vehicle or part or accessory for a new motor vehicle as covered by the franchise if the vehicle, part, or accessory is publicly advertised as being available for delivery or is actually being delivered.

(b) This section does not apply to a delivery prevented by:

- (1) an act of God;
- (2) a work stoppage or delay because of a strike or labor dispute;
- (3) a freight embargo; or
- (4) another cause beyond the control of the manufacturer, distributor, or representative.

**Section 2301.453. Termination or Discontinuance of Franchise**

(a) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not terminate or discontinue a franchise with a franchised dealer or directly or indirectly force or attempt to force a franchised dealer to relocate or discontinue a line-make or parts or products related to that line-make unless the manufacturer, distributor, or representative provides notice of the termination or discontinuance as required by Subsection (c) and:

- (1) the manufacturer, distributor, or representative receives the dealer's informed written consent;
- (2) the appropriate time for the dealer to file a protest under Subsection (e) has expired; or
- (3) the board makes a determination of good cause under Subsection (g).

(b) A termination or discontinuance to which this section applies includes a termination or discontinuance of a franchise that results from a change by a manufacturer, distributor, or representative of its:

- (1) distributor;
- (2) method of distribution of its products in this state; or

(3) business structure or ownership.

(c) Except as provided by Subsection (d), the manufacturer, distributor, or representative must provide written notice by registered or certified mail to the dealer and the board stating the specific grounds for the termination or discontinuance. The notice must:

(1) be received not later than the 60th day before the effective date of the termination or discontinuance; and

(2) contain on its first page a conspicuous statement that reads: "NOTICE TO DEALER: YOU MAY BE ENTITLED TO FILE A PROTEST WITH THE TEXAS MOTOR VEHICLE BOARD IN AUSTIN, TEXAS, AND HAVE A HEARING IN WHICH YOU MAY PROTEST THE PROPOSED TERMINATION OR DISCONTINUANCE OF YOUR FRANCHISE UNDER THE TERMS OF CHAPTER 2301, OCCUPATIONS CODE, IF YOU OPPOSE THIS ACTION."

(d) Notice may be provided not later than the 15th day before the effective date of termination or discontinuance if a licensed dealer fails to conduct its customary sales and service operations during its customary business hours for seven consecutive business days. This subsection does not apply if the failure is caused by:

(1) an act of God;

(2) a work stoppage or delay because of a strike or labor dispute;

(3) an order of the board; or

(4) another cause beyond the control of the dealer.

(e) A franchised dealer may file a protest with the board of the termination or discontinuance not later than the latter of:

(1) the 60th day after the date of the receipt of the notice of termination or discontinuance; or

(2) the time specified in the notice.

(f) After a timely protest is filed under Subsection (e), the board shall notify the party seeking the termination or discontinuance that:

(1) a timely protest has been filed;

(2) a hearing is required under this chapter; and

(3) the party may not terminate or discontinue the franchise until the board issues its final order or decision.

(g) After a hearing, the board shall determine whether the party seeking the termination or discontinuance has established by a preponderance of the evidence that there is good cause for the proposed termination or discontinuance.

(h) If a franchise is terminated or discontinued, the manufacturer, distributor, or representative shall establish another franchise in the same line-make within a reasonable time unless it is shown to the board by a preponderance of the evidence that the community or trade area cannot reasonably support such a dealership. If this showing is



made, a license may not be issued for a franchised dealer in the same area until a change in circumstances is established.

(i) A manufacturer that changes its distributor or the method of distribution of its products in this state in a manner that results in unlawful termination or discontinuance of a franchise without good cause may not directly or indirectly distribute its products in this state.

#### **Section 2301.454. Modification or Replacement of Franchise**

(a) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not modify or replace a franchise if the modification or replacement would adversely affect to a substantial degree the dealer's sales, investment, or obligations to provide service to the public, unless:

(1) the manufacturer, distributor, or representative provides written notice by registered or certified mail to each affected dealer and the department of the modification or replacement; and

(2) if a protest is filed under this section, the board approves the modification or replacement.

(b) The notice required by Subsection (a)(1) must:

(1) be given not later than the 60th day before the date of the modification or replacement; and

(2) contain on its first page a conspicuous statement that reads: "NOTICE TO DEALER: YOU MAY BE ENTITLED TO FILE A PROTEST WITH THE TEXAS MOTOR VEHICLE BOARD IN AUSTIN, TEXAS, AND HAVE A HEARING IN WHICH YOU MAY PROTEST THE PROPOSED MODIFICATION OR REPLACEMENT OF YOUR FRANCHISE UNDER THE TERMS OF CHAPTER 2301, OCCUPATIONS CODE, IF YOU OPPOSE THIS ACTION."

(c) A franchised dealer may file a protest with the board of the modification or replacement not later than the latter of:

(1) the 60th day after the date of the receipt of the notice; or

(2) the time specified in the notice.

(d) After a protest is filed, the board shall determine whether the manufacturer, distributor, or representative has established by a preponderance of the evidence that there is good cause for the proposed modification or replacement. The prior franchise continues in effect until the board resolves the protest.

#### **Section 2301.455. Determination of Good Cause for Termination, Discontinuance, Modification, or Replacement**

(a) Notwithstanding the terms of any franchise, in determining whether good cause has been established under Section 2301.453 or 2301.454, the board shall consider all existing circumstances, including:

- (1) the dealer's sales in relation to the sales in the market;
  - (2) the dealer's investment and obligations;
  - (3) injury or benefit to the public;
  - (4) the adequacy of the dealer's service facilities, equipment, parts, and personnel in relation to those of other dealers of new motor vehicles of the same line-make;
  - (5) whether warranties are being honored by the dealer;
  - (6) the parties' compliance with the franchise, except to the extent that the franchise conflicts with this chapter; and
  - (7) the enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise's terms, oppression, adhesion, and the parties' relative bargaining power.
- (b) The desire of a manufacturer, distributor, or representative for market penetration does not by itself constitute good cause.

#### **Section 2301.456. Use of Advertising**

A manufacturer, distributor, or representative may not:

- (1) use any false, deceptive, or misleading advertising; or
- (2) notwithstanding the terms of any franchise, require that a franchised dealer join, contribute to, or affiliate with, directly or indirectly, any advertising association.

#### **Section 2301.457. Prohibition: Change of Franchised Dealer's Capital Structure**

Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not prevent a franchised dealer who meets reasonable capital requirements from reasonably changing:

- (1) the capital structure of the dealership; or
- (2) the means by or through which the dealer finances the operation of the dealership.

#### **Section 2301.458. Prohibition: Change in Dealer Ownership**

Notwithstanding the terms of any franchise, except as provided by Section 2301.359 or 2301.360, a manufacturer, distributor, or representative may not fail to give effect to or attempt to prevent the sale or transfer of:

- (1) a dealer, dealership, or franchise;
- (2) an interest in a dealer, dealership, or franchise; or
- (3) the management of a dealer, dealership, or franchise.

**Section 2301.459. Prohibition: Use of Promissory Note, Security Agreement, or Insurance Policy**

Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not require or attempt to require that a franchised dealer assign to or act as an agent for a manufacturer, distributor, or representative to secure:

- (1) a promissory note or security agreement given in connection with the sale or purchase of a new motor vehicle; or
- (2) an insurance policy on or having to do with the operation of a vehicle that is sold.

**Section 2301.460. Warranty, Preparation, or Delivery Agreement Obligations**

Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not, after a complaint and a hearing, fail or refuse to perform an obligation placed on the manufacturer in connection with the preparation, delivery, and warranty of a new motor vehicle as provided in the manufacturer's warranty, preparation, and delivery agreements.

**Section 2301.461. Liability of Franchised Dealer**

(a) Notwithstanding the terms of any franchise or any other law, a franchised dealer's preparation, delivery, and warranty obligations are the dealer's sole responsibility for product liability as between the dealer and a manufacturer or distributor.

(b) Notwithstanding the terms of any franchise or any other law, a manufacturer or distributor shall reimburse the dealer for any loss incurred by the dealer, including legal fees, court costs, and damages, as a result of the dealer having been named a party in a product liability action, except for a loss caused by the dealer's:

- (1) failure to comply with an obligation described by Subsection (a);
- (2) negligence or intentional misconduct; or
- (3) modification of a product without the authorization of the manufacturer or distributor.

**Section 2301.462. Succession Following Death of Franchised Dealer**

(a) Notwithstanding the terms of any franchise, except as provided by Subsection (b), a manufacturer, distributor, or representative shall honor the succession to a dealership by a legal heir or devisee under:

- (1) the will of a franchised dealer; or
- (2) the laws of descent and distribution of this state.

(b) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may refuse to honor a succession if, after notice and hearing, it is shown to the board that the result of the succession will be detrimental to the public interest and to the representation of the manufacturer or distributor.

(c) This section does not prevent a franchised dealer, during the dealer's lifetime, from designating any person as a successor dealer by a written instrument filed with the manufacturer or distributor.

**Section 2301.463. Prohibition: Payment of Rebate by Franchised Dealer**

Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not require a franchised dealer to directly or indirectly pay or assume any part of a refund, rebate, discount, or other financial adjustment made by the manufacturer, distributor, or representative to, or in favor of, a customer of the dealer, unless the dealer voluntarily agrees.

**Section 2301.464. Relocation of Franchise**

(a) Not later than the 60th day before the date a franchised dealer proposes to begin the relocation of a dealership, the dealer must provide written notice of the dealer's intent to relocate to the dealer's manufacturer, distributor, or representative. The notice must be sent by certified mail, return receipt requested. Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not deny or withhold approval of a written application to relocate a franchise unless:

- (1) the applicant receives written notice of the denial or withholding of approval not later than the 60th day after the date the application is received; and
- (2) if the applicant files a protest with the board, the board makes a determination of reasonable grounds under this section.

(b) An application under Subsection (a) to relocate a franchise must contain information reasonably necessary to enable a manufacturer or distributor to adequately evaluate the application.

(c) If the applicant files a protest under Subsection (a)(2), the board shall hold a hearing. After the hearing, the board shall determine whether the manufacturer or distributor has established by a preponderance of the evidence that the grounds for the denial or withholding of approval of the relocation are reasonable.

**Section 2301.465. Payment to Franchised Dealer Following Termination of Franchise**

(a) In this section:

- (1) "Net cost" means the franchised dealer cost for a new, unsold, undamaged, and complete motor vehicle in a dealer's inventory:
  - (A) plus any charges by the manufacturer, distributor, or representative for distribution, delivery, and taxes; and
  - (B) less all allowances paid to the franchised dealer by the manufacturer, distributor, or representative.

(2) "Net discount value" is the net cost multiplied by the total mileage, exclusive of mileage placed on the motor vehicle before it was delivered to the dealer, divided by 100,000.

(b) Notwithstanding the terms of any franchise, after the termination of a franchise, a manufacturer, distributor, or representative shall pay to a franchised dealer or any lienholder, in accordance with the interest of each, the following amounts:

(1) the dealer cost of each new motor vehicle in the dealer's inventory with mileage of 5,000 miles or less, exclusive of mileage placed on the vehicle before it was delivered to the dealer, reduced by the net discount value of each vehicle, except that if a vehicle cannot be reduced by the net discount value, the manufacturer or distributor shall pay the dealer the net cost of the vehicle;

(2) the dealer cost of each new, unused, undamaged, and unsold part or accessory that:

(A) is in the current parts catalogue and is still in the original, resalable merchandising package and in an unbroken lot, except in the case of sheet metal, a comparable substitute for the original package may be used; and

(B) was purchased by the dealer either directly from the manufacturer or distributor or from an outgoing authorized dealer as a part of the dealer's initial inventory;

(3) the fair market value of each undamaged sign owned by the dealer that bears a trademark or tradename used or claimed by the manufacturer, distributor, or representative and that was purchased from or at the request of the manufacturer, distributor, or representative;

(4) the fair market value of all special tools, data processing equipment, and automotive service equipment owned by the dealer that:

(A) were recommended in writing and designated as special tools and equipment;

(B) were purchased from or at the request of the manufacturer, distributor, or representative; and

(C) are in usable and good condition except for reasonable wear and tear;

(5) the cost of transporting, handling, packing, storing, and loading any property subject to repurchase under this section; and

(6) the depreciated value of computer software that was recommended and required in writing by the manufacturer, distributor, or representative.

(c) An amount described by Subsection (b) is due:

(1) for property described by Subsection (b)(1), not later than the 60th day after the date a franchise is terminated; and

(2) for all other property described by Subsection (b), not later than the 90th day after the date a franchise is terminated.

(d) As a condition of payment, a franchised dealer must comply with reasonable requirements provided by the franchise regarding the return of inventory.

(e) A manufacturer or distributor shall reimburse a franchised dealer for the dealer's cost for storing any property covered by this section:

- (1) beginning on the 91st day after the date the franchise is terminated; or
- (2) before the date described by Subdivision (1) if the dealer notifies the manufacturer or distributor of the commencement of storage charges within that period.

(f) On receipt of notice under Subsection (e)(2), a manufacturer or distributor may immediately take possession of the property by repurchase under this section.

(g) A manufacturer, distributor, or representative who fails to pay an amount within the time required by this section or at the time the dealer and any lienholder proffer good title before the time required for payment, is liable to the dealer for:

- (1) the dealer cost, fair market value, or current price of the inventory, whichever amount is highest;
- (2) interest on the amount due computed at the rate applicable to a judgment of a court; and
- (3) reasonable attorney's fees and costs.

(h) Notwithstanding any other law, this section does not require a manufacturer, distributor, or representative to repurchase a motor vehicle that:

- (1) at the time of termination of the franchise had been in the dealer's inventory for at least 24 months after the date the dealer took delivery of the vehicle; or
- (2) the dealer purchased not more than 30 days before the date of termination of the franchise solely in anticipation of the termination and, in the ordinary course of business, would not have purchased.

(i) For purposes of this section, a sale of the assets or stock of a dealership to a buyer who continues the operation of the dealership is not a termination of a franchise.

### **Section 2301.4651. Additional Payment to Franchised Dealer in Certain Situations**

(a) This section applies to a manufacturer, distributor, or representative that terminates or discontinues a franchise by:

- (1) discontinuing a line-make;
- (2) ceasing to do business in this state; or
- (3) changing the distributor or method of distribution of its products in this state.

(b) In addition to the duties placed on a manufacturer, distributor, or representative by Section 2301.465, a manufacturer, distributor, or representative to whom this section applies shall pay to the franchised dealer the following amounts as applicable:

- (1) either:
  - (A) the dealer's construction costs for a new dealership completed in the two years preceding the date of the termination or discontinuance described by Subsection (a); or

(B) if the dealer does not have any costs described by Paragraph (A), the fair monthly rental value of the dealership payable in cash each month beginning on the first day of the first month following the date of the termination or discontinuance described by Subsection (a) and ending on the earlier of:

(i) the first anniversary of the termination or discontinuance date;  
or

(ii) the date on which the dealer no longer owns the dealership;

(2) the dealer's costs for upgrading or substantially altering a dealership if the upgrades or alterations were completed or added in the two years preceding the date of the termination or discontinuance described by Subsection (a); and

(3) an amount equal to the value of the goodwill associated with the franchise as it existed on the day before the earlier of:

(A) the date of the termination or discontinuance described by Subsection (a); or

(B) the date on which the manufacturer, distributor, or representative announced its intention to terminate or discontinue the franchise in a manner described by Subsection (a).

(c) A franchised dealer receiving money under Subsection (b)(1)(B) shall:

(1) make a reasonable effort to earn income from a dealership after a termination or discontinuance described by Subsection (a); and

(2) inform the manufacturer, distributor, or representative of the dealer's efforts under Subdivision (1) and of any income earned from the dealership.

(d) The amounts to be paid under Subsection (b)(1) or (2) to the dealer by a manufacturer, distributor, or representative shall be based on the percentage of the total square footage of the dealership attributable to sales, service, and parts suggested by a manufacturer or distributor and allocated to the franchise being terminated or discontinued at the time of the termination or discontinuance.

(e) A franchised dealer receiving money under Subsection (b)(1) or (2) shall mitigate damages by listing the dealership for lease or sublease with a real estate broker licensed under Chapter 1101 not later than the 30th day after the effective date of the termination or discontinuance described by Subsection (a) and shall reasonably cooperate with the broker in the performance of the broker's duties.

(f) A manufacturer, distributor, or representative may reduce the amount of a payment made to a franchised dealer under Subsection (b)(1)(B) by the amount of any income earned by the dealer from the dealership during the month preceding the payment.

(g) The manufacturer, distributor, or representative, as appropriate, shall pay any amount described by Subsection (b)(1)(A), (b)(2), or (b)(3) not later than the 90th day after the date of the termination or discontinuance described by Subsection (a).

(h) An amount payable under Subsection (b)(1)(A) or (b)(2) does not include any tax depreciation benefit received by the franchised dealer or any amount previously paid to

the franchised dealer by the manufacturer, distributor, or representative to subsidize the costs incurred by the dealer in performing the activities described by Subsection (b)(1)(A) or (b)(2).

#### **Section 2301.466. Arbitration**

(a) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not require a franchised dealer to submit to arbitration on any issue unless the dealer and the manufacturer, distributor, or representative and their respective counsel agree to the arbitration after a controversy arises.

(b) An arbitrator shall apply this chapter in resolving a controversy. Either party may appeal to the board a decision of an arbitrator on the ground that the arbitrator failed to apply this chapter.

#### **Section 2301.467. Prohibitions: Sales Standards, Relocations, Facility Changes, Purchase of Equipment**

(a) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not:

- (1) require adherence to unreasonable sales or service standards; or
- (2) unreasonably require a franchised dealer to purchase special tools or equipment.

(b) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not unreasonably require a franchised dealer to relocate, or to replace or substantially change, alter, or remodel the dealer's facilities. Except as provided by Subsections (b-1) and (b-2), an act is reasonable if it is justifiable in light of current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area.

(b-1) Except as necessary to comply with health or safety laws or to comply with technology requirements necessary to sell or service a line-make, it is unreasonable for a manufacturer, distributor, or representative to require a franchised dealer to construct a new dealership or to substantially change, alter, or remodel an existing dealership before the 10th anniversary of the date the construction of the dealership at that location was completed if the construction was in substantial compliance with standards or plans provided by a manufacturer, distributor, or representative or through a subsidiary or agent of the manufacturer, distributor, or representative.

(b-2) Except as necessary to comply with health or safety laws or to comply with technology requirements necessary to sell or service a line-make, it is unreasonable for a manufacturer, distributor, or representative to require a franchised dealer to substantially change, alter, or remodel an existing dealership before the 10th anniversary of the date that a prior change, alteration, or remodel of the dealership at that location was completed if the change, alteration, or remodel was in substantial compliance with standards or plans provided by a manufacturer, distributor, or representative or through a subsidiary or agent of the manufacturer, distributor, or representative.



(c) This section applies to the relationship between a manufacturer, distributor, or representative and:

- (1) a current franchisee of the manufacturer, distributor, or representative;
- (2) a successor of a current franchisee of the manufacturer, distributor, or representative; or
- (3) a franchised dealer who is seeking to become a franchisee of the manufacturer, distributor, or representative.

**Section 2301.4671. Franchise Provision Establishing Restriction on Dealer’s Use of Dealership Property**

Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not:

- (1) unreasonably limit or impair the ability of a franchised dealer to use the dealership property as the dealer considers appropriate;
- (2) control the use of the dealership property after the franchise is terminated or discontinued; or
- (3) at any time exercise exclusive control over the use of the dealership property.

**Section 2301.468. Inequitable Treatment of Dealers or Franchisees**

Notwithstanding the terms of a franchise, a manufacturer, distributor, or representative may not treat franchised dealers of the same line-make differently as a result of the application of a formula or other computation or process intended to gauge the performance of a dealership or otherwise enforce standards or guidelines applicable to its franchised dealers in the sale of motor vehicles if, in the application of the standards or guidelines, the franchised dealers are treated unfairly or inequitably in the sale of a motor vehicle owned by the manufacturer or distributor.

**Section 2301.469. Costs of Product Recall**

Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative shall compensate a franchised dealer for all costs incurred by the dealer as required by the manufacturer in complying with a product recall by the manufacturer or distributor, including any costs incurred by the dealer in notifying vehicle owners of the existence of the recall.

**Section 2301.470. Prohibition: Conditions for Financing Motor Vehicle**

A manufacturer, distributor, or representative may not directly or indirectly, or through a subsidiary or agent, require as a condition for obtaining financing for a motor vehicle that:

- (1) the purchaser of the vehicle purchase any product other than the motor vehicle from the manufacturer, the distributor, or an entity owned or controlled by the manufacturer or distributor; or

- (2) an insurance policy or service contract bought by the purchaser be from a specific source.

### **Section 2301.471. Use of Financing Subsidiary**

- (a) A manufacturer, distributor, or representative may not:
  - (1) compel a franchised dealer through a financing subsidiary of the manufacturer or distributor to agree to unreasonable operating requirements; or
  - (2) directly or indirectly terminate a franchise through the actions of a financing subsidiary of the manufacturer or distributor.
- (b) This section does not limit the right of a financing entity to engage in business practices in accordance with the usage of trade in retail and wholesale motor vehicle financing.

### **Section 2301.472. Addition of Line-Make**

- (a) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not deny or withhold approval of a franchised dealer's application to add a line-make or parts or products related to that line-make unless:
  - (1) the manufacturer or distributor provides written notice of the denial or withholding of approval to the applicant not later than the 60th day after the date the application is received; and
  - (2) if the applicant files a protest under this section, the board upholds the denial or withholding of approval.
- (b) After receiving notice under Subsection (a)(1), a dealer may file a protest with the board.
- (c) If the dealer files a protest, the board may uphold the manufacturer's or distributor's decision to deny or withhold approval of the addition of the line-make only if the manufacturer or distributor establishes by a preponderance of the evidence that the denial or withholding of approval was reasonable.
- (d) In determining whether a manufacturer or distributor has established that the denial or withholding of approval is reasonable, the board shall consider all existing circumstances, including:
  - (1) the dealer's sales in relation to the sales in the market;
  - (2) the dealer's investment and obligations;
  - (3) injury or benefit to the public;
  - (4) the adequacy of the dealer's sales and service facilities, equipment, parts, and personnel in relation to those of other dealers of new motor vehicles of the same line-make;
  - (5) whether warranties are being honored by the dealer agreement;
  - (6) the parties' compliance with the franchise, except to the extent that the franchise conflicts with this chapter;

(7) the enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise's terms, oppression, adhesion, and the parties' relative bargaining power;

(8) whether the dealer complies with reasonable capitalization requirements or will be able to comply with reasonable capitalization requirements within a reasonable time;

(9) any harm to the manufacturer or distributor if the denial or withholding of approval is not upheld;

(10) any harm to the dealer if the denial or withholding of approval is upheld;

(11) the manufacturer's or distributor's investment and obligations; and

(12) whether the denial or withholding of approval is justified in light of current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area.

### **Section 2301.473. Models Within Line-Make**

A manufacturer, distributor, or representative may not:

(1) fail or refuse to offer to its same line-make franchised dealers all models manufactured for that line-make; or

(2) require as a prerequisite to receiving a model or series of vehicles that a franchised dealer:

(A) pay an extra fee;

(B) purchase unreasonable advertising displays or other materials; or

(C) remodel, renovate, or recondition the dealer's existing facilities.

### **Section 2301.474. Payment of Costs for Administrative or Civil Proceeding**

(a) A manufacturer, distributor, or representative may not require a franchised dealer to compensate the manufacturer or distributor for any court costs, attorney's fees, or other expenses incurred in an administrative or civil proceeding arising under this chapter.

(b) This section does not prohibit a manufacturer and a franchised dealer from entering into an agreement to share costs in a proceeding in which the dealer and manufacturer have the same or similar interests.

### **Section 2301.4749. Manufacturer or Distributor Incentive Programs: Payment to Dealer**

(a) A manufacturer or distributor shall pay a dealer's claim filed under a manufacturer or distributor incentive program not later than the 30th day after the date the claim is approved.

(b) A claim is considered approved unless a manufacturer or distributor rejects the claim not later than the 31st day after the date of receipt of the claim by the manufacturer or distributor.

(c) The manufacturer or distributor shall provide the dealer with written notice of a rejection of a claim and the reasons for the rejection.

**Section 2301.475. Manufacturer or Distributor Incentive Programs: Audit or Chargeback**

(a) Except as provided by Subsection (b), after the first anniversary of the date a manufacturer or distributor pays a claim under Section 2301.4749, the manufacturer or distributor may not:

- (1) charge back to a dealer money paid by the manufacturer or distributor as a result of the incentive program;
- (2) charge back to a dealer the cash value of a prize or other thing of value awarded to the dealer as a result of the incentive program; or
- (3) audit the records of a dealer to determine compliance with the terms of the incentive program, unless the manufacturer or distributor has reasonable grounds to believe the dealer committed fraud with respect to the incentive program.

(b) A manufacturer or distributor may make charge-backs to a dealer if, after an audit, the manufacturer or distributor has reasonable grounds to conclude that the dealer committed fraud with respect to the incentive program.

(c) Money paid by a manufacturer or distributor under an incentive program may only be paid to a dealer, unless the dealer agrees to the payment of the money to another person, including an employee of the dealer, before the payment is made.

**Section 2301.476. Manufacturer or Distributor Ownership, Operation, or Control of Dealership**

(a) In this section, "manufacturer" includes:

- (1) a representative; or
- (2) a person who:
  - (A) is affiliated with a manufacturer or representative; or
  - (B) directly or indirectly through an intermediary, is controlled by, or is under common control with, a manufacturer.

(b) For purposes of Subsection (a)(2)(B), a person is controlled by a manufacturer if the manufacturer is directly or indirectly authorized, by law or by agreement of the parties, to direct or influence the person's management and policies.

(c) Except as provided by this section, a manufacturer or distributor may not directly or indirectly:

- (1) own an interest in a franchised or nonfranchised dealer or dealership;
- (2) operate or control a franchised or nonfranchised dealer or dealership; or
- (3) act in the capacity of a franchised or nonfranchised dealer.

(d) A manufacturer or distributor may own an interest in a franchised dealer, or otherwise control a dealership, for a period not to exceed 12 months from the date the manufacturer or distributor acquires the dealership if:

- (1) the person from whom the manufacturer or distributor acquired the dealership was a franchised dealer; and
- (2) the dealership is for sale by the manufacturer or distributor at a reasonable price and on reasonable terms and conditions.

(e) On a showing of good cause by a manufacturer or distributor, the board may extend the time limit imposed under Subsection (d) for a period not to exceed an additional 12 months. An application for an extension after the first extension is granted is subject to protest by a dealer of the same line-make whose dealership is located in the same county as, or within 15 miles of, the dealership owned or controlled by the manufacturer or distributor.

(f) For the purpose of determining compliance with Subsection (d)(2), the price of a dealership and the other terms and conditions of a contract for the sale of a dealership are reasonable if the purchaser is a franchised dealer who:

- (1) has made a significant investment in the dealership, subject to loss;
- (2) has an ownership interest in the dealership; and
- (3) operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms and conditions.

(g) For the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group that has been historically underrepresented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, but for no other purpose, a manufacturer or distributor may temporarily own an interest in a dealership if the manufacturer's or distributor's participation in the dealership is in a bona fide relationship with a franchised dealer who:

- (1) has made a significant investment in the dealership, subject to loss;
- (2) has an ownership interest in the dealership; and
- (3) operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms.

(h) A person who on June 7, 1995, held both a motor home manufacturer's license and a motor home dealer's license issued under this chapter may:

- (1) hold:
  - (A) a motor home manufacturer's license;
  - (B) a general distinguishing number issued under Chapter 503, Transportation Code; and
  - (C) not more than two franchised dealer's licenses; and
- (2) operate as both a manufacturer and dealer of motor homes but of no other type of vehicle.

(h-1) A person who on January 18, 2002, held both a converter's license to convert buses with a gross vehicle weight rating of 40,000 pounds or more and a franchised dealer's license to sell buses issued under this chapter may:

- (1) regain and hold both licenses; and
- (2) operate as both a converter and franchised dealer of bus conversions with a gross vehicle weight rating of 40,000 pounds or more but of no other type of vehicle.

(i) Notwithstanding the terms of this chapter, and subject to the limitations set forth in this subsection, a manufacturer or distributor may own an interest in an entity that holds a general distinguishing number if the entity:

- (1) is primarily engaged in the business of renting to other persons passenger vehicles or commercial motor vehicles that the entity owns; and
- (2) sells or offers for sale no vehicle other than a vehicle that the entity:
  - (A) owns and has taken from service in its rental fleet; or
  - (B) has taken in trade as part of a transaction involving the sale of a vehicle taken from service in its rental fleet.

(j) This section does not prohibit a manufacturer or distributor that owned, on or before January 1, 2007, an interest in a motor vehicle dealer engaged in the sale of used motor vehicles, and that has not agreed to or been ordered by a court order or ruling to comply with Subsection (c), from continuing to directly or indirectly own an interest in the motor vehicle dealer if the manufacturer's or distributor's ownership and control of the motor vehicle dealer does not increase after January 1, 2007. The exception provided by this subsection:

- (1) applies if the motor vehicle dealer is engaged in the business of selling or offering for sale only used trucks that have a gross vehicle weight rating of 16,000 pounds or more;
- (2) does not apply if the motor vehicle dealer sells a new motor vehicle;
- (3) does not permit an increase in the manufacturer's or distributor's ownership interest in the motor vehicle dealer;
- (4) does not grant an exception to this chapter other than the exception expressly provided by this subsection;
- (5) applies regardless of whether there is a transfer or relocation of the motor vehicle dealer required by:
  - (A) an act of God;
  - (B) the exercise of eminent domain authority; or
  - (C) another reason approved by the division after a hearing conducted in the same manner as a contested case under Subchapter O; and
- (6) does not apply if the manufacturer or distributor no longer owns the interest in the motor vehicle dealer that the manufacturer or distributor owned on or before January 1, 2007.

- (k) A motor vehicle dealer under Subsection (j) violates that subsection if the dealer:
- (1) sells or offers for sale a motor vehicle with a gross vehicle weight rating of less than 16,000 pounds, other than a motor vehicle the dealer has acquired as a trade-in in a transaction involving the retail sale of a motor vehicle with a gross vehicle weight rating of 16,000 pounds or more and if the trade-in motor vehicle will be sold or offered for sale only to a person who holds a general distinguishing number issued in the category described by Section 503.029(a)(6)(C), Transportation Code;
  - (2) performs or offers to perform new motor vehicle warranty repair; or
  - (3) sells or offers for sale a new motor vehicle.
- (l) A manufacturer or distributor described by Subsection (j) violates that subsection if the manufacturer or distributor:
- (1) sells, assigns, or otherwise transfers an interest in the motor vehicle dealer or a portion of its interest in the motor vehicle dealer to an unaffiliated manufacturer or distributor; or
  - (2) increases its ownership interest in the motor vehicle dealer.
- (m) A person who violates Subsection (j), (k), or (l) is subject to:
- (1) a civil penalty under Section 2301.801;
  - (2) a suit for injunctive relief under Section 2301.804; and
  - (3) denial, revocation, or suspension of a license under Section 2301.651.
- (n) For purposes of Subsections (j), (k), and (l), a reference to a motor vehicle dealer includes the physical premises, business facilities, and operations where motor vehicle sales occur.
- (o) This subsection, Subsections (j) through (n), and the exception provided by Subsection (j) expire September 1, 2023.

### **Section 2301.477. Manufacturer Doing Business in This State**

A manufacturer whose products are offered for sale in this state under a franchise entered into between its distributor or representative and a dealer is bound by the terms of the franchise and this chapter as if the manufacturer had executed the franchise.

### **Section 2301.478. Action on Franchise**

(a) Notwithstanding the terms of any franchise or any other law, an action or proceeding brought by a manufacturer, representative, converter, or distributor against a dealer must be brought in an appropriate forum in this state only, and the law of this state applies to the action or proceeding.

(b) Each party to a franchise owes to the other party a duty of good faith and fair dealing that is actionable in tort.

### **Section 2301.479. Adverse Action in Connection with Export of Vehicle**

(a) Except as otherwise provided by this section, a manufacturer, distributor, or representative may not take an adverse action against a franchised dealer because the franchised dealer sells or leases a vehicle that is later exported to a location outside the United States.

(b) A franchise provision that allows a manufacturer, distributor, or representative to take adverse action against a franchised dealer because the franchised dealer sells or leases a vehicle that is later exported to a location outside the United States is enforceable only if, at the time of the original sale or lease, the dealer knew or reasonably should have known that the vehicle would be exported to a location outside the United States.

(c) A franchised dealer is presumed to have no actual knowledge that a vehicle the dealer sells or leases will be exported to a location outside the United States if, under the laws of a state of the United States:

- (1) the vehicle is titled;
- (2) the vehicle is registered; and
- (3) applicable state and local taxes are paid for the vehicle.

(d) The presumption under Subsection (c) may be rebutted by direct, clear, and convincing evidence that the franchised dealer had actual knowledge or reasonably should have known at the time of the original sale or lease that the vehicle would be exported to a location outside the United States.

(e) Except as otherwise permitted by this section, a franchise provision that allows a manufacturer, distributor, or representative to take adverse action against a franchised dealer because the franchised dealer sells or leases a vehicle that is later exported to a location outside the United States is void and unenforceable.

### **Section 2301.480. Disclosure of Certain Information**

A manufacturer, distributor, or representative may not require that a franchised dealer provide to the manufacturer, distributor, or representative information regarding a customer, except to the extent that a specific item of information is necessary:

- (1) for the sale or delivery of a new motor vehicle to a customer;
- (2) for reasonable marketing purposes;
- (3) to validate a claim and make payment under an incentive program;
- (4) to support a dealer's claim for reimbursement for repairs performed under a manufacturer's warranty; or
- (5) to satisfy a product recall or safety obligation.

### **Section 2301.481. Property Use Agreement**

(a) A manufacturer, distributor, or representative may not require that a dealer enter into a property use agreement as a condition of the manufacturer, distributor, or representative:

- (1) entering into a franchise;
- (2) approving a franchised dealer's application to add a line-make;



- (3) approving a franchised dealer's application to relocate a franchise; or
  - (4) approving a sale or transfer of a dealer, dealership, or franchise.
- (b) The following provisions in a property use agreement are void and unenforceable:
- (1) a limitation on the franchised dealer's ability to add a line-make; or
  - (2) a provision that binds a franchised dealer's successor.
- (c) A property use agreement expires on the earlier of:
- (1) the date provided by the property use agreement; or
  - (2) the termination of the franchise between the parties to the property use agreement.
- (d) This section applies to a subsidiary of, or a person controlled by, a manufacturer, distributor, or representative.

### **Section 2301.482. Certain Property Use Agreements**

- (a) Notwithstanding Section 2301.481(b)(1), and subject to this section, a dealer may enter into a property use agreement for cash consideration that grants the manufacturer or distributor the exclusive rights to direct the use of the dealership.
- (b) In the event the dealer breaches the terms of the property use agreement described by Subsection (a) by altering the use of the property during the term of the agreement in violation of the agreement, the property use agreement is terminated and the dealer must reimburse the manufacturer or distributor in an amount determined by dividing the amount of the manufacturer's or distributor's cash consideration provided under Subsection (a) by the market value of the property identified in the original property use agreement at the time any necessary real estate has been purchased and any necessary construction has been completed, and multiplying the resulting quotient by the market value of the property at the time of the breach.
- (c) For purposes of this section, the market value of property is to be determined by three appraisers chosen as follows:
- (1) one selected by the affected manufacturer or distributor;
  - (2) one selected by the affected dealer; and
  - (3) one selected by mutual agreement of the manufacturer or distributor and the dealer.

### **Section 2301.483. Specific Use Agreements**

- (a) In this section:
- (1) "Necessary real estate" means real estate that is necessary for the proper operation of a dealership in the dealership's location as determined by the manufacturer's, distributor's, or representative's facility requirements or to comply with any applicable law or zoning requirement.
  - (2) "Owner" means a manufacturer, distributor, or representative, including an entity owned or controlled by a manufacturer, distributor, or representative.
  - (3) "Specific use agreement" means a property use agreement that is executed in conjunction with a sale or as part of the terms of a lease by an owner of real

property to a transferee for use by the transferee as a dealership under the terms of a franchise executed or to be executed between the owner and the transferee.

(4) "Transferee" means a person who is a purchaser or lessee of real property subject to a specific use agreement.

(b) To the extent of any conflict between this section and another section of this chapter regarding a specific use agreement, this section controls. Notwithstanding any other section of this chapter and except as provided by this section, a specific use agreement may include provisions that allow an owner to:

(1) limit the transferee's ability to add a line-make after the transferee has opened a franchised dealership on the property to which the specific use agreement applies;

(2) prohibit the sale or sublease of the dealership property by the transferee to a person for a purpose other than the operation of a dealership under a franchise with the owner of the property; or

(3) make the limitations described by Subdivisions (1) and (2) applicable to any successor or sublessee of the transferee.

(c) An owner may not coerce or attempt to coerce an existing franchised dealer of the owner to relocate an existing dealership of the same line-make to property that is subject to a specific use agreement. If it is proven in a civil suit that a person entered into a specific use agreement containing a provision described by Subsection (b) as a result of coercion, the specific use agreement is void.

(d) A specific use agreement executed in conjunction with the sale of real property may apply only to the necessary real estate.

(e) A specific use agreement executed in conjunction with the sale of real property to an existing franchised dealer for the purpose of relocating an existing dealership of the same line-make to property that is the subject of the specific use agreement or to a person for the purpose of establishing a new dealership expires on the earliest of:

(1) the date established by the specific use agreement;

(2) the termination or discontinuance of the franchise between the parties to the specific use agreement as a result of the owner:

(A) discontinuing all line-makes applicable to the necessary real estate that are under the control of a manufacturer or distributor holding property use rights for the necessary real estate under the specific use agreement;

(B) ceasing to do business in this state; or

(C) changing the distributor or method of distribution of the owner's products in this state;

(3) the 10th anniversary of the date the dealership opens for business; or

(4) any time after the expiration of nine years from the date the dealership opens for business if the transferee has performed all the transferee's financial duties as provided by the contract and title to the property has passed to the transferee.

(f) Unless a specific use agreement associated with the sale of property expressly provides otherwise, there is no penalty for the full performance by the transferee and transfer of title to the transferee prior to the time set forth by the contract's terms.

**SUBCHAPTER K.  
MEDIATION BETWEEN DEALER AND MANUFACTURER  
OR DISTRIBUTOR**

**Section 2301.521. Definition**

In this subchapter, "mediation" means a nonbinding forum in which an impartial mediator facilitates communication between parties to promote reconciliation, settlement, or understanding between the parties.

**Section 2301.522. Mediation Applicable**

(a) In an action brought against a manufacturer or distributor under Subchapter J by a franchised dealer whose franchise provides for arbitration in compliance with this chapter, the board shall order the parties to submit the dispute to mediation in the manner provided by this subchapter.

(b) Subsection (a) applies only if the dealer's franchise does not contain an arbitration provision in conflict with this chapter. In a dispute concerning whether Subsection (a) applies, the board shall enter an order either that the franchise contains a provision in conflict with this chapter or that it does not. If the board determines that the franchise does not contain an arbitration provision that conflicts with this chapter, the board shall order the parties to proceed to mediation as provided by this subchapter.

(c) An order issued under Subsection (b) is not appealable.

(d) This subchapter does not apply to an action brought by the board to enforce this chapter.

**Section 2301.523. Mediator**

(a) By agreement, the parties shall select and compensate a mediator who is qualified to serve under Section 154.052(a), Civil Practice and Remedies Code.

(b) Sections 154.053 and 154.055, Civil Practice and Remedies Code, apply to a mediator under this subchapter.

(c) A mediator may not impose the mediator's own judgment on the issues for that of the parties.

**Section 2301.524. Location and Schedule of Mediation**

(a) The parties by agreement shall select a venue and schedule for mediation under this subchapter. If the parties are unable to agree on a venue and schedule, the mediator shall select a venue and schedule.

(b) Except by written agreement of all parties, mediation must be held in this state.

(c) Mediation must be completed not later than the 60th day after the date the board orders the parties to mediate. The deadline may be extended by the board at the request of all parties.

### **Section 2301.525. Law Applicable; Conflict of Laws**

(a) Except as provided by Subsection (b) of this section, Section 154.073, Civil Practice and Remedies Code, applies to mediation under this subchapter.

(b) If Section 154.073, Civil Practice and Remedies Code, conflicts with another legal requirement for disclosure of communications or materials, the issue of confidentiality may be presented to the board to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order of the board or whether the communications or materials are subject to disclosure.

(c) This subchapter controls over any other law relating to or requiring mediation between or among license holders.

### **Section 2301.526. Costs of Mediation**

(a) The board is not liable for the compensation paid or to be paid to a mediator employed under this subchapter.

(b) Without regard to the outcome of mediation or subsequent regulatory or judicial proceedings, costs incurred by a party in mediation required by this subchapter may not be imposed on the opposing party.

### **Section 2301.527. Jurisdiction of Board**

The board retains jurisdiction of the subject matter of and parties to a dispute during mediation and may, on the motion of a party or on its own motion, enter appropriate orders.

### **Section 2301.528. Effect of Mediation on Chapter**

(a) Except as provided by this subchapter, mediation under this subchapter does not affect a procedural right or duty conferred by this chapter or by board rule.

(b) Procedural time limits imposed by this chapter or under the authority of this chapter are tolled during mediation.

(c) Mediation does not affect any right of a person who is not a party to the mediation.

(d) The board shall stay proceedings involving the parties in mediation until the board receives the mediator's certification that mediation has concluded.

### **Section 2301.529. Outcome of Mediation**

(a) If mediation resolves the dispute, the board shall enter an order incorporating the terms of the agreement reached in mediation.

(b) If mediation does not resolve the dispute, the board shall proceed to a contested case hearing or other appropriate exercise of its jurisdiction.

**SUBCHAPTER L.  
VEHICLE LESSORS AND VEHICLE LEASE FACILITATORS**

**Section 2301.551. Acceptance and Payment of Fees by Vehicle Lessor**

(a) A vehicle lessor may not directly or indirectly accept a fee from a dealer. For purposes of this subsection, "fee" does not include an adjustment in the purchase price paid for the lease or leased vehicle. This subsection does not authorize a fee for referring vehicle leases or prospective lessees.

(b) A vehicle lessor may not pay a fee to any person in return for the solicitation, procurement, or production by the person of a prospective lessee of a motor vehicle unless the person:

- (1) holds a vehicle lease facilitator license issued under this chapter; and
- (2) has an appointment from the lessor as provided by Section 2301.552.

(c) The fees prohibited by this section do not include money paid to:

- (1) a franchised dealer as a part of the consideration for the sale or assignment of a lease or leased vehicle; or
- (2) a franchised dealer who transfers title of the vehicle or assigns the lease contract to the lessor of the motor vehicle.

**Section 2301.552. Appointment of Vehicle Lease Facilitator**

(a) A vehicle lessor may appoint one or more vehicle lease facilitators licensed under this chapter to represent the lessor in obtaining prospective vehicle lessees.

(b) An appointment must:

- (1) be in writing;
- (2) disclose its terms; and
- (3) comply with board rules.

**Section 2301.553. Disclosure of Fee Required**

(a) In a vehicle lease solicited, procured, or produced by a vehicle lease facilitator, the vehicle lessor shall disclose to the lessee that a fee was paid or will be paid to the vehicle lease facilitator for the solicitation, procurement, or production of the lessee or the lease.

(b) The vehicle lessor shall include the disclosure in a prominent position either:

- (1) on the face of the written memorandum of the vehicle lease; or
- (2) on a separate instrument signed by the lessee at the same time as the signing of the vehicle lease.

### **Section 2301.554. Terms of Lease: Foreign Countries**

(a) Except as provided by Subsection (b) or by federal law, including a federal agency rule, a vehicle lessor may not, and the vehicle lease may not, prohibit the lessee from taking the vehicle that is the subject of the lease into a specific foreign country unless the lease prohibits the lessee from taking the vehicle into any foreign country.

(b) In the interests of justice and giving deference to standard national business practices, the board may adopt a rule by which a lease may prohibit the lessee from taking the vehicle into a specific foreign country regardless of whether the lease prohibits the lessee from taking the vehicle into another foreign country. In adopting a rule under this subsection the board shall give consideration to the proximity of international borders to prospective Texas lessees.

### **Section 2301.555. Limitations on Vehicle Lease Facilitator**

(a) A vehicle lease facilitator may not:

- (1) sell or offer to sell a new motor vehicle;
- (2) accept a fee from a dealer;
- (3) sign a motor vehicle manufacturer's statement of origin to a vehicle, accept an assignment of a manufacturer's statement of origin to a vehicle, or otherwise assume any element of title to a new motor vehicle;
- (4) procure or solicit a prospective vehicle lessee for or on behalf of any person other than a vehicle lessor; or
- (5) act in the capacity of or engage in the business of a vehicle lease facilitator without having an appointment from a vehicle lessor as provided by Section 2301.552.

(b) Except as provided by Subsection (a)(2), a vehicle lease facilitator may accept a fee for procuring a vehicle lessee or prospective vehicle lessee for or on behalf of a lessor.

(c) This section does not:

- (1) limit the ability of a vehicle lease facilitator to accept an appointment from more than one vehicle lessor; or
- (2) prohibit a vehicle lease facilitator from representing a vehicle lessor or lessee in acquiring a motor vehicle to lease the vehicle to another person.

### **Section 2301.556. Use of Certain Terms**

With respect to the regulation of motor vehicle distribution under this chapter, a person may not use the word "lease" or "leasing," or any variation of those words, in the person's name or in the name of an entity owned by the person unless the person is:

- (1) licensed under this chapter as a vehicle lessor or vehicle lease facilitator; or
- (2) exempt under Section 2301.254 from the requirement to obtain a license.

**SUBCHAPTER M.  
WARRANTIES: RIGHTS OF VEHICLE OWNER**

**Section 2301.601. Definitions**

In this subchapter:

(1) "Impairment of market value" means a substantial loss in market value caused by a defect specific to a motor vehicle.

(2) "Owner" means a person who is entitled to enforce a manufacturer's warranty with respect to a motor vehicle, and who:

- (A) purchased the motor vehicle at retail from a license holder;
- (B) is a lessor or lessee, other than a sublessee, who purchased or leased the vehicle from a license holder;
- (C) is a resident of this state and has registered the vehicle in this state;
- (D) purchased or leased the vehicle at retail and is an active duty member of the United States armed forces stationed in this state at the time a proceeding is commenced under this subchapter; or
- (E) is:
  - (i) the transferee or assignee of a person described by Paragraphs (A)--(D);
  - (ii) a resident of this state; and
  - (iii) the person who registered the vehicle in this state.

(3) "Reasonable allowance for use" means the amount directly attributable to use of a motor vehicle when the vehicle is not out of service for repair.

(4) "Serious safety hazard" means a life-threatening malfunction or nonconformity that:

- (A) substantially impedes a person's ability to control or operate a motor vehicle for ordinary use or intended purposes; or
- (B) creates a substantial risk of fire or explosion.

**Section 2301.602. Duty of Board**

(a) The board shall cause a manufacturer, converter, or distributor to perform an obligation imposed by this subchapter.

(b) The board shall adopt rules for the enforcement and implementation of this subchapter.

**Section 2301.603. Conformance with Warranty Required**

(a) A manufacturer, converter, or distributor shall make repairs necessary to conform a new motor vehicle to an applicable manufacturer's, converter's, or distributor's express warranty.

(b) Subsection (a) applies after the expiration date of a warranty if:

(1) during the term of the warranty, the owner or the owner's agent reported the nonconformity to the manufacturer, converter, or distributor, or to a designated agent or franchised dealer of the manufacturer, converter, or distributor; or

(2) a rebuttable presumption relating to the vehicle is created under Section 2301.605.

(c) This subchapter does not limit a remedy available to an owner under a new motor vehicle warranty that extends beyond the provisions of this subchapter.

#### **Section 2301.604. Replacement of or Refund for Vehicle**

(a) A manufacturer, converter, or distributor that is unable to conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts shall reimburse the owner for reasonable incidental costs resulting from loss of use of the motor vehicle because of the nonconformity or defect and:

(1) replace the motor vehicle with a comparable motor vehicle; or

(2) accept return of the vehicle from the owner and refund to the owner the full purchase price, less a reasonable allowance for the owner's use of the vehicle, and any other allowances or refunds payable to the owner.

(b) A refund made for a vehicle for which there is a lienholder shall be made to the owner and lienholder in proportion to each person's interest in the vehicle.

(c) As necessary to promote the public interest, the board by rule:

(1) shall define the incidental costs that are eligible for reimbursement;

(2) shall specify other requirements necessary to determine an eligible cost; and

(3) may set a maximum amount that is eligible for reimbursement, either by type of eligible cost or by a total for all costs.

#### **Section 2301.605. Rebuttable Presumption—Reasonable Number of Attempts**

(a) A rebuttable presumption that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty is established if:

(1) the same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and:

(A) two of the repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and

(B) the other two repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt;



(2) the same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and:

(A) at least one attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and

(B) at least one other attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the first repair attempt; or

(3) a nonconformity still exists that substantially impairs the vehicle's use or market value and:

(A) the vehicle is out of service for repair for a cumulative total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner; and

(B) at least two repair attempts were made in the 12 months or 12,000 miles following the date of original delivery to an owner.

(b) A period or a number of days or miles described by Subsection (a) is extended for any period that repair services are not available to the owner because of:

(1) a war, invasion, or strike; or

(2) a fire, flood, or other natural disaster.

(c) The 30 days described by Subsection (a)(3)(A) do not include any period during which the manufacturer or distributor lends the owner a comparable motor vehicle while the owner's vehicle is being repaired by a franchised dealer.

### **Section 2301.606. Conduct of Proceedings**

(a) *Repealed by Acts 2013, 83rd Leg., ch. 1135 (H.B. 2741), § 140(1), effective September 1, 2013 and by Acts 2013, 83rd Leg., ch. 1379 (H.B. 1692), § 12, effective January 1, 2014.*

(b) In a hearing under this subchapter, a manufacturer, converter, or distributor may plead and prove as an affirmative defense to a remedy under this subchapter that a nonconformity:

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

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

*First of two versions of subsection (c): As amended by Acts 2013, 83rd Leg., ch. 1135,  
§ 19, effective September 1, 2013*

(c) The board or a person delegated power from the board under Section 2301.154 may not issue an order requiring a manufacturer, converter, or distributor to make a refund or to replace a motor vehicle unless:

- (1) the owner or a person on behalf of the owner has mailed written notice of the alleged defect or nonconformity to the manufacturer, converter, or distributor; and
- (2) the manufacturer, converter, or distributor has been given an opportunity to cure the alleged defect or nonconformity.

*Second of two versions of subsection (c): As amended by Acts 2013, 83rd leg., ch. 1379,  
§ 3, effective January 1, 2014*

(c) An order issued under this subchapter may not require a manufacturer, converter, or distributor to make a refund or to replace a motor vehicle unless:

- (1) the owner or a person on behalf of the owner has mailed written notice of the alleged defect or nonconformity to the manufacturer, converter, or distributor; and
- (2) the manufacturer, converter, or distributor has been given an opportunity to cure the alleged defect or nonconformity.

(d) A proceeding under this subchapter must be commenced not later than six months after the earliest of:

- (1) the expiration date of the express warranty term; or
- (2) the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner.

### **Section 2301.607. Exhaustion of Administrative Remedies; Right to Sue**

(a) A refund or replacement under this subchapter because a motor vehicle is alleged to not conform to an express warranty is not available to the owner of the vehicle unless the owner has exhausted the administrative remedies provided by this subchapter.

(b) A refund or replacement under this subchapter is not available to a party in an action against a seller under Chapter 2 or 17, Business & Commerce Code, but is available in an action against a manufacturer, converter, or distributor brought under Chapter 17, Business & Commerce Code, after the owner has exhausted the administrative remedies provided by this subchapter.

*First of two versions of subsection (c): As amended by Acts 2013, 83rd Leg., ch. 1135,  
§ 20, effective September 1, 2013*

(c) If a proposal for decision and recommendation for a final order are not issued before the 151st day after the date a complaint is filed under this subchapter, the department

shall provide written notice by certified mail to the complainant and to the manufacturer, converter, or distributor of the expiration of the 150-day period and of the complainant's right to file a civil action. The board or a person delegated power from the board under Section 2301.154 shall extend the 150-day period if a delay is requested or caused by the person who filed the complaint.

*Second of two versions of subsection (c): As amended by Acts 2013, 83rd Leg., ch. 1379, § 4, effective January 1, 2014*

(c) If a final order is not issued before the 151st day after the date a complaint is filed under this subchapter, the department shall provide written notice by certified mail to the complainant and to the manufacturer, converter, or distributor of the expiration of the 150-day period and of the complainant's right to file a civil action. The department shall extend the 150-day period if a delay is requested or caused by the person who filed the complaint.

(d) Notwithstanding a requirement of this section that administrative remedies be exhausted, a person who receives notice under Subsection (c) may file a civil action against any person named in the complaint.

(e) The failure to issue notice under Subsection (c) does not affect a person's right to bring an action under this chapter.

(f) This subchapter does not limit a right or remedy otherwise available to an owner under another law.

(g) A contractual provision that excludes or modifies a remedy provided by this subchapter is prohibited and is void as against public policy unless the exclusion or modification is made under a settlement agreement between the owner and the manufacturer, converter, or distributor.

### **Section 2301.608. Assessment of Costs for Replacement or Refund**

*First of two versions of § 2301.608: As amended by Acts 2013, 83rd Leg., ch. 1135, § 21, effective September 1, 2013*

(a) In an order issued under this subchapter, the board or a person delegated power from the board under Section 2301.154 shall name the person responsible for paying the cost of any refund or replacement. A manufacturer, converter, or distributor may not cause a franchised dealer to directly or indirectly pay any money not specifically ordered by the board or a person delegated power from the board under Section 2301.154.

(b) If the board or a person delegated power from the board under Section 2301.154 orders a manufacturer, converter, or distributor to make a refund or replace a motor vehicle under this subchapter, the board or person may order the franchised dealer to reimburse the owner, lienholder, manufacturer, converter, or distributor only for an item or option added to the vehicle by the dealer to the extent that the item or option contributed to the defect that served as the basis for the order.

(c) In a case involving a leased vehicle, the board or a person delegated power from the board under Section 2301.154 may terminate the lease and apportion allowances or refunds, including the reasonable allowance for use, between the lessee and lessor of the vehicle.

**Section 2301.608. Assessment of Costs for Replacement or Refund**

*Second of two versions of § 2301.608: As amended by Acts 2013, 83rd Leg., ch. 1379, § 5, effective January 1, 2014*

(a) An order issued under this subchapter must name the person responsible for paying the cost of any refund or replacement. A manufacturer, converter, or distributor may not cause a franchised dealer to directly or indirectly pay any money not specifically required by the order.

(b) If the final order requires a manufacturer, converter, or distributor to make a refund or replace a motor vehicle under this subchapter, the final order may require the franchised dealer to reimburse the owner, lienholder, manufacturer, converter, or distributor only for an item or option added to the vehicle by the dealer to the extent that the item or option contributed to the defect that served as the basis for the order.

(c) In a case involving a leased vehicle, the final order may terminate the lease and apportion allowances or refunds, including the reasonable allowance for use, between the lessee and lessor of the vehicle.

**Section 2301.609. Judicial Review**

(a) A party to a proceeding under this subchapter that is affected by a final order related to the proceeding is entitled to judicial review of the order under the substantial evidence rule in a district court of Travis County.

(b) Judicial review is subject to Chapter 2001, Government Code, to the extent that chapter is not inconsistent with this chapter.

**Section 2301.610. Disclosure Statement**

(a) A manufacturer, distributor, or converter that has been ordered to repurchase or replace a vehicle shall, through its franchised dealer, issue a disclosure statement stating that the vehicle was repurchased or replaced by the manufacturer, distributor, or converter under this subchapter. The statement must accompany the vehicle through the first retail purchase following the issuance of the statement and must include the toll-free telephone number described by Subsection (d) that will enable the purchaser to obtain information about the condition or defect that was the basis of the order for repurchase or replacement.

(b) The manufacturer, distributor, or converter must restore the cause of the repurchase or replacement to factory specifications and issue a new 12-month, 12,000-mile warranty on the vehicle.

(c) The board shall adopt rules for the enforcement of this section.

(d) The department shall maintain a toll-free telephone number to provide information to a person who requests information about a condition or defect that was the basis for

repurchase or replacement by an order issued under this chapter. The department shall maintain an effective method of providing information to a person who makes a request.

**Section 2301.611. Annual Report on Repurchased or Replaced Vehicles**

(a) The department shall publish an annual report on the motor vehicles ordered repurchased or replaced under this subchapter.

(b) The report must list the number of vehicles by brand name and model and include a brief description of the conditions or defects that caused the repurchase or replacement.

(c) The department shall make the report available to the public and may charge a reasonable fee to cover the cost of the report.

**Section 2301.612. Open Records Exception**

Information filed with the board under this subchapter is not a public record and is not subject to release under Chapter 552, Government Code, until the complaint is finally resolved by order of the board.

**Section 2301.613. Notice to Buyer**

(a) The department shall prepare, publish, and distribute information concerning an owner's rights under this subchapter. The retail seller of a new motor vehicle shall conspicuously post a copy of the information in the area where its customers usually pay for repairs.

(b) The failure to provide notice as required by this section is a violation of this chapter.

**SUBCHAPTER N.  
DENIAL, REVOCATION, OR SUSPENSION OF LICENSE**

**Section 2301.651. Denial, Revocation or Suspension Generally**

(a) The board may deny an application for a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder if the applicant or license holder:

- (1) is unfit under standards described in this chapter or board rules;
- (2) makes a material misrepresentation in any application or other information filed under this chapter or board rules;
- (3) violates this chapter or a board rule or order;
- (4) violates any law relating to the sale, distribution, financing, or insuring of motor vehicles;
- (5) fails to maintain the qualifications for a license;
- (6) wilfully defrauds a purchaser;
- (7) fails to fulfill a written agreement with a retail purchaser of a motor vehicle; or

(8) violates the requirements of Section 503.0631, Transportation Code.

(b) The board may take action under Subsection (a) against an applicant or license holder for an act or omission by an officer, director, partner, trustee, or other person acting in a representative capacity for the applicant or license holder that would be cause for denying, revoking, or suspending a license under this chapter.

(c) The revocation of a license previously held under this chapter may be grounds for denying a subsequent application for a license.

(d) A license may not be denied, revoked, or suspended, and disciplinary action may not be taken under this subchapter, unless the respondent is given an opportunity for a hearing. The board may deny, revoke, or suspend a license or take disciplinary action by order only after the department grants the respondent an opportunity for a hearing.

**Section 2301.652. Denial of License Application: Dealership**

(a) The board may deny an application for a license to establish a dealership if, following a protest, the applicant fails to establish good cause for establishing the dealership. In determining good cause, the board shall consider:

- (1) whether the manufacturer or distributor of the same line-make of new motor vehicle is being adequately represented as to sales and service;
- (2) whether the protesting franchised dealer representing the same line-make of new motor vehicle is in substantial compliance with the dealer's franchise, to the extent that the franchise is not in conflict with this chapter;
- (3) the desirability of a competitive marketplace;
- (4) any harm to the protesting franchised dealer;
- (5) the public interest;
- (6) any harm to the applicant; and
- (7) current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area.

(b) Except as provided by Subsection (c) and Sections 2301.6521 and 2301.6522, a person has standing under this section to protest an application to establish or relocate a dealership if the person filing the protest is a franchised dealer of the same line-make whose dealership is located:

- (1) in the county in which the proposed dealership is to be located; or
- (2) within a 15-mile radius of the proposed dealership.

(c) A franchised dealer may not protest an application to relocate a dealership under this section if the proposed relocation site is not:

- (1) more than two miles from the site where the dealership is currently located; or
- (2) closer to the franchised dealer than the site from which the dealership is being relocated.

### **Section 2301.6521. Right to Protest: Certain Relocations**

(a) In this section, "affected county" means:

- (1) a county with a population of one million or more; or
- (2) a county with a population of 500,000 or more but less than one million that is adjacent to a county with a population of one million or more.

(b) Notwithstanding any other provision of this chapter and except as provided by Subsection (d), a franchised dealer may protest an application to relocate a dealership from a location in an affected county to a location within the same affected county or an adjacent affected county only if the dealer is:

- (1) a dealer of the same line-make as the relocating dealership and is in the affected county where the proposed dealership is being relocated and is nearest to the proposed relocation site, if no dealership of the same line-make as the relocating dealership is located within 15 miles of the proposed relocation site; or
- (2) a dealer of the same line-make as the relocating dealership whose dealership location is within 15 miles of the proposed relocation site.

(c) If more than one dealership location is an equal distance from the proposed relocation site and each dealer and dealership location satisfies the requirements of Subsection (b)(1), each dealer may protest the relocation under Subsection (b)(1).

(d) A franchised dealer may not protest an application to relocate a dealership under this section if the proposed relocation site is not:

- (1) more than two miles from the site where the dealership is currently located; or
- (2) closer to the franchised dealer than the site from which the dealership is being relocated.

### **Section 2301.6522. Right to Protest: Economically Impaired Dealer**

(a) In this section, "economically impaired dealer" means a franchised dealer whose profitability has been, or is reasonably expected to be, substantially reduced at the dealer's current location, with no reasonable expectation of substantial improvement at that location, due to:

- (1) a natural disaster;
- (2) the exercise of eminent domain authority with respect to the dealership; or
- (3) the sale of all or part of the dealership to a governmental entity under threat of the exercise of eminent domain authority.

(b) Notwithstanding any other provision of this chapter and except as provided by Subsections (c) and (d), a dealer may not protest the relocation of an economically impaired dealer if:

- (1) the relocation is reasonably expected to be completed before the first anniversary of the date of the event described by Subsection (a); and
- (2) the proposed relocation site is two miles or less from the economically impaired dealer's current location.

(c) A dealer of the same line-make as an economically impaired dealer whose dealership is nearest to the proposed relocation site of the economically impaired dealer may protest the relocation if the proposed relocation site is more than two miles closer to the protesting dealer's dealership than the site of the economically impaired dealer's current location.

(d) If more than one dealership location is an equal distance from the proposed relocation site and each dealer and dealership location satisfies the requirements of Subsection (c), each dealer may protest the relocation under Subsection (c).

### **Section 2301.653. Revocation or Suspension of Manufacturer's or Distributor's License**

The revocation or suspension of a manufacturer's or distributor's license may be:

- (1) limited to one or more municipalities or counties or any other defined area; or
- (2) limited in a defined area only as to:
  - (A) certain aspects of the manufacturer's or distributor's business; or
  - (B) specified franchised dealers.

### **Section 2301.654. Probation**

If a suspension of a license is probated, the board may:

- (1) require the license holder to report regularly to the board on matters that are the basis of the probation; or
- (2) limit activities to those prescribed by the board.

## **SUBCHAPTER O. HEARINGS PROCEDURES**

### **Section 2301.701. Definition**

In this subchapter, "contested case" has the meaning assigned by Section 2001.003, Government Code.

### **Section 2301.702. Conflict with Other Law**

To the extent of a conflict between this chapter and Chapter 2001, Government Code, this chapter controls.

### **Section 2301.7025. Limitations Period for Certain Causes of Action by License Holders**

- (a) This section does not apply to:
- (1) an action with respect to which this chapter or rules of the board establish specific procedural time limits; or



(2) an action brought under Section 2301.204.

(b) Except as provided by this section, a license holder may not file an action with the board after the fourth anniversary of the date the action accrues.

(c) The limitations period provided by Subsection (b) may be extended for not more than 180 days on a showing that the failure to commence an action in a timely manner was caused by reliance on a fraudulent statement or inducement made by a party to induce a party to refrain from bringing an action.

### **Section 2301.703. Hearing Required in Contested Case**

(a) A hearing arising under this chapter or a board rule adopted under this chapter must be conducted in accordance with this chapter, any order, decision, or rule of the board, and Chapter 2001, Government Code.

(b) A hearing may be informally disposed of in accordance with Chapter 2001, Government Code.

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

### **Section 2301.704. Hearings Examiner; Administrative Law Judge**

(a) Except as otherwise provided by this section, a hearing under this chapter must be held by an administrative law judge of the State Office of Administrative Hearings.

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

(b) An administrative law judge and a hearings examiner have all of the board's power and authority as provided by this chapter to conduct hearings, including the power to:

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

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

### **Section 2301.705. Notice of Contested Case Hearing**

- (a) Notice of a contested case hearing involving a license holder must be given in accordance with this chapter and board rules.
- (b) Notice must be given by certified mail, return receipt requested.
- (c) Notice may be given to a person's officer, agent, employee, attorney, or other legal representative.
- (d) Notice is considered to have been received by a person known to have legal rights, duties, or privileges that may be determined at the hearing if the notice is mailed to the last known address of the person not later than the 10th day before the date of the hearing.
- (e) A person may waive notice of a hearing.

### **Section 2301.706. Notice of Rulemaking Hearing**

Notice of a rulemaking hearing must be given in accordance with Chapter 2001, Government Code, and board rules before the 30th day preceding the date of the hearing.

### **Section 2301.707. Contents of Hearing Notice**

Notice of a hearing shall describe in summary form the purpose of the hearing and the date, time, and place of the hearing.

### **Section 2301.708. Conduct of Hearing**

- (a) A hearing must be convened at the time and place stated in the notice.
- (b) A hearing may be recessed until a time and place certain:
  - (1) by giving advance notice as required by Section 2001.057, Government Code; or
  - (2) without advance notice if the time and place is announced openly before the recess.
- (c) Except as otherwise provided by this chapter, a person whose legal rights, duties, or privileges are to be determined at a hearing is entitled to:
  - (1) appear personally or by counsel;
  - (2) cross-examine adverse witnesses; and
  - (3) produce evidence and witnesses in the person's own behalf.

### **Section 2301.709. Review by Board**

- (a) In reviewing a case under this subchapter, the board or a person delegated power from the board under Section 2301.154 may consider only materials that are submitted timely.
- (b) The board or a person delegated power from the board under Section 2301.154 may hear such oral argument from any party as the board may allow.

(c) The board or a person delegated power from the board under Section 2301.154 shall take any further action conducive to the issuance of a final order and shall issue a written final decision or order. A majority vote of a quorum of the board is required to adopt a final decision or order of the board.

### **Section 2301.710. Dismissal of Complaint**

On the motion of any party, the board or other person delegated final order authority under Section 2301.154, without holding a contested case hearing, may issue a final order dismissing a complaint, protest, or response in accordance with the terms and procedures set forth in the Texas Rules of Civil Procedure.

### **Section 2301.711. Orders and Decisions**

(a) The board or other person delegated final order authority under Section 2301.154 shall issue final orders for the implementation and enforcement of this chapter and Chapter 503, Transportation Code.

(b) An order or decision under this chapter must:

- (1) include a separate finding of fact with respect to each specific issue required by law to be considered 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; and
- (4) be signed by the presiding officer or assistant presiding officer for the board or other person delegated final order authority under Section 2301.154.

### **Section 2301.712. Filing Fee**

(a) The filing fee for a contested case or a protest that involves a hearing is:

- (1) \$ 35 for a complaint filed under Subchapter M; and
- (2) \$ 200 for any other complaint or protest.

(b) If a person who brings a complaint under Subchapter M prevails in the case, the board or a person delegated power from the board under Section 2301.154 shall order the nonprevailing party in the case to reimburse the amount of the filing fee for the case.

### **Section 2301.713. Rehearing**

*First of two versions of § 2301.713: As amended by Acts 2013, 83rd Leg., ch. 1135, § 30, effective September 1, 2013*

(a) Except as provided by Subsection (b), a party who seeks a rehearing of an order shall seek the rehearing in accordance with Chapter 2001, Government Code.

(b) The board by rule may establish a procedure to allow parties to contested cases in which the final order is issued by a person to whom final order authority is delegated under Section 2301.154 to file motions for rehearing with the board.

**Section 2301.713. Rehearing**

*Second of two versions of § 2301.713: As amended by Acts 2013, 83rd Leg., ch. 1379, § 10, effective January 1, 2014*

- (a) Except as otherwise provided by this section, a party who seeks a rehearing of an order shall seek the rehearing in accordance with Chapter 2001, Government Code.
- (b) The board by rule may establish procedures to allow a party to a contested case to file a motion for rehearing.
- (c) A motion for rehearing in a contested case under Section 2301.204 or Subchapter M must be filed with and decided by the chief hearings examiner.

**SUBCHAPTER P.  
JUDICIAL REVIEW**

**Section 2301.751. Judicial Review Generally**

(a) A party to a proceeding affected by a final order, rule, or decision or other final action of the board with respect to a matter arising under this chapter or Chapter 503, Transportation Code, may seek judicial review of the action under the substantial evidence rule in:

- (1) a district court in Travis County; or
- (2) the court of appeals for the Third Court of Appeals District.

(b) Except as otherwise provided by this chapter, an appeal brought in a district court may be removed to the court of appeals by any party before trial in the district court on the filing of notice of removal with the district court.

(c) Judicial review by a court, to the extent not in conflict with this chapter, is in the manner provided by Chapter 2001, Government Code. Judicial review in the court of appeals:

- (1) is initiated under Chapter 2001, Government Code, in the manner review is initiated for a proceeding in a district court; and
- (2) is governed by the applicable rules of appellate procedure.

**Section 2301.752. Time for Filing; Citation**

(a) A petition for judicial review under this chapter must be filed not later than the 30th day after the date on which the action, ruling, order, or decision becomes final and appealable.

(b) Citation for an appeal must be served on the executive director or the executive director's designee and each party of record in the matter. For an appeal initiated in the court of appeals, the court shall cause the citation to be issued.

### **Section 2301.753. Additional Evidence**

An appeal in which evidence outside the record of the board is to be taken under Chapter 2001, Government Code, or otherwise, shall be brought in a district court in Travis County or in the court of appeals. An appeal brought in the court of appeals is subject to remand to a district court in Travis County for proceedings under instructions from the court of appeals.

### **Section 2301.754. Dismissal for Failure to Prosecute**

(a) A person filing an appeal under this subchapter shall pursue the appeal with reasonable diligence.

(b) If the person fails to prosecute the appeal within six months after the date the appeal is filed, the court shall presume that the appeal has been abandoned. On the motion of the attorney general or a party in the case, the court shall dismiss the appeal after notifying the person who filed the appeal, unless the person shows good cause for the delay.

### **Section 2301.755. Effect of Appeal on Order**

An appeal under this subchapter does not affect the enforcement of a final board order unless:

- (1) the enforcement of the order is enjoined under Chapter 65, Civil Practice and Remedies Code, and under principles of primary jurisdiction; or
- (2) the board, in the interest of justice, suspends the enforcement of the order pending final determination of the appeal.

### **Section 2301.756. Review of Interlocutory Order**

(a) A writ of error is allowed from the supreme court for an appeal of an interlocutory order described by Section 51.014(a)(3) or (6), Civil Practice and Remedies Code, in a civil action involving a license holder.

(b) The supreme court shall give precedence to a writ of error under this section over other writs of error.

(c) The right to appeal by writ of error is without prejudice to the right of any party to seek relief by an application for leave to file a petition for writ of mandamus with respect to the order.

## **SUBCHAPTER Q. PENALTIES AND OTHER ENFORCEMENT PROVISIONS**

### **Section 2301.801. Civil Penalty**

(a) If, after a proceeding under this chapter and board rules, the board determines that a person is violating or has violated this chapter, a rule adopted or order issued under this chapter, or Section 503.038(a), Transportation Code, the board may impose a civil

penalty. The amount of the penalty may not exceed \$ 10,000 for each violation. Each act of violation and each day a violation continues is a separate violation.

(b) In determining the amount of the penalty, the board shall consider:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the harm or potential harm to the safety of the public;
- (2) the economic damage to the public caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

(c) Notwithstanding any other law to the contrary, a civil penalty recovered under this chapter shall be deposited in the state treasury to the credit of the Texas Department of Motor Vehicles fund.

### **Section 2301.802. Cease and Desist Order**

(a) If it appears to the board that a person is violating this chapter or a board rule or order, the board after notice may 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.

(b) An interlocutory cease and desist order may be granted with or without bond or other undertaking if:

- (1) the order is necessary to the performance of the duties delegated to the board by this chapter;
- (2) the order is necessary or convenient to maintaining the status quo between two or more adverse parties before the board;
- (3) a party before the board is entitled to relief demanded of the board and all or part of the relief requires the restraint of some act prejudicial to the party;
- (4) a person is performing, about to perform, or procuring or allowing the performance of an act:
  - (A) relating to the subject of a contested case pending before the board, in violation of the rights of a party before the board; and
  - (B) that would tend to render the board's order in the case ineffectual; or
- (5) substantial injury to the rights of a person subject to the board's jurisdiction is threatened regardless of any remedy available at law.

(c) A proceeding under this section is governed by:

- (1) this chapter and the board's rules; and
- (2) Chapter 2001, Government Code, relating to a contested case, to the extent that chapter is not in conflict with Subdivision (1).

(d) An interlocutory cease and desist order remains in effect until vacated or incorporated in a final order. An appeal of an interlocutory cease and desist order must be made to the board before seeking judicial review as provided by this chapter.

(e) A permanent cease and desist order may be issued regardless of the requirements of Subsection (b) but only under the procedures for a final order under this chapter. An appeal of a permanent cease and desist order is made in the same manner as an appeal of a final order under this chapter.

### **Section 2301.803. Statutory Stay**

(a) On the initiation of a proceeding under this chapter or Chapter 503, Transportation Code, whether by complaint, protest, or otherwise, a person who receives notice from the board of a statutory stay imposed by this chapter may not allow or commit any act or omission that would:

(1) violate this chapter, Chapter 503, Transportation Code, any rule, order, or decision of the board, or an order or decision of a person delegated power from the board under Section 2301.154;

(2) affect a legal right, duty, or privilege of any party to a proceeding under this chapter or Chapter 503, Transportation Code; or

(3) tend to render ineffectual an order in a pending proceeding.

(b) A statutory stay imposed by this chapter remains in effect until vacated or until the proceeding is concluded by a final order or decision.

(c) A person affected by a statutory stay imposed by this chapter may request a hearing to modify, vacate, or clarify the extent and application of the statutory stay.

### **Section 2301.804. Suit for Injunctive Relief or Civil Penalty**

(a) If it appears that a person has violated, is violating, or is threatening to violate this chapter, Chapter 503, Transportation Code, a board rule adopted under this chapter or Chapter 503, Transportation Code, or an order issued under this chapter or Chapter 503, Transportation Code, the board or the executive director, if authorized by the presiding officer of the board, may cause a suit to be instituted in a court for:

(1) injunctive relief to restrain the person from committing the violation or threat of violation;

(2) imposition of a civil penalty; or

(3) both injunctive relief and a civil penalty.

(b) At the request of the board or the executive director, if authorized by the presiding officer of the board, the attorney general shall bring in the name of the state a suit for an injunction or a civil penalty as described by Subsection (a).

(c) In a suit for injunctive relief under this chapter, the court shall grant, without bond or other undertaking, any prohibitory or mandatory injunction the facts warrant, including a temporary restraining order, temporary injunction, or permanent injunction.

### **Section 2301.805. Relief Under Other Law**

(a) Notwithstanding any other law, including Subchapter E, Chapter 17, Business & Commerce Code, in addition to the other remedies provided by this subchapter, a person may institute an action under Subchapter E, Chapter 17, Business & Commerce Code, or any successor statute to that subchapter, and is entitled to any procedure or remedy under that subchapter, if the person:

(1) has sustained damages as a result of a violation of Sections 2301.351-2301.354 or Section 2301.357; or

(2) is a franchised dealer who has sustained damages as a result of a violation of:

(A) Subchapter J of this chapter; or

(B) Subchapter E, Chapter 17, Business & Commerce Code.

(b) In an action brought under this section, and in the interest of judicial economy and efficiency, a judgment entered in the action must give deference to the findings of fact and conclusions of law of the board contained in any final order that is the basis of the action.

(c) In an action brought against a license holder under this section, or for any other type of conduct for which an action may be brought under Subchapter E, Chapter 17, Business & Commerce Code, the \$ 1,000 limitation contained in Section 17.50(b)(1), Business & Commerce Code, as that provision existed on September 1, 1979, shall be adjusted to reflect a change in the consumer price index after that date. The limitation shall be increased or decreased, as applicable, by an amount equal to 1,000 multiplied by the percentage of increase or decrease in the consumer price index between September 1, 1979, and the time the damages are awarded by final judgment or settlement. In this subsection, "consumer price index" means the National Consumer Price Index For All Urban Consumers, or a substantially similar successor. A court may take judicial notice of that index.

### **Section 2301.806. Board Exempt from Filing Fee**

Notwithstanding the other provisions of this chapter, the board is not required to pay a filing fee when filing a complaint or other enforcement action.

## **SUBCHAPTER R.**

### **REGULATION OF CERTAIN COMMERCIAL USES OF MOTOR VEHICLES**

#### **Section 2301.851. Certain Charges Included in Customer Agreement**

(a) A person required to register under Section 152.065, Tax Code, may include in a customer agreement subject to Subsection (b) a separate charge for the proportionate amount of title fees, registration fees, and property taxes paid in the preceding calendar year on the person's vehicle fleet.

(b) A person who includes the charge must do so:

(1) on a nondiscriminatory basis; and



(2) in each agreement other than an agreement that is exempt from the tax imposed under Section 152.026, Tax Code.

### **Section 2301.852. Use or Retention of Salvage Motor Vehicle**

(a) Notwithstanding Section 2301.002, in this section, "certificate of title," "motor vehicle," and "owner" have the meanings assigned by Section 501.002, Transportation Code.

(b) An owner required to register under Section 152.065, Tax Code, may not use or retain for use for a usual commercial purpose of the owner a motor vehicle that has been issued a certificate of title under Section 501.100, Transportation Code.

### **Section 2301.853. Criminal Penalty**

(a) A person commits an offense if the person violates this subchapter.

(b) An offense under this section is a Class A misdemeanor.

### **Session Law History**

Acts 1971, 62nd Legislature, page 89, Chapter 51, effective April 7, 1971; amended by page 627, Chapter 266, Acts of the 63rd Legislature, Regular Session, 1973, effective June 11, 1973; amended by page 297, Chapter 128, Acts of the 64th Legislature, Regular Session, 1975, effective May 6, 1975; amended by page 947, Chapter 357, Acts of the 65th Legislature, Regular Session, 1977, effective June 10, 1977; amended by page 1833, Chapter 735, Acts of the 65th Legislature, Regular Session, 1977, effective August 29, 1977; amended by page 1725, Chapter 709, Acts of the 66th Legislature, Regular Session, 1979, effective September 1, 1979; amended by page 555, Chapter 235, Acts of the 67th Legislature, Regular Session, 1981, effective May 28, 1981; amended by page 388, Chapter 81, Acts of the 68th Legislature, Regular Session, 1983, effective September 1, 1983; amended by page 4134, Chapter 651, Acts of the 68th Legislature, Regular Session, 1983, effective June 19, 1983; amended by page 1215, Chapter 241, Acts of the 69th Legislature, Regular Session, 1985, effective June 4, 1985; amended by page 1652, Chapter 479, Acts of the 69th Legislature, Regular Session, 1985, effective September 1, 1985; amended by page 1781, Chapter 357, Acts of the 70th Legislature, Regular Session, 1987, effective June 11, 1987; amended by page 4653, Chapter 1130, Acts of the 71st Legislature, Regular Session, 1989, effective June 16, 1989; amended by page 1749, Chapter 501, Acts of the 72nd Legislature, Regular Session, 1991, effective June 16, 1991; amended by page 226, Chapter 7, Acts of the 72nd Legislature, First Called Session, 1991, effective September 1, 1992; amended by page 136, Chapter 61, Acts of the 73rd Legislature, Regular Session, 1993, effective April 29, 1993; amended by page 2869, Chapter 345 and by page 2887, Chapter 357, Acts of the 74th Legislature, Regular Session, 1995, effective June 8, 1995; amended by page 2185, Chapter 639, Acts of the 75th Legislature, Regular Session, 1997, effective June 11, 1997; amended by page 2567, Chapter 779, by page 2788, Chapter 871, by page 4427, Chapter 1171, and by page 5256 Chapter 1401, Acts of the 75th Legislature, Regular Session, 1997, effective September 1, 1997; amended by page 3861, Chapter 1047, Acts of the 76th Legislature,

Regular Session, 1999, effective June 18, 1999; amended by page 3707, Chapter 962, Acts of the 76th Legislature, Regular Session, 1999, effective September 1, 1999; amended by page 296, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, effective May 18, 2001.

#### Repeal

Acts 2001, 77th Legislature, page 4317, Chapter 1421, repeals this article effective June 1, 2003.

Acts 2001, 77th Legislature, page 4642, Chapter 1421, effective June 1, 2003; amended by page 124, Chapter 85, Acts of 78th Legislature, Regular Session, 2003, effective September 1, 2003; amended by page 1773, Chapter 503, Acts of 78th Legislature, Regular Session, 2003, effective June 20, 2003; amended by page 4399, Chapter 1276, 78th Legislature, Regular Session, 2003, effective September 1, 2003; amended by page 839, Chapter 281, Acts of 79th Legislature, Regular Session, 2005, effective June 14, 2005; amended by page 114, Chapter 105, Acts of 80th Legislature, Regular Session, 2007, effective September 1, 2008; amended by page 380, Chapter 258, Acts of 80th Legislature, Regular Session, 2007, effective September 1, 2007; amended by page 1338, Chapter 710, Acts of 80th Legislature, Regular Session, 2007, effective June 15, 2007; amended by page 1528, Chapter 732, Acts of 80th Legislature, Regular Session, 2007, effective September 1, 2007; amended by page 2079, Chapter 885, Acts of 80th Legislature, Regular Session, 2007, effective April 1, 2009; amended by page 4528, Chapter 1336, Acts of 80th Legislature, Regular Session, 2007, effective September 1, 2007; amended by page 4640, Chapter 1363, Acts of 80th Legislature, Regular Session, 2007, effective June 15, 2007; amended by page 4794, Chapter 1403, Acts of 80th Legislature, Regular Session, 2007, effective September 1, 2007; amended by page 379, Chapter 87, Acts of 81st Legislature, Regular Session, 2009, effective September 1, 2009; amended by pages 1740 through 1744, Chapter 684, Acts of 81st Legislature, Regular Session, 2009, effective September 1, 2009; amended by page 1805, Chapter 717, Acts of 81st Legislature, Regular Session, 2009, effective September 1, 2009; amended by pages 2497, 2504, and 2505, Chapter 933, Acts of 81st Legislature, Regular Session, 2009, effective September 1, 2009; amended by pages 644 through 650, Chapter 137, Acts of 82nd Legislature, Regular Session, 2011, effective September 1, 2011; amended by pages 3597 through 3602, Chapter 1290, Acts of 82nd Legislature, Regular Session, 2011, effective September 1, 2011; amended by pages 2706 through 2712, Chapter 1135, Acts of 83rd Legislature, Regular Session, 2013, effective September 1, 2013; amended by page 3250, Chapter 1287, Acts of 83rd Legislature, Regular Session, 2013, effective September 1, 2013; amended by pages 3550 through 3552, Chapter 1338, Acts of 83rd Legislature, Regular Session, 2013, effective June 14, 2013; amended by pages 3666 through 3668, Chapter 1379, Acts of 83rd Legislature, Regular Session, 2013, effective January 1, 2014; amended by page 2411, Chapter 777, Acts of 84th Legislature, Regular Session, 2015, effective September 1, 2015; amended by page 1876, Chapter 512, Acts 84th Legislature, Regular Session, 2015, effective June 16, 2015; amended by page 4136, Chapter 1236, Acts of 84th Legislature, Regular Session, 2015, effective September 1, 2015.