

Tex. Occ. Code § 2301.001

This document is current through the 2021 Regular Session of the 87th legislature, 2021 1st Called Session, 2021 2nd Called Session, 2021 3rd Called Session, and the 2021 & 2022 ballot propositions.

Texas Statutes & Codes Annotated by LexisNexis® > Occupations Code > Title 14 Regulation of Motor Vehicles and Transportation (Subts. A — C) > Subtitle A Regulations Related to Motor Vehicles (Chs. 2301 — 2350) > Chapter 2301 Sale or Lease of Motor Vehicles (Subchs. A — R) > Subchapter A General Provisions (§§ 2301.001 — 2301.007)

Sec. 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.

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003.

Annotations

Notes to Decisions

Administrative Law: Judicial Review: Standards of Review: Substantial Evidence

Governments: State & Territorial Governments: Licenses

Governments: State & Territorial Governments: Police Power

Administrative Law: Judicial Review: Standards of Review: Substantial Evidence

Appellate court could not modify an order of the Motor Vehicle Board of the Texas Department of Transportation to include findings of fact and conclusions of law favorable to the dealer in its franchise dispute with a motor home manufacturer because under Tex. Occ. Code Ann. §§ 2301.001, 2301.151, and Tex. Gov't Code Ann. § 2001.174(2)(E), the court could only review the order to determine if they are reasonably supported by substantial evidence. Further, the order complied with Tex. Occ. Code Ann. § 2301.711(a). *Buddy Gregg Motor Homes, Inc. v. Motor Vehicle Bd.*, 179 S.W.3d 589, 2005 Tex. App. LEXIS 5952 (Tex. App. Austin July 28, 2005, no pet.).

Governments: State & Territorial Governments: Licenses

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Action of responding to a solicitation for information or bids and a discussion of price regarding the bid, standing alone, is not sufficient to find that an entity has done business in the State of Texas. *Motor Vehicle Bd. v. Prevost Car (US), Inc.*, No. 03-04-00373-CV, 2006 Tex. App. LEXIS 8461 (Tex. App. Austin Sept. 26, 2006).

Governments: State & Territorial Governments: Police Power

Texas Motor Vehicle Commission Code sections providing that a dealer must obtain a license to operate a franchise at a certain location confer statutory rights on motor vehicle dealers that do not exist at common law, former Tex. Rev. Civ. Stat. Ann. art. 4413(36), § 4.02(c) and former Tex. Rev. Civ. Stat. Ann. art. 4413(36), § 4.06(a)-(e) (now Tex. Occ. Code Ann. § 2301.651 et seq.). That is, the code determines who may operate a dealership and where that dealership may be located as an exercise of the state's police power to insure a sound system of distributing and selling motor vehicles through licensing and regulating manufacturers, distributors, converters, and dealers of those vehicles, former Tex. Rev. Civ. Stat. Ann. art. 4413(36), § 1.02 (now Tex. Occ. Code Ann. § 2301.001). *Subaru of Am. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 2002 Tex. LEXIS 96 (Tex. 2002).

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Tex. Occ. Code § 2301.002

This document is current through the 2021 Regular Session of the 87th legislature, 2021 1st Called Session, 2021 2nd Called Session, 2021 3rd Called Session, and the 2021 & 2022 ballot propositions.

Texas Statutes & Codes Annotated by LexisNexis® > Occupations Code > Title 14 Regulation of Motor Vehicles and Transportation (Subts. A — C) > Subtitle A Regulations Related to Motor Vehicles (Chs. 2301 — 2350) > Chapter 2301 Sale or Lease of Motor Vehicles (Subchs. A — R) > Subchapter A General Provisions (§§ 2301.001 — 2301.007)

Sec. 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:

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- (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 leases or offers to lease a motor vehicle to another person under a lease agreement.
- (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.

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 14A.601(a), 14A.602, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 281 (H.B. 2702), § 7.01, effective June 14, 2005; am. Acts 2007, 80th Leg., ch. 710 (H.B. 2216), § 1, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 933 (H.B. 3097), §§ 2U.01, 2U.02, 3I.02, 3I.10, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 137 (S.B. 529), § 1, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1290 (H.B. 2017), § 1, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 1135 (H.B. 2741), § 5, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1379 (H.B. 1692), § 1, effective January 1, 2014; Acts 2017, 85th Leg., ch. 183 (S.B. 1052), § 8, effective September 1, 2017.

Annotations

Notes

STATUTORY NOTES

Amendment Notes

2005 amendment, rewrote (2), which read: “‘Board’ means the Motor Vehicle Board of the Texas Department of Transportation”; and rewrote (10), which read: “‘Director’ means the director of the board and of the division.”

2007 amendment, added (17-a), (20-a), and (23-a); and added “, an independent mobility motor vehicle dealer’s general distinguishing number,” in (25).

2009 amendment, substituted “Texas Department of Motor Vehicles” for “Texas Department of Transportation” in (9); and repealed (33), which read: “‘Transportation commission’ means the Texas Transportation Commission of the department.”

2011 amendment, by ch. 137, added (27-a).

2011 amendment, by ch. 1290, added (1-a), (11)(B), and (14-a); added the (11)(A) designation; added “this chapter and” in (16)(A); substituted “meets the requirements for” for “has been issued” in (23)(B)(iii); substituted “meets the requirements to be issued a certificate of title and registration by” for “is titled and registered with” in (32)(B); and made related changes.

2013 amendment, by ch. 1135, substituted “department division that regulates the distribution and sale of motor vehicles” for “Motor Vehicle Division of the department” in (12).

2013 amendment, by ch. 1379, added (17-a); and added the (17-b) designation.

Applicability

Acts 2011, 82nd Leg., ch. 137 (S.B. 529) § 16 provides: “The change in law made by this Act applies only to an agreement entered into or renewed under Chapter 2301, Occupations Code, on or after the effective date of this Act [September 1, 2011]. An agreement entered into or renewed before the effective date of this Act is governed by the law in effect on the date the agreement was entered into or renewed, and the former law is continued in effect for that purpose.”

Acts 2013, 83rd Leg., ch. 1135 (H.B. 2741), § 141 provides: “The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act [September 1, 2013]. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law

is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.”

Acts 2013, 83rd Leg., ch. 1379 (H.B. 1692), § 13 provides: “The changes in law made by this Act apply only to a complaint filed or a proceeding commenced on or after the effective date of this Act [January 1, 2014]. A complaint filed or a proceeding commenced before the effective date of this Act is governed by the law in effect on the date the complaint was filed or the proceeding was commenced, and the former law is continued in effect for that purpose.”

Acts 2013, 83rd Leg., ch. 1379 (H.B. 1692), § 14 provides: “The changes in law made by this Act apply to a person who holds a license issued under Chapter 2301, Occupations Code, regardless of the date the license is issued or renewed.”

Notes to Decisions

Administrative Law: Separation of Powers: Jurisdiction

Administrative Law: Separation of Powers: Primary Jurisdiction

Business & Corporate Law: Distributorships & Franchises: Assignments & Transfers

Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: General Overview

Business & Corporate Law: Distributorships & Franchises: Remedies: Punitive Damages

Governments: State & Territorial Governments: Licenses

Administrative Law: Separation of Powers: Jurisdiction

Where a competitor complained to the Motor Vehicle Board of the Texas Department of Transportation that a coach company was improperly licensed as a converter under Tex. Occ. Code § 2301.002(23) as opposed to a manufacturer under Tex. Occ. Code § 2301.002(22) the Board properly granted the coach company 12 months to restructure its licenses from that of converter to manufacturer because the Board had jurisdiction and enforcement powers under Tex. Occ. Code Ann. § 2301.151 and further, the board adopted the ALJ's extensive findings and gave sufficient reasoning for its actions. *Buddy Gregg Motor Homes, Inc. v. Motor Vehicle Bd.*, 156 S.W.3d 91, 2004 Tex. App. LEXIS 11225 (Tex. App. Austin Dec. 16, 2004, no pet.).

Administrative Law: Separation of Powers: Primary Jurisdiction

District court did not err in determining that the Board of the Texas Department of Motor Vehicles retained exclusive jurisdiction over a franchisor's breach of contract counterclaims where it alleged that the franchisee breached a written franchise agreement, and thus, a Texas Occupation Code violation was required to determine if there was an enforceable agreement between the parties. *Autobahn Imps., L.P. v. Jaguar Land Rover N. Am., L.L.C.*, 730 Fed. Appx. 184, 2018 U.S. App. LEXIS 8723 (5th Cir. Tex. 2018).

Business & Corporate Law: Distributorships & Franchises: Assignments & Transfers

Motor Vehicle Board of the Texas Department of Transportation's imposition of a civil penalty under Tex. Occ. Code Ann. § 2301.801 against the corporation for opposing the franchisee's proposed transfer of its franchise was not supported by substantial evidence and exceeded the Board's power because the corporation's relationship with the franchisee was limited to being a Board-mandated supplier of heavy-duty trucks to the franchisee; any franchisee

relationship was potential only, not actual; therefore, the franchise was not required to notify the corporation of the proposed transfer and the corporation was not required to approve or reject it. *Sterling Truck Corp. v. Motor Vehicle Bd. of the Tex. DOT*, 255 S.W.3d 368, 2008 Tex. App. LEXIS 3193 (Tex. App. Austin May 1, 2008, no pet.).

Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: General Overview

District court did not err in determining that the Board of the Texas Department of Motor Vehicles retained exclusive jurisdiction over a franchisor's breach of contract counterclaims where it alleged that the franchisee breached a written franchise agreement, and thus, a Texas Occupation Code violation was required to determine if there was an enforceable agreement between the parties. *Autobahn Imps., L.P. v. Jaguar Land Rover N. Am., L.L.C.*, 730 Fed. Appx. 184, 2018 U.S. App. LEXIS 8723 (5th Cir. Tex. 2018).

Business & Corporate Law: Distributorships & Franchises: Remedies: Punitive Damages

Motor Vehicle Board of the Texas Department of Transportation's imposition of a civil penalty under Tex. Occ. Code Ann. § 2301.801 against the corporation for opposing the franchisee's proposed transfer of its franchise was not supported by substantial evidence and exceeded the Board's power because the corporation's relationship with the franchisee was limited to being a Board-mandated supplier of heavy-duty trucks to the franchisee; any franchise relationship was potential only, not actual; therefore, the franchise was not required to notify the corporation of the proposed transfer and the corporation was not required to approve or reject it. *Sterling Truck Corp. v. Motor Vehicle Bd. of the Tex. DOT*, 255 S.W.3d 368, 2008 Tex. App. LEXIS 3193 (Tex. App. Austin May 1, 2008, no pet.).

Governments: State & Territorial Governments: Licenses

Pursuant to former Tex. Rev. Civ. Stat. Ann. art. 4413(36) (see Tex. Occ. Code Ann. § 2301.002), a licensee is a person who holds a license or general distinguishing number issued by the Motor Vehicle Board and the Motor Vehicle Division of the Texas Department of Transportation under the terms of the Texas Motor Vehicle Code or Tex. Transp. Code ch. 503. *Pretzer v. Motor Vehicle Bd.*, 125 S.W.3d 23, 2003 Tex. App. LEXIS 277 (Tex. App. Austin Jan. 16, 2003), *aff'd in part and rev'd in part*, 138 S.W.3d 908, 2004 Tex. LEXIS 193 (Tex. 2004).

Former Tex. Rev. Civ. Stat. Ann. art. 4413(36) (see Tex. Occ. Code Ann. § 2301.002) gives the Board power to enforce the Motor Vehicle Code to other persons to prevent frauds, unfair practices, discriminations, impositions, and other abuses of citizens. *Pretzer v. Motor Vehicle Bd.*, 125 S.W.3d 23, 2003 Tex. App. LEXIS 277 (Tex. App. Austin Jan. 16, 2003), *aff'd in part and rev'd in part*, 138 S.W.3d 908, 2004 Tex. LEXIS 193 (Tex. 2004).

Research References & Practice Aids

TREATISES & ANALYTICAL MATERIALS

1-13 Dorsaneo, *Texas Litigation Guide* § 13.13, *Pretrial Practice* (Chs. 1-114), *Plaintiff's Pleadings* (Chs. 10-13), *Appeal of Orders Relating to Class Certification*, Dorsaneo, *Texas Litigation Guide*.

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Tex. Occ. Code § 2301.003

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Sec. 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.

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003.

Annotations

Notes to Decisions

Administrative Law: Separation of Powers: Primary Jurisdiction

Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: General Overview

Administrative Law: Separation of Powers: Primary Jurisdiction

District court did not err in determining that the Board of the Texas Department of Motor Vehicles retained exclusive jurisdiction over a franchisor's breach of contract counterclaims where it alleged that the franchisee breached a written franchise agreement, and thus, a Texas Occupation Code violation was required to determine if there was an enforceable agreement between the parties. *Autobahn Imps., L.P. v. Jaguar Land Rover N. Am., L.L.C.*, 730 Fed. Appx. 184, 2018 U.S. App. LEXIS 8723 (5th Cir. Tex. 2018).

Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: General Overview

District court did not err in determining that the Board of the Texas Department of Motor Vehicles retained exclusive jurisdiction over a franchisor's breach of contract counterclaims where it alleged that the franchisee breached a written franchise agreement, and thus, a Texas Occupation Code violation was required to determine if there was an enforceable agreement between the parties. *Autobahn Imps., L.P. v. Jaguar Land Rover N. Am., L.L.C.*, 730 Fed. Appx. 184, 2018 U.S. App. LEXIS 8723 (5th Cir. Tex. 2018).

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End of Document

Tex. Occ. Code § 2301.251

This document is current through the 2021 Regular Session of the 87th legislature, 2021 1st Called Session, 2021 2nd Called Session, 2021 3rd Called Session, and the 2021 & 2022 ballot propositions.

Texas Statutes & Codes Annotated by LexisNexis® > Occupations Code > Title 14 Regulation of Motor Vehicles and Transportation (Subts. A — C) > Subtitle A Regulations Related to Motor Vehicles (Chs. 2301 — 2350) > Chapter 2301 Sale or Lease of Motor Vehicles (Subchs. A — R) > Subchapter F License Requirements (§§ 2301.251 — 2301.266)

Sec. 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, 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.

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003; Acts 2019, 86th Leg., ch. 594 (S.B. 604), § 2.01, effective September 1, 2019.

Annotations

Notes

STATUTORY NOTES

Amendment Notes

The 2019 amendment deleted "representative" following "converter" in (a)(1).

Applicability

Acts 2019, 86th Leg. Ch. 594 (SB 604), § 2.16 provides:

"(a) The changes in law made by this Act to Chapters 2301 and 2302, Occupations Code, do not affect the validity of a proceeding pending before a court or other governmental entity on the effective date of this Act.

(b) An offense or other violation of law committed before the effective date of this Act is governed by the law in effect when the offense or violation was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense or violation was committed before the effective date of this Act if any element of the offense or violation occurred before that date.

(c) On the effective date of this Act, a representative's license issued under Chapter 2301, Occupations Code, as that law existed immediately before the effective date of this Act, expires.

(d) On the effective date of this Act, a salvage vehicle agent license issued under former Section 2302.107, Occupations Code, expires.

(e) Section 2302.151(a), Occupations Code, as amended by this Act, applies only to a license issued or renewed on or after September 1, 2019. A license issued or renewed before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.”

Notes to Decisions

Contracts Law: Defenses: Illegal Bargains

Governments: State & Territorial Governments: Licenses

Contracts Law: Defenses: Illegal Bargains

In a case arising from an agreement between appellants, a car dealership and its owner, and appellees, a credit union and its president, through its alleged agent, under which appellants found cars for the credit union's customers and the credit union then financed the loans, appellants' breach of contract claim against appellees was barred by the illegality defense because although there was nothing inherently illegal about selling cars in Dallas County, Texas, the transaction of selling the cars was illegal because on the day of the transactions, appellants did not have the statutory required license. The evidence showed that appellants could not have obtained a license because they had not established a permanent place of business in Dallas County as required under Tex. Transp. Code Ann. § 503.032(a)(1). *Denson v. Dallas County Credit Union*, 262 S.W.3d 846, 2008 Tex. App. LEXIS 6206 (Tex. App. Dallas Aug. 15, 2008, no pet.).

Governments: State & Territorial Governments: Licenses

In a case arising from an agreement between appellants, a car dealership and its owner, and appellees, a credit union and its president, through its alleged agent, under which appellants found cars for the credit union's customers and the credit union then financed the loans, appellants' breach of contract claim against appellees was barred by the illegality defense because although there was nothing inherently illegal about selling cars in Dallas County, Texas, the transaction of selling the cars was illegal because on the day of the transactions, appellants did not have the statutory required license. The evidence showed that appellants could not have obtained a license because they had not established a permanent place of business in Dallas County as required under Tex. Transp. Code Ann. § 503.032(a)(1). *Denson v. Dallas County Credit Union*, 262 S.W.3d 846, 2008 Tex. App. LEXIS 6206 (Tex. App. Dallas Aug. 15, 2008, no pet.).

Tex. Occ. Code § 2301.359

This document is current through the 2021 Regular Session of the 87th legislature, 2021 1st Called Session, 2021 2nd Called Session, 2021 3rd Called Session, and the 2021 & 2022 ballot propositions.

Texas Statutes & Codes Annotated by LexisNexis® > Occupations Code > Title 14 Regulation of Motor Vehicles and Transportation (Subts. A — C) > Subtitle A Regulations Related to Motor Vehicles (Chs. 2301 — 2350) > Chapter 2301 Sale or Lease of Motor Vehicles (Subchs. A — R) > Subchapter H Dealers (§§ 2301.351 — 2301.363)

Sec. 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).

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003; am. Acts 2011, 82nd Leg., ch. 137 (S.B. 529), § 2, effective September 1, 2011.

Annotations

Notes

STATUTORY NOTES

Amendment Notes

2011 amendment, deleted the former second sentence in (e), which read: “It is unreasonable for a manufacturer or distributor to reject a prospective transferee who is of good moral character and who meets the written, reasonable, and uniformly applied standards or qualifications, if any, of the manufacturer or distributor relating to the prospective transferee’s business experience and financial qualifications.”; and added (g), (h), (i).

Applicability

Acts 2011, 82nd Leg., ch. 137 (S.B. 529) § 16 provides: “The change in law made by this Act applies only to an agreement entered into or renewed under Chapter 2301, Occupations Code, on or after the effective date of this Act [September 1, 2011]. An agreement entered into or renewed before the effective date of this Act is governed by the law in effect on the date the agreement was entered into or renewed, and the former law is continued in effect for that purpose.”

Notes to Decisions

Administrative Law: Judicial Review: Remands & Remittiturs

Administrative Law: Judicial Review: Reviewability: Jurisdiction & Venue

Business & Corporate Law: Distributorships & Franchises: Alternative Dispute Resolution

Business & Corporate Law: Distributorships & Franchises: Assignments & Transfers

Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: General Overview

Business & Corporate Law: Distributorships & Franchises: Remedies: Punitive Damages

Torts: Business Torts: Commercial Interference: Contracts

Torts: Negligence: Causation: Proximate Cause

Administrative Law: Judicial Review: Remands & Remittiturs

Remand for further administrative proceedings was proper under the primary jurisdiction doctrine after a trial court erred in denying a manufacturer's plea to the jurisdiction in a dealership transfer case; however, the remand order could not require the agency to act. *Ford Motor Co. v. Butnaru*, 157 S.W.3d 142, 2005 Tex. App. LEXIS 465 (Tex. App. Austin Jan. 21, 2005, no pet.).

Administrative Law: Judicial Review: Reviewability: Jurisdiction & Venue

Remand for further administrative proceedings was proper under the primary jurisdiction doctrine after a trial court erred in denying a manufacturer's plea to the jurisdiction in a dealership transfer case; however, the remand order could not require the agency to act. *Ford Motor Co. v. Butnaru*, 157 S.W.3d 142, 2005 Tex. App. LEXIS 465 (Tex. App. Austin Jan. 21, 2005, no pet.).

Business & Corporate Law: Distributorships & Franchises: Alternative Dispute Resolution

Inadequacies in a notice of a proposed sale and supporting materials sent to a manufacturer may make rejection of the sale more reasonable and, thus, may affect the assessment of the merits of a protest of the rejection, but such inadequacies do not deprive the Motor Vehicle Board of the Texas Department of Transportation of the power to consider the protest. *Ford Motor Co. v. Motor Vehicle Bd. of the Tex. DOT*, No. 03-05-00290-CV, 2008 Tex. App. LEXIS 3189 (Tex. App. Austin May 1, 2008).

Alleged deficiencies in notice and material supplied by the franchisee to the automobile manufacturer did not deprive the Motor Vehicle Board of the Texas Department of Transportation of jurisdiction to hear the franchisee's protest because the manufacturer's letter rejecting the proposed sale of the franchise was a statement setting forth the material reasons for the rejection and the franchisee's protest of that rejection invoked the Board's jurisdiction. *Ford Motor Co. v. Motor Vehicle Bd. of the Tex. DOT*, No. 03-05-00290-CV, 2008 Tex. App. LEXIS 3189 (Tex. App. Austin May 1, 2008).

Order of Motor Vehicle Board of the Texas Department of Transportation fining manufacturer \$ 10,000 for improperly resisting transfer of franchise was reversed because the Board failed to give proper effect to a previous decision in a related case by the court; in the related case, the administrative law judge correctly stated that the franchisee even after the remand and the finding that the manufacturer had good cause to terminate the franchise did not force the franchisee to immediately and unconditionally give up its franchise; however, the Board went further in its reconsideration of that case, believing that the good cause determination itself was within the scope of the remand, when actually the good cause determination was affirmed and not remanded; thus, the Board assessed a penalty against the manufacturer in the instant case while under a key misapprehension regarding the context of the manufacturer's resistance to the proposed transfer. *Ford Motor Co. v. Motor Vehicle Bd. of the Tex. DOT*, No. 03-05-00290-CV, 2008 Tex. App. LEXIS 3189 (Tex. App. Austin May 1, 2008).

Business & Corporate Law: Distributorships & Franchises: Assignments & Transfers

Motor Vehicle Board of the Texas Department of Transportation's imposition of a civil penalty under Tex. Occ. Code Ann. § 2301.801 against the corporation for opposing the franchisee's proposed transfer of its franchise was not supported by substantial evidence and exceeded the Board's power because the corporation's relationship with the franchisee was limited to being a Board-mandated supplier of heavy-duty trucks to the franchisee; any franchise relationship was potential only, not actual; therefore, the franchise was not required to notify the corporation of the proposed transfer and the corporation was not required to approve or reject it. *Sterling Truck Corp. v. Motor Vehicle Bd. of the Tex. DOT*, 255 S.W.3d 368, 2008 Tex. App. LEXIS 3193 (Tex. App. Austin May 1, 2008, no pet.).

Legislature's "if any" language in Tex. Occ. Code Ann. § 2301.359(e) recognizes that manufacturers may not have written, reasonable, and uniformly applied standards relating to business experience and financial qualifications; nothing in the statute requires manufacturers to have such standards in order to reasonably deny a transfer

Tex. Occ. Code § 2301.359

applicant with good moral character. *GMC v. Bray*, 243 S.W.3d 678, 2007 Tex. App. LEXIS 6603 (Tex. App. Austin Aug. 16, 2007, no pet.).

While the second sentence of Tex. Occ. Code Ann. § 2301.359(e) provides a bright-line test for one specific factual situation, it also provides guidance concerning the interpretation of the comprehensive standard set out in the first sentence, i.e., reasonableness. *GMC v. Bray*, 243 S.W.3d 678, 2007 Tex. App. LEXIS 6603 (Tex. App. Austin Aug. 16, 2007, no pet.).

Basing a denial of a transfer application on unwritten standards is not a per se violation of Tex. Occ. Code Ann. § 2301.359, although the Motor Vehicle Division of the Texas Department of Transportation may consider whether the standards were written as one factor in analyzing whether the denial was reasonable. *GMC v. Bray*, 243 S.W.3d 678, 2007 Tex. App. LEXIS 6603 (Tex. App. Austin Aug. 16, 2007, no pet.).

Remand for further administrative proceedings was proper under the primary jurisdiction doctrine after a trial court erred in denying a manufacturer's plea to the jurisdiction in a dealership transfer case; however, the remand order could not require the agency to act. *Ford Motor Co. v. Butnaru*, 157 S.W.3d 142, 2005 Tex. App. LEXIS 465 (Tex. App. Austin Jan. 21, 2005, no pet.).

Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: General Overview

Former Tex. Rev. Civ. Stat. Ann. art. 4413(36), 5.01 et seq., strictly regulates conduct by or between franchise dealers and manufacturers. For example, the code establishes how a dealer must request a transfer, assignment, or sale of its franchise agreement, former Tex. Rev. Civ. Stat. Ann. art. 4413(36), § 5.01B (now Tex. Occ. Code Ann. § 2301.359). *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 2002 Tex. LEXIS 95 (Tex. 2002).

To transfer an automobile dealership the dealer must file a written application with the manufacturer to transfer the dealership. The application must identify the prospective transferee and any pertinent agreements about the proposed transfer, former Tex. Rev. Civ. Stat. Ann. art. 4413(36), § 5.01B(a)(1)-(4) (now Tex. Occ. Code Ann. § 2301.359). *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 2002 Tex. LEXIS 95 (Tex. 2002).

Business & Corporate Law: Distributorships & Franchises: Remedies: Punitive Damages

Order of Motor Vehicle Board of the Texas Department of Transportation fining manufacturer \$ 10,000 for improperly resisting transfer of franchise was reversed because the Board failed to give proper effect to a previous decision in a related case by the court; in the related case, the administrative law judge correctly stated that the franchisee even after the remand and the finding that the manufacturer had good cause to terminate the franchise did not force the franchisee to immediately and unconditionally give up its franchise; however, the Board went further in its reconsideration of that case, believing that the good cause determination itself was within the scope of the remand, when actually the good cause determination was affirmed and not remanded; thus, the Board assessed a penalty against the manufacturer in the instant case while under a key misapprehension regarding the context of the manufacturer's resistance to the proposed transfer. *Ford Motor Co. v. Motor Vehicle Bd. of the Tex. DOT*, No. 03-05-00290-CV, 2008 Tex. App. LEXIS 3189 (Tex. App. Austin May 1, 2008).

Motor Vehicle Board of the Texas Department of Transportation's imposition of a civil penalty under Tex. Occ. Code Ann. § 2301.801 against the corporation for opposing the franchisee's proposed transfer of its franchise was not supported by substantial evidence and exceeded the Board's power because the corporation's relationship with the franchisee was limited to being a Board-mandated supplier of heavy-duty trucks to the franchisee; any franchise relationship was potential only, not actual; therefore, the franchise was not required to notify the corporation of the proposed transfer and the corporation was not required to approve or reject it. *Sterling Truck Corp. v. Motor Vehicle Bd. of the Tex. DOT*, 255 S.W.3d 368, 2008 Tex. App. LEXIS 3193 (Tex. App. Austin May 1, 2008, no pet.).

Torts: Business Torts: Commercial Interference: Contracts

Tex. Occ. Code § 2301.359

In an action for breach of an asset purchase agreement, the trial court did not abuse its discretion in refusing to instruct the jury that the motor company tortiously interfered with the contract because the conclusion that the motor company unreasonably withheld its approval of the agreement under Tex. Occ. Code Ann. § 2301.359(e) did not establish that act was a proximate cause of the intervenor's damages. *Brannan v. Ford Motor Co.*, No. 14-16-00789-CV, 2018 Tex. App. LEXIS 1482 (Tex. App. Houston 14th Dist. Feb. 27, 2018).

Torts: Negligence: Causation: Proximate Cause

In an action for breach of an asset purchase agreement, the trial court did not abuse its discretion in refusing to instruct the jury that the motor company tortiously interfered with the contract because the conclusion that the motor company unreasonably withheld its approval of the agreement under Tex. Occ. Code Ann. § 2301.359(e) did not establish that act was a proximate cause of the intervenor's damages. *Brannan v. Ford Motor Co.*, No. 14-16-00789-CV, 2018 Tex. App. LEXIS 1482 (Tex. App. Houston 14th Dist. Feb. 27, 2018).

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Tex. Occ. Code § 2301.006

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Sec. 2301.006. Brokers Prohibited.

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

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003.

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Sec. 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.

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003; am. Acts 2009, 81st Leg., ch. 684 (H.B. 2640), § 2, effective September 1, 2009.

Annotations

Notes

STATUTORY NOTES

Amendment Notes

2009 amendment, in (b), substituted "rejection was reasonable under the criteria described by Section 2301.359" for "prospective transferee is qualified" in the first sentence and added "under the criteria" in the second sentence.

Applicability

Acts 2009, 81st Leg., ch. 684 (H.B. 2640), § 10 provides: “(a) The change in law made by this Act applies only to an agreement entered into or renewed under Chapter 2301, Occupations Code, on or after the effective date of this Act [September 1, 2009]. An agreement entered into or renewed before the effective date of this Act is governed by the law in effect on the date the agreement was entered into or renewed, and the former law is continued in effect for that purpose.

(b) The change in law made by this Act applies only to an application filed under Chapter 2301, Occupations Code, on or after the effective date of this Act. An application filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.”

Notes to Decisions

Administrative Law: Judicial Review: Remands & Remittiturs

Administrative Law: Judicial Review: Reviewability: Jurisdiction & Venue

Business & Corporate Law: Distributorships & Franchises: Alternative Dispute Resolution

Business & Corporate Law: Distributorships & Franchises: Assignments & Transfers

Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: General Overview

Administrative Law: Judicial Review: Remands & Remittiturs

Remand for further administrative proceedings was proper under the primary jurisdiction doctrine after a trial court erred in denying a manufacturer’s plea to the jurisdiction in a dealership transfer case; however, the remand order could not require the agency to act. *Ford Motor Co. v. Butnaru*, 157 S.W.3d 142, 2005 Tex. App. LEXIS 465 (Tex. App. Austin Jan. 21, 2005, no pet.).

Administrative Law: Judicial Review: Reviewability: Jurisdiction & Venue

Remand for further administrative proceedings was proper under the primary jurisdiction doctrine after a trial court erred in denying a manufacturer’s plea to the jurisdiction in a dealership transfer case; however, the remand order could not require the agency to act. *Ford Motor Co. v. Butnaru*, 157 S.W.3d 142, 2005 Tex. App. LEXIS 465 (Tex. App. Austin Jan. 21, 2005, no pet.).

Business & Corporate Law: Distributorships & Franchises: Alternative Dispute Resolution

Inadequacies in a notice of a proposed sale and supporting materials sent to a manufacturer may make rejection of the sale more reasonable and, thus, may affect the assessment of the merits of a protest of the rejection, but such inadequacies do not deprive the Motor Vehicle Board of the Texas Department of Transportation of the power to consider the protest. *Ford Motor Co. v. Motor Vehicle Bd. of the Tex. DOT*, No. 03-05-00290-CV, 2008 Tex. App. LEXIS 3189 (Tex. App. Austin May 1, 2008).

Alleged deficiencies in notice and material supplied by the franchisee to the automobile manufacturer did not deprive the Motor Vehicle Board of the Texas Department of Transportation of jurisdiction to hear the franchisee’s protest because the manufacturer’s letter rejecting the proposed sale of the franchise was a statement setting forth the material reasons for the rejection and the franchisee’s protest of that rejection invoked the Board’s jurisdiction.

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Ford Motor Co. v. Motor Vehicle Bd. of the Tex. DOT, No. 03-05-00290-CV, 2008 Tex. App. LEXIS 3189 (Tex. App. Austin May 1, 2008).

Business & Corporate Law: Distributorships & Franchises: Assignments & Transfers

Motor Vehicle Division's finding that an individual was qualified under Tex. Occ. Code Ann. § 2301.360(b) was affirmed where the evidence showed, inter alia, he was experienced in the used car business, he had successfully run a profitable dealership, and his existing dealership had a good reputation and had taken actions to increase its sales. GMC v. Bray, 243 S.W.3d 678, 2007 Tex. App. LEXIS 6603 (Tex. App. Austin Aug. 16, 2007, no pet.).

Remand for further administrative proceedings was proper under the primary jurisdiction doctrine after a trial court erred in denying a manufacturer's plea to the jurisdiction in a dealership transfer case; however, the remand order could not require the agency to act. Ford Motor Co. v. Butnaru, 157 S.W.3d 142, 2005 Tex. App. LEXIS 465 (Tex. App. Austin Jan. 21, 2005, no pet.).

Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: General Overview

Former Tex. Rev. Civ. Stat. Ann. art. 4413(36), § 1.03(7), provides a dealer a remedy if the manufacturer "unreasonably" denies a dealer's application to transfer its franchise ownership. Butnaru v. Ford Motor Co., 84 S.W.3d 198, 2002 Tex. LEXIS 95 (Tex. 2002).

Texas legislature has specifically authorized the Texas Motor Vehicle Board to resolve disputes between a manufacturer and dealer when the dealer alleges that the manufacturer violated former Tex. Rev. Civ. Stat. Ann. art. 4413(36), § 5.01B(d) (now Tex. Occ. Code Ann. § 2301.359), by unreasonably withholding consent to transfer a dealership. Butnaru v. Ford Motor Co., 84 S.W.3d 198, 2002 Tex. LEXIS 95 (Tex. 2002).

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Tex. Occ. Code § 2301.007

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Sec. 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.

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003.

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Sec. 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.

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003; am. Acts 2011, 82nd Leg., ch. 1290 (H.B. 2017), § 14, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 1135 (H.B. 2741), § 15, effective September 1, 2013.

Annotations

Notes

STATUTORY NOTES

Amendment Notes

2011 amendment, substituted “department” for “board” in the introductory language of (a).

2013 amendment, substituted “Warranty, Preparation, and Delivery” for “Filing” in the section heading; in the introductory language of (a), added “On request” and substituted “provide to” for “file with”; deleted “and are disclosed and filed as required by Subsection (a)” at the end of (b); and made a related change.

Applicability

Acts 2013, 83rd Leg., ch. 1135 (H.B. 2741), § 141 provides: “The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act [September 1, 2013]. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.”

Tex. Occ. Code § 2301.401

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Tex. Occ. Code § 2301.402

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Sec. 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.

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003.

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Tex. Occ. Code § 2301.403

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Texas Statutes & Codes Annotated by LexisNexis® > Occupations Code > Title 14 Regulation of Motor Vehicles and Transportation (Subts. A — C) > Subtitle A Regulations Related to Motor Vehicles (Chs. 2301 — 2350) > Chapter 2301 Sale or Lease of Motor Vehicles (Subchs. A — R) > Subchapter I Warranties: Reimbursement of Dealer (§§ 2301.401 — 2301.406)

Sec. 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.

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003.

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Tex. Occ. Code § 2301.404

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Sec. 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.

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003.

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Sec. 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.

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003.

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Tex. Occ. Code § 2301.406

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Sec. 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.

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003.

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Tex. Occ. Code § 2301.521

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Sec. 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.

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003.

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Sec. 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.

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003; am. Acts 2011, 82nd Leg., ch. 137 (S.B. 529), § 12, effective September 1, 2011.

Annotations

Notes

STATUTORY NOTES

Amendment Notes

2011 amendment, substituted "Subchapter J" for "Sections 2301.451-2301.474" in (a).

Applicability

Acts 2011, 82nd Leg., ch. 137 (S.B. 529) § 16 provides: "The change in law made by this Act applies only to an agreement entered into or renewed under Chapter 2301, Occupations Code, on or after the effective date of this Act [September 1, 2011]. An agreement entered into or renewed before the effective date of this Act is governed by the law in effect on the date the agreement was entered into or renewed, and the former law is continued in effect for that purpose."

Tex. Occ. Code § 2301.522

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Sec. 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.

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003.

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Sec. 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.

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003.

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Sec. 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.

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003.

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Sec. 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.

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003.

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Sec. 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.

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003.

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Sec. 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.

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003.

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Sec. 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.

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003.

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Tex. Occ. Code § 2301.6521

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Sec. 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.

History

Enacted by Acts 2011, 82nd Leg., ch. 137 (S.B. 529), § 14, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 1338 (S.B. 854), § 2, effective June 14, 2013.

Annotations

Notes

STATUTORY NOTES

Amendment Notes

2013 amendment, rewrote (d), which read: “A dealer may not protest an application to relocate a dealership under this section if the proposed relocation site is two miles or less from the dealership’s current location.”

Applicability

Acts 2011, 82nd Leg., ch. 137 (S.B. 529) § 16 provides: “The change in law made by this Act applies only to an agreement entered into or renewed under Chapter 2301, Occupations Code, on or after the effective date of this Act [September 1, 2011]. An agreement entered into or renewed before the effective date of this Act is governed by the law in effect on the date the agreement was entered into or renewed, and the former law is continued in effect for that purpose.”

Acts 2013, 83rd Leg., ch. 1338 (S.B. 854), § 4 provides: “Subsection (d), Section 2301.6521, Occupations Code, as amended by this Act, applies only to an application to relocate a dealership that is made on or after the effective date of this Act [June 14, 2013]. An application made before that date is governed by the law in effect on the date the application was made, and the former law is continued in effect for that purpose.”

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Sec. 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).

History

Enacted by Acts 2011, 82nd Leg., ch. 137 (S.B. 529), § 14, effective September 1, 2011.

Annotations

Notes

STATUTORY NOTES

Applicability

Tex. Occ. Code § 2301.6522

Acts 2011, 82nd Leg., ch. 137 (S.B. 529) § 16 provides: "The change in law made by this Act applies only to an agreement entered into or renewed under Chapter 2301, Occupations Code, on or after the effective date of this Act [September 1, 2011]. An agreement entered into or renewed before the effective date of this Act is governed by the law in effect on the date the agreement was entered into or renewed, and the former law is continued in effect for that purpose."

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Sec. 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.

History

Enacted by Acts 2001, 77th Leg., ch. 1421 (H.B. 2813), § 5, effective June 1, 2003; am. Acts 2013, 83rd Leg., ch. 1135 (H.B. 2741), § 31, effective September 1, 2013.

Annotations

Notes

STATUTORY NOTES

Amendment Notes

2013 amendment, in the introductory language of (a), deleted “or director under this chapter or under another law” before “with respect to” and added “or Chapter 503, Transportation Code.”

Applicability

Acts 2013, 83rd Leg., ch. 1135 (H.B. 2741), § 141 provides: "The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act [September 1, 2013]. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date."

Notes to Decisions

Administrative Law: Judicial Review: Remands & Remittiturs

Administrative Law: Judicial Review: Reviewability: Final Order Requirement

Administrative Law: Judicial Review: Standards of Review: Substantial Evidence

Antitrust & Trade Law: Consumer Protection: Vehicle Warranties: Lemon Laws

Business & Corporate Law: Distributorships & Franchises: Assignments & Transfers

Business & Corporate Law: Distributorships & Franchises: Remedies: Punitive Damages

Business & Corporate Law: Distributorships & Franchises: Terminations: Good Cause

Administrative Law: Judicial Review: Remands & Remittiturs

Motor Vehicle Board of the Texas Department of Transportation did not have the power on remand to revisit its prior finding that the automobile manufacturer failed to show good cause to terminate a franchise under Tex. Occ. Code Ann. § 2301.453 because the trial court's order excluded the good cause issue from the scope of remand; the trial court's express finding of substantial evidence to support the good cause finding was discussed separately from the conclusion that the remedy imposed was unlawful, which was followed immediately by the order of remand; the language and structure showed that the trial court's order did not include the affirmed good cause determination with the scope of remand. *Freightliner Corp. v. Motor Vehicle Bd. of the Tex. DOT*, 255 S.W.3d 356, 2008 Tex. App. LEXIS 3191 (Tex. App. Austin May 1, 2008, no pet.).

Administrative Law: Judicial Review: Reviewability: Final Order Requirement

Any party affected by a final Texas Motor Vehicle Board order, rule, decision, or action may obtain judicial review under the substantial evidence rule in a Travis County district court or, if removed, in the Texas Third Court of Appeals, former Tex. Rev. Civ. Stat. Ann. art. 4413(36), § 7.01(a) (now Tex. Occ. Code Ann. § 2301.751). *Subaru of Am. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 2002 Tex. LEXIS 96 (Tex. 2002).

Effect of amendments to Occupations Code deprived the court of jurisdiction it previously had to review an order under Tex. Occ. Code Ann. § 2301.751(a); the chief hearing officer's dismissal order in a Lemon Law case was not a "final order of the board" by virtue of Tex. Occ. Code Ann. § 2301.154(e) and could not be appealed under § 2301.751(a). *Keystone RV Co. v. Tex. DMV*, 507 S.W.3d 829, 2016 Tex. App. LEXIS 12106 (Tex. App. Austin Nov. 10, 2016, no pet.).

Administrative Law: Judicial Review: Standards of Review: Substantial Evidence

Any party affected by a final Texas Motor Vehicle Board order, rule, decision, or action may obtain judicial review under the substantial evidence rule in a Travis County district court or, if removed, in the Texas Third Court of

Tex. Occ. Code § 2301.751

Appeals, former Tex. Rev. Civ. Stat. Ann. art. 4413(36), § 7.01(a) (now Tex. Occ. Code Ann. § 2301.751). *Subaru of Am. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 2002 Tex. LEXIS 96 (Tex. 2002).

Board properly approved the proposed modification of the franchise agreement because the board did consider the most recent data but also properly examined data from recent years, and appellant failed to show the board's findings or decision were arbitrary or capricious or otherwise reversibly erroneous under Tex. Gov't Code Ann. § 2001.174(2). *Sweeten Truck Ctr., L.C. v. Volvo Trucks N. Am.*, No. 03-16-00068-CV, 2016 Tex. App. LEXIS 10069 (Tex. App. Austin Sept. 13, 2016).

Agency's order revoking the appellant's dealer's license was affirmed because he had not presented the court with argument or evidence in the record that defeated the presumption that the agency's final order or the agency's director's order denying the motion for rehearing was supported by substantial evidence. The appellant did not identify any particular finding of fact, conclusion of law, evidentiary or legal ruling, or legal or factual basis that was erroneous. *Atkins v. Tex. DMV*, No. 03-19-00964-CV, 2021 Tex. App. LEXIS 9342 (Tex. App. Austin Nov. 18, 2021).

Antitrust & Trade Law: Consumer Protection: Vehicle Warranties: Lemon Laws

Effect of amendments to Occupations Code deprived the court of jurisdiction it previously had to review an order under Tex. Occ. Code Ann. § 2301.751(a); the chief hearing officer's dismissal order in a Lemon Law case was not a "final order of the board" by virtue of Tex. Occ. Code Ann. § 2301.154(e) and could not be appealed under § 2301.751(a). *Keystone RV Co. v. Tex. DMV*, 507 S.W.3d 829, 2016 Tex. App. LEXIS 12106 (Tex. App. Austin Nov. 10, 2016, no pet.).

Business & Corporate Law: Distributorships & Franchises: Assignments & Transfers

Motor Vehicle Board of the Texas Department of Transportation's imposition of a civil penalty under Tex. Occ. Code Ann. § 2301.801 against the corporation for opposing the franchisee's proposed transfer of its franchise was not supported by substantial evidence and exceeded the Board's power because the corporation's relationship with the franchisee was limited to being a Board-mandated supplier of heavy-duty trucks to the franchisee; any franchise relationship was potential only, not actual; therefore, the franchise was not required to notify the corporation of the proposed transfer and the corporation was not required to approve or reject it. *Sterling Truck Corp. v. Motor Vehicle Bd. of the Tex. DOT*, 255 S.W.3d 368, 2008 Tex. App. LEXIS 3193 (Tex. App. Austin May 1, 2008, no pet.).

Business & Corporate Law: Distributorships & Franchises: Remedies: Punitive Damages

Motor Vehicle Board of the Texas Department of Transportation's imposition of a civil penalty under Tex. Occ. Code Ann. § 2301.801 against the corporation for opposing the franchisee's proposed transfer of its franchise was not supported by substantial evidence and exceeded the Board's power because the corporation's relationship with the franchisee was limited to being a Board-mandated supplier of heavy-duty trucks to the franchisee; any franchise relationship was potential only, not actual; therefore, the franchise was not required to notify the corporation of the proposed transfer and the corporation was not required to approve or reject it. *Sterling Truck Corp. v. Motor Vehicle Bd. of the Tex. DOT*, 255 S.W.3d 368, 2008 Tex. App. LEXIS 3193 (Tex. App. Austin May 1, 2008, no pet.).

Business & Corporate Law: Distributorships & Franchises: Terminations: Good Cause

Motor Vehicle Board of the Texas Department of Transportation did not have the power on remand to revisit its prior finding that the automobile manufacturer failed to show good cause to terminate a franchise under Tex. Occ. Code

Tex. Occ. Code § 2301.751

Ann. § 2301.453 because the trial court's order excluded the good cause issue from the scope of remand; the trial court's express finding of substantial evidence to support the good cause finding was discussed separately from the conclusion that the remedy imposed was unlawful, which was followed immediately by the order of remand; the language and structure showed that the trial court's order did not include the affirmed good cause determination with the scope of remand. *Freightliner Corp. v. Motor Vehicle Bd. of the Tex. DOT*, 255 S.W.3d 356, 2008 Tex. App. LEXIS 3191 (Tex. App. Austin May 1, 2008, no pet.).

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