

to be unfit or to be acting in a manner detrimental to a sound system of distribution or sale of motor vehicles in Texas.

COMMENTS

No comments on the proposed new sections were received.

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §503.002 and §1002.001, and under Occupations Code, §2301.153 and §2301.155, which provide the Board of the Texas Department of Motor Vehicles the authority to establish rules for the conduct of the work of the department; under Transportation Code, §503.038, which authorizes the department to cancel a dealer's general distinguishing number license if the dealer violates a rule adopted under Transportation Code, Chapter 503; under Occupations Code, §53.025, which requires the department to issue guidelines stating the reasons a particular crime relates to a particular license; under Occupations Code, §§2301.151-2301.153 and 2301.155, which provide the board's jurisdiction, require the board to ensure that the regulation of motor vehicles in Texas is conducted as required by board rules, and empower and authorize the board to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; under §2301.351, which prohibits a dealer from violating a board rule; and under Occupations Code, §2301.651, which provides for the board's denial of an application for license or revocation or suspension of a license if the applicant or license holder is unfit under standards described in board rules.

CROSS REFERENCE TO STATUTE

Occupations Code, §§53.021, 53.022 - 53.025, and 2301.651.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER H. DEPUTIES

43 TAC §217.111

The Texas Department of Motor Vehicles (department) adopts new Subchapter H, Deputies, §217.111, Deputies, which was proposed as §217.111, Purpose and Scope, with changes to the proposed text as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3974). Adopted new §217.111 will be republished. The department simultaneously withdraws proposed new §§217.112 - 217.116 as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3974).

EXPLANATION OF ADOPTED NEW SUBCHAPTER

The new subchapter implements Transportation Code, §520.0071, as added by House Bill 2741 and House Bill 2202, 83rd Legislature, Regular Session, 2013. Section 520.0071 requires the board by rule to prescribe the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county assessor-collector for a deputy to perform titling and registration duties, and the fees that may be charged or retained by deputies.

These bills also repealed Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092, which had governed deputies providing titling and registration services.

Both of these bills also provided that a deputy appointed under Transportation Code, §520.0091 on or before August 31, 2013, may continue to perform the services authorized under Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092, until the effective date of the rules regarding the types of deputies authorized to perform titling and registration duties under Transportation Code, §520.0071.

The proposed new sections of Subchapter H were intended to fill the void created by the repeal of the former Transportation Code sections describing deputies and their duties and obligations, and to implement the legislative directive to prescribe rules governing deputies performing titling and registration duties. The fees proposed under this rulemaking were intended to be temporary, until the completion of a study of the cost to process motor vehicle registration and titling transactions. After the study was completed and the findings presented to the board of the department, the board would then decide whether to reopen the rules for amendment.

The publication of the proposed new rules resulted in a great number of comments from the public, including comments from stakeholders such as county tax assessor-collectors, title companies, automobile dealers, industry groups, and other concerned private and public citizens and organizations. These comments are summarized in more detail in the "comments" section below.

Many of the comments expressed the concern that the proposed additional fees that deputies could charge for providing titling and registration services were too low, so that many deputies would be put out of business or refuse to continue to provide titling and registration services as deputies. Many of the comments expressed the concern that the loss of deputies would impose increased financial and workflow burdens on the county tax assessor-collectors, and would greatly inconvenience those customers who prefer the convenience, additional services, and improved efficiency that a deputy may offer.

Several commenters urged the department to wait until the completion of the comprehensive titling and registration fee study, which is expected to be completed in November 2014, before enacting rules related to deputy fees. Several commenters also urged that the department convene a working group of stakeholders, including industry groups, representative county tax assessor-collectors, and other interested parties, to discuss deputy issues, including fees, before the adoption of the deputy rules.

In response to these comments, the department is withdrawing the proposed deputy rules (except for §217.111, which is being modified, as explained below). The department will repropose new deputy rules following the completion of the fee study and following additional discussions with stakeholders and other interested parties.

New §217.111, Deputies, is required to maintain the current status quo for deputies until such time as the department is able to adopt comprehensive deputy rules following the completion of the fee study and discussions with stakeholders and interested parties. This new section makes clear that county tax assessor-collectors may continue to appoint new deputies prior to the adoption of comprehensive deputy rules. This new section also makes clear that existing and newly appointed deputies will continue to provide the services authorized under the former statutory provisions of Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092.

COMMENTS

The department received comments from 160 groups, businesses, and citizens, expressing their concerns regarding the proposed rules.

The following 85 commenters asked that the independent titling companies be allowed to remain in business as they provide a valued and needed service: Anna Behiti, Austinite Auto Sales; Judith A. Beers; Michael C. Miller; Candace A. York; Shelby Sumerlin; Adrian Castellanos; Danny Owens, Clearwater Transportation, LTD d/b/a Dollar Thrifty Car Rental; Kelly Laake, Magnum Custom Trailers; Jan Hardcastle, C.C. Carlton Industries, Ltd.; John Pickens; Karen Ratliff; William Young; Michael McCormack; Brad and Kathy Hill; Ace L. Burt; Timothy Catlin Whittington; Val Emrick; Jessica Smith; David Dorette; Carole A. Griffin; Megan Donahue, Covert Ford; Danny Dawdy; Doyle Antle; Boughan Auto Sales; Martha Grona; Billie Davison; Apple Leasing; Ceasar A. Hernandez, Auto Motors Austin LLC; Shanna Lea; Craig Cherico; Robert R. Krull, Lone Star BMW/Triumph; Raymond Klingermann, Klingermann Car Care Center; Charles Mautz; Homer and Mickey Owens; Bonnie P. Keller, Kyle Chapman Motor Sales; Gloria Wuthrich; William H. Pitts; Michael K. Lucero; Jack Petrucelli, QSI Truck Sales; Wm. Turansky; Denio Adams; Jessica Kapusinski; Wendy Brooks; Roger Hankins, RGB Auto Sales; Kristoffer Aaron Morgan; Sid Mourning Tree Service, Inc.; Mike Sullivan; Jim Olmstead, Sybil Childers, and Andrea Baker, First Texas Honda; George Frock; Craig McKinley; Marla Wilkerson, Frances Martin, Rebecca Evans, and Sharla Marek, Covert Cadillac Buick GMC; Charlene Glimp and Heidi Frederick, Covert Buick, Inc.; BJ Gray; James P. Willie; Anne Markley; Sean Mahan; Katie Farmer, Cars of Austin.com, LLC; Sid Mourning and Tracy Allison; Randy Norris; Rosie Johnson, R & D Motors; Joe Essler; Earl Campbell; Heather Diaz, South Point Hyundai; Avery Strait; Johnny C.; Howard Gatewood; Rosa Olivares; Robert and Cynthia Labuda; Mona Rodriguez, Texas Auto Center, LLC; Cynthia Garrett, Drive Trainers Campus, Inc.; Amy Menchaca, Charles Maund Imports; Billy Cockrell; Mary Ann Hotmann, Charles Maund Toyota; Tori Mykal Bove; Anne and John Ramsey; Carlos Reyna; Charles Floyd; Cord Shiflet; and Katrina Scheihing.

The following 17 commenters stated that the fees currently charged by deputies are reasonable and requested that the deputies be allowed to continue to stay in business: David S. Jellison; Michelle Buffington, Elite Motorsports; Irene Porras, Covert Chrysler Dodge Jeep Ram; Karin Phillips, Texas Trucks & Toys; Pat Urbach; Highway Gmail; Todd Danz; Michael Wehbe, N.F.W. Auto Sales; Danette and Dick Bottos; Angela Ortiz, Covert Buick, Inc.; Lee Hagy; Jon Minor; Glenn L. Randle; Ben Joyce; Mona Chmeis, Hi-Tech Automotive; Joseph Thorne Gilbert; and Kathleen Davis.

The department received nine comments stating that customers should have the right to choose between taking their titling or

registration transactions to the county tax assessor-collectors or to deputies, including comments from: David Huggins; Jerry Grona; J. Urbach, Sr.; Skull; Regena Baker, Stepping Stone Schools; Linda Lamkin, Henna Chevrolet LP; Felisha Flores; Debbie Stuart, Terry Sayther Automotive; and David Lamping, Flamingo Motor Cars.

The following six commenters stated that the fees currently being charged were reasonable; that the proposed fees are too low; and/or that a reasonable fee should be allowed: Leon Whitney; Jinee Rizzo, Ph.D; Miles Frost; Angela Vasconcellos; Jimmy D. Lillard; and Olga Campos. The following five commenters stated that the public should have the right to choose whether they wanted to pay the additional fee for the services provided by deputies: Jeremy Raquet; Joe Jackson; Darla Jackson; Jeanne L. Samson, Levelfield Auto; and Maria Vara.

There were six comments in support of the titling service companies from: Allison Patterson, South Point Hyundai; Sharla Resseguie, Capitol Car Credit; Emily Hutchinson; Ducati Austin; William Haskell, Khitomer Solutions; and Starkar Auto Sales.

John Brodnax stated that the fees charged are reasonable and the public should be given the right to choose. John Taylor; and Anton Ratsa, East West Auto Sales, recommended that titling businesses not be regulated by the government and that they be allowed to remain open. Allan Brandes and Mike Bell recommended that titling businesses not be regulated by the government and stated that the current fees were reasonable.

Kathy Wagner stated that the fees being charged were fair and requested that a working group be established to come to a fair solution.

The county tax assessor-collectors from Denton, Dallas, Brazos, Lubbock, Williamson, Travis, Tarrant, Collin, Bexar, Harris and El Paso counties, along with the Tax Assessor-Collectors Association of Texas (TACA), filed comments detailing suggested changes to the proposed rules and suggesting a working group be established to discuss the rules before adoption. The Texas Association of Counties (TAC) supported the comments of TACA.

The following title companies submitted comments: Tri Star Auto Title; Texas Auto Registration and Titles; Monica Ramirez, El Paso Auto Registration & Titling; Nubia Acosta, EZ Title Registration Inc.; Donna Childress, Sharon Gattis, and Rita Newton, Universal Auto Title Services; and Chris Moravec and Patience Urbach, Fry Auto Title Services. These comments generally requested that deputies be allowed to determine the additional fees that they charge their customers, that customers be given the right to choose, and that they be included in a formal, professional study to determine the allowable additional fees and other rules concerning deputies.

The department received comments from the Texas Automobile Dealers Association (TADA), suggesting separate deputy or licensing rules for the dealer community, bond requirements, and participation in the department's electronic title processing system. The Texas Independent Automobile Dealers Association (TIADA) requested an adjustment of the proposed fee limits and supported the recommendations of TADA, TAC, and TACA.

Additional comments were received from the Travis County Commissioners Court, requesting that the department work with the tax offices at the county level; and from Bill Aleshire of Riggs, Aleshire & Ray, P.C., on behalf of Travis Auto Title

Companies, requesting to participate in a formal, professional study regarding the rules.

RESPONSE

The proposed rules prescribed the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county assessor-collector for a deputy to perform titling and registration duties, and the fees that may be charged or retained by deputies. The board agrees with those commenters who suggested that these rules not be adopted until the pending fee study is completed and stakeholders and other interested parties are further consulted.

At this time, the board withdraws proposed new §217.112, Definitions; §217.113, Full Service Deputies; §217.114, Limited Service Deputies; §217.115, Bonding Requirements; and §217.116, Deputy Fees, with neither concurrence nor disagreement with comments received. The board will repropose these sections after the completion of the pending fee study and further consultation with stakeholders and other interested parties.

New §217.111, Deputies, maintains the current status quo for deputies until such time as the department is able to adopt comprehensive deputy rules following the completion of the fee study and discussions with stakeholders and interested parties. This new section makes clear that county tax assessor-collectors may continue to appoint new deputies while the new deputy rules are being considered. This new section also makes clear that existing and new deputies will continue to provide the services authorized under the former statutory provisions of Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092.

STATUTORY AUTHORITY

The new section is adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Chapter 502, Registration of Vehicles; Transportation Code, §520.003, which provides the department may adopt rules to administer Chapter 520, Miscellaneous Pro-

visions; and more specifically, Transportation Code, §520.004, which provides the department by rule shall establish standards for uniformity and service quality for counties and dealers; and Transportation Code, §520.0071, which provides the board by rule shall prescribe the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county assessor-collector for a deputy to perform titling and registration duties, and the fees that may be charged or retained by deputies.

CROSS REFERENCE TO STATUTE

Finance Code, §348.005 and §353.006; and Transportation Code, §§501.076, 502.191, 502.1911, 502.197, and 520.007.

§217.111. *Deputies.*

(a) A county assessor-collector with the approval of the commissioners court of the county may deputize a person to perform the services authorized under former Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092, as amended by Acts 2011, 82nd Leg., ch. 1296 (H.B. 2357), effective January 1, 2012.

(b) A deputy appointed under Transportation Code, §520.0091 may perform the services authorized under former Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092, as amended by Acts 2011, 82nd Leg., ch. 1296 (H.B. 2357), effective January 1, 2012.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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