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Serving the RV industry since 1974!

May 21, 2018

Mr. Ken Levine
Director
Sunset Advisory Commission
P.O. Box 13066
Austin, TX 78711

Via email: sunset@sunset.texas.gov

Dear Director Levine,

The Texas Recreational Vehicle Association (TRVA) represents dealers who sell towable travel trailers and motorhomes, aka, recreational vehicles (RV's). These dealers are regulated by the Texas Department of Motor Vehicles (TxDMV) under Chapter 2301 of the Occupations Code and Chapter 501 of the Transportation Code. On behalf of TRVA, please accept these comments in reference to the 2018-2019 Sunset Staff Report on the Texas Department of Motor Vehicles.

Motor Vehicle Shows and Exhibitions:

TRVA disagrees with the staff's recommendation to eliminate the TxDMV's ability to set and enforce requirements for motor vehicle shows and exhibitions. Elimination of agency enforcement would have negative consequences for the public and for licensed dealers who abide by the law.

The potential deregulation of these events could revert the industry back to the times when rogue shows and itinerant sellers caused problems for consumers and licensed dealers, and eventually led to the current regulatory requirements. One of the basic reasons TxDMV oversees shows and exhibitions is to make sure those history lessons are not repeated.

If not properly regulated, motor vehicle shows present the same types of problems that led to regulation of the door-to-door and other "off premises" sales industry under both state and federal law—the seller can be here today and gone tomorrow. In the case of motor vehicle shows, the consequences are far more costly than in the case of the door to door vacuum cleaner salesperson.





With the current regulation, the Department knows in advance that a show is being held and can have a representative attend the show to watch for, among other things, participants being licensed dealers, compliance with Chapter 601 of the Texas Business & Commerce Code (the Texas three day right of rescission statute), Texas rules relating to advertising, issues under the Texas Deceptive Trade Practices Act, etc. Without at least the current level of regulation, the Department may not even know that a show is being held. Further, an unscrupulous show promoter whose past shows have resulted in problems could continue to hold further shows without the Department's knowledge.

The requirement that the shows be open to licensed dealers in the area provides an important public function. As one example, without this protection a group of dealers affiliated by common ownership or control could have a closed show and not invite any competitors to attend. A prospective buyer would get the false impression that the prices quoted by the affiliates are competitive, when in fact the actual competitors have been excluded from the show. Local dealers that have invested heavily in personnel and facilities to stand behind what they sell, and that are in a position to provide service after the sale, could be excluded from competing.

Regulation of the shows is necessary to foster competition and to present a level playing field in the highly competitive dealer marketplace. The staff reports show that there is a low level of legal violations at shows under the current regulatory approach. This is evidence of the effectiveness of the current rules, rather than a reason to do away with what is working. To address the evolving market, TxDMV should retain the ability to approve or disapprove shows and to strengthen and adjust the rules as new problems arise.

Changing the Makeup of the TxDMV Board:

TRVA supports the current structure of the TxDMV Board and the appointment of its presiding officer by the Texas Governor. If the Commission determines that an additional public member would be helpful, an additional position could be added rather than taking away one of the existing dealer positions.

The Board's effectiveness would be reduced by reducing the number of dealer representatives to one. Dealers range from small single location dealerships to dealers that are part of large dealer groups, and from small town dealers in rural areas to large dealers in metro areas. In addition, besides passenger car and light truck dealers, the TxDMV regulates heavy truck dealers, motor home dealers, towable RV dealers, and motorcycle dealers. A single representative could not bring the diversity needed to provide the necessary insight and experience of these diverse groups.

A significant part of the Board's work relates to enforcement of Chapter 2301 of the Texas Occupations Code. That chapter regulates relationships between manufacturers and franchised





dealers. The courts have consistently recognized and deferred to the Board's expertise and decisions on those issues. *See, e.g., Ford Motor Co. v. Bob Tomes Ford, Inc.*, 2010 Dist. Lexis 135092 (E. D. Tex. 2010). In that case, the United States District Court for the Eastern District of Texas was presented with a dispute in which the manufacturer asked the Court to require a Ford/Lincoln dealer, Tomes, to drop its Subaru franchise and file a plan to reinstate its dealership facility to the condition that existed before addition of the Subaru franchise. The Court deferred to the Texas Motor Vehicle Board to determine the issue. The Magistrate Judge's opinion reflects the deference that the courts have afforded to the Board in manufacturer-dealer disputes, and the need for Board members with dealer and manufacturer experience:

The essence of this dispute is whether addition of Subaru by Tomes is a violation of the franchise agreement . . . The Board has exclusive jurisdiction of this matter, and the case should be dismissed.

As stated, ". . . the Court is not - and should not be - in the car business."

Therefore, even judges have recognized that these types of disputes are best addressed by those who know the car business, not by judges or laymen on juries.

The dealer representatives and manufacturer representative are much more knowledgeable regarding the intricate and complicated relationships between dealers and manufacturers that the Board regulates than a lay person or even a judge would be.

Likewise, dealers have a strong interest in requiring manufacturers to comply with their "Lemon law" responsibilities, in order to keep the dealers' customers satisfied and the dealers reimbursed for repairing the vehicles to comply with the manufacturers' warranties.

Dealer members have a strong motivation to require manufacturers and other dealers to comply with the law and ethical standards, and to keep bad actors out of the industry. The Governor can be relied on to appoint dealers that have integrity, judgment, experience and knowledge, and who use their experience to make fair decisions.

As noted, the dealers in Texas range from small family-run operations to large multi-point groups. Having only one dealer member would prevent the diversity of views needed to fairly represent dealers. In addition, having only one dealer member would upset the dealer-manufacturer balance on the Board.

Besides allowing for representation of the diverse types of dealers, there is another reason that the Board has more dealer members than manufacturer members—to partially address the disparity of bargaining position between manufacturers and dealers. The two franchised dealer members may or may not agree on a particular case, but even if they agree they still must be





joined by at least three other members to form a majority. The current approach is a major improvement over the days before the Board and its predecessor was formed, and has substantially benefitted the public and improved manufacturer-dealer relations.

In addition to the current two designated public members, one of the board positions is reserved for a County Tax Assessor-Collector, who represents the public as an elected public official, and another, the law enforcement officer, is also a public member insofar as manufacturer-dealer disputes are concerned. The motor carrier industry and independent (non-franchised) dealer representatives likewise would not have experience in manufacturer-dealer issues.

Recommending the Agency be Continued:

And lastly, TRVA supports the continuance of the TxDMV for another twelve years and urges the Sunset Commission to recommend its continuance to the Texas Legislature.

Thank you for allowing our industry to comment and if any questions arise please feel free to contact me at your convenience.

Best regards,

A handwritten signature in cursive script that reads "Phil Elam".

Phil Elam
Executive Director
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