



1108 Lavaca, Suite 800
Austin, Texas 78701
Phone: 512-476-2686
www.tada.org

May 10, 2018

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

Sent via email: sunset@sunset.texas.gov

Re: Sunset Staff Report on the TxDMV

Dear Director Levine:

On behalf of the approximately 1,355 members of the Texas Automobile Dealers Association (TADA), please accept these comments from the franchised motor vehicle and truck dealers in Texas with respect to the 2018-2019 Sunset Staff Report (Staff Report) on the Texas Department of Motor Vehicles (TxDMV).

TADA recognizes the time and effort expended by the Sunset Advisory Commission staff and is in agreement with the staff's recommendation to continue the TxDMV for 12 years, as stated in Recommendation 5.1 (Staff Report at 55).

TxDMV BOARD¹

An understanding of the motor vehicle industry is necessary in order to comprehend the necessity of the industry's participation in the state's oversight. The manufacturer, distributor, and franchised dealer relationship does not necessarily follow conventional wisdom. Conventional wisdom tends

¹Staff Report at 11 - 20.

not to discern that the franchised dealer is a small to publicly-traded business and independent from the franchisor; yet, each franchisee is dependent upon the franchisor for motor vehicles, parts, recall information, warranty claims, payment, and evenhandedness.

Knowledge of the dealer's franchise or sales and service agreement and the responsibilities and requirements placed on the franchised dealer by the franchisor is not well known by the public. The complexities of the franchised dealer's multi-faceted business are numerous and without the guidance from this specialized community as well as an historical perspective of the industry, many misconceptions will continue and unsound decisions may follow—to the detriment of the state and the public as well as the regulated community.

Nonetheless, the franchised dealer intra-brand competition model brings about the most desirable and competitive motor vehicle sales and service arrangement benefitting all parties, particularly the public and state in price, choice, convenience, and repairs.

An understanding of the many aspects involving the franchised motor vehicle business and the impact of the numerous statutes and regulations touching the industry is necessary in making just and equitable decisions involving millions of dollars, impacting numerous employment decisions, tax ramifications, and the impact on the public.

Many states also recognize the importance of constituting motor vehicle boards and commissions with industry members. For example: California's nine-member board requires four new motor vehicle dealers;² Colorado's nine-member board includes three franchised dealers, three independent dealers, and three public members;³ Ohio's eleven-member board includes three new motor vehicle dealers, one recreational vehicle dealer, one used motor vehicle dealer, and two members who are engaged in the leasing of motor vehicles.⁴

In Oklahoma, their commission is composed of nine members of whom seven of the members are engaged in the sale, manufacture, or distribution of new motor vehicles and two are public members;⁵ and, Virginia's board is nineteen members--ten are franchised dealers and seven are independent dealers.⁶

It cannot be overstated that there is a necessity to have the expertise of the franchised dealers as

²CAL. VEH. CODE §§ 3000 - 3001 (2017).

³COLO. REV. STAT. § 12-6-103 (2017).

⁴OHIO REV. CODE § 4517.30 (2018).

⁵OKLA. STAT. 47 § 563 (2017).

⁶VA. CODE ANN. § 46.2-1503 (2017).

board members in order to carry out the construction and purpose of the state's licensing and oversight of the distributing and selling of motor vehicles as outlined in § 2301.001, Occupations Code.⁷ The legislature has also determined that industry expertise is necessary for other state boards⁸ just as in the motor vehicle industry.

Background

H. B. 3097⁹ created the current TxDMV in 2009, and a transfer of all powers, duties, obligations, and rights of action of the Motor Vehicle Division and the Vehicle Titles and Registration Division of the Texas Department of Transportation transferred to the TxDMV as well as all powers, duties, obligations, and rights of the Texas Transportation Commission in connection or associated with those divisions of the TxDMV, transferred to the board on November 1, 2009.

In addition, the Motor Carrier Division of the Texas Department of Transportation that is responsible for motor carrier registration and enforcement transferred to the TxDMV and the associated powers, duties, obligations, and rights of action of the Texas Transportation Commission transferred to the board of the TxDMV on November 1, 2009.¹⁰

Historically, a commission overseeing the motor vehicle industry goes back to 1971 when the 62nd Legislature created the Texas Motor Vehicle Commission¹¹ and adopted the Texas Motor Vehicle

⁷TEX. OCC. CODE ANN. § 2301.001 (Vernon 2012).

⁸The Texas Board of Public Accountancy consists of fifteen members—ten certified public account members and five public members. (TEX. OCC. CODE ANN. § 901.051 (Vernon 2012). The State Board of Dental Examiners is an eleven-member board with six dentist members, three dental hygienist members, and two public members. (TEX. OCC. CODE ANN. § 252.001 (Vernon 2012). The Texas Board of Chiropractic Examiners has nine members of whom six or chiropractors and three are public members. (TEX. OCC. CODE ANN. § 201.051 (Vernon 2012).

⁹Act of Sept. 1, 2009, 81st Leg., R.S., ch. 933, 2009 Tex. Gen. Laws 2485.

¹⁰*Id.*

¹¹Act of April 7, 1971, 62nd Leg., R.S., ch. 51, 1971 Tex. Gen. Laws 89.

S.B. 140: “An Act relating to the creation, organization, powers, duties, and procedures of the Texas Motor Vehicle Commission; providing and establishing the requirements for the licensing of persons engaged in the business as franchise new motor vehicle dealers and new motor vehicle manufacturers and distributor and their representatives and the renewal of such licenses; providing fees for the issuance of licenses; providing grounds for refusal to license and revocation and suspension of licenses; providing certain prohibited acts on the part of franchise new motor vehicle dealers and new motor vehicle manufacturers and distributors and their representatives without regard to the terms of the franchise agreements between the parties;

Commission Code. The commission's initial six-person board consisted of four franchised dealers and two public members.

In 1979,¹² the commission was increased to nine persons, five franchised dealers and four public members. The commission was reduced to six persons in 1987¹³ with eligibility limited to no interest in a business that manufactures, distributes, converts, or sells motor vehicles. In 1991,¹⁴ the Texas Department of Transportation [formerly State Department of Highways and Public Transportation] was created with a Motor Vehicle Division and a Motor Vehicle Board. This board was comprised of six persons and abolished the Texas Motor Vehicle Commission.

In 1997,¹⁵ the nine-member board required two dealers with one mandated to be a franchised dealer and a third member required to be a representative of a motor vehicle manufacturer or distributor.

In 2005,¹⁶ the Texas Department of Transportation's commission assumed the responsibilities of the board and in 2009, the 81st Legislature constituted the TxDMV with the nine-member board's current complement:

Three members must be persons who hold a dealer's license issued under Chapter 2301, Occupations Code, of whom two must be franchised dealers of different classes and one must be an independent dealer; one member must be a representative of a manufacturer or distributor that holds a license under Chapter 2301, Occupations Code; one member must be a tax assessor-collector; one member must be a member of a law enforcement agency of a county or municipality; and, one member must be a representative of the motor carrier industry. The remaining members must be public members.¹⁷

The 62nd Legislature through the current legislature grasps the importance of the franchised motor vehicle and truck dealer to the public and to the state as intra-brand competition serves the state and

providing for suits for civil penalties and injunction for violation of the Act; providing for appeals from actions taken by the Commission; enacting other provisions relating to the subject; providing for severability of the Act; and declaring an emergency."

¹²Act of Sept. 1, 1979, 66th Leg., R.S., ch. 709, 1979 Tex. Gen. Laws 1725.

¹³Act of June 11, 1987, 70th Leg., R.S., ch. 357, 1987 Tex. Gen. Laws 1781.

¹⁴Act of Sept. 1, 1991, 72nd Leg., 1st C. S., ch. 7, 1991 Tex. Gen. Laws 226.

¹⁵Act of June 11, 1997, 75th Leg., R.S., ch. 639, 1997 Tex. Gen. Laws 2185.

¹⁶Act of June 14, 2005, 79th Leg., R.S., ch. 281, 2005 Tex. Gen. Laws 778, 839.

¹⁷TEX. TRANSP. CODE ANN. § 1001.021 (Vernon 2011).

public optimally. According to information compiled by TADA, the franchised motor vehicle dealer is in 292 Texas cities and towns. The franchised dealer-body engages over 100,000 employees with an annual payroll of \$6.25 billion. The franchised dealer's retail dollar sales as a percentage of the state's total retail dollar sales is 20.6%.

As the motor vehicle industry is an integral fabric of the lives of the state's citizenry and revenue, licensing and regulating the persons who engage in the motor vehicle industry, i.e., manufacturers, distributors, converters, franchised dealers, independent dealers, lessors, and lease facilitators, is necessary.

The insight of the 62nd Legislature in 1971 and carried forward by successive legislatures, is demonstrated in one of the stated purposes for the enactment of the Texas Motor Vehicle Commission Code:

An Act. . .providing certain prohibited acts on the part of franchise new motor vehicle dealers and new motor vehicle manufacturers and distributors and their representatives without regard to the terms of the franchise agreements between the parties; . . .¹⁸

The recognition that the state must begin to bring equanimity as well as an understanding of the control and command over the franchisee from the franchisor necessitated the state to oversee this all-important intra-brand competitive model and relationship as well as ensuring that the public's and state's needs are administered.

The policy and purpose provision for the statute remains almost identical since its enactment.¹⁹ There is a recognition on the part of the legislature that the sale and distribution of motor vehicles vitally affects the state's economy as well as the public interest and the welfare of all Texans. The statute is to be liberally construed, including the state's exercise of its police power, through licensing and regulating and enforcing the law for compliance with warranties and to prevent fraud, unfair practices, discrimination, impositions, or other abuses.²⁰

The franchised motor vehicle dealers are needed as board members for their historical and hands-on experience and knowledge. It is in the best interests of the public and the state to include their participation at the TxDMV.

¹⁸*Id.* at Footnote 11.

¹⁹*Id.* at § 2301.001.

²⁰*Id.*

North Carolina State Board of Dental Examiners Inapplicable

A reliance upon North Carolina State Board of Dental Examiners v. Federal Trade Commission²¹ (hereinafter referred to as Dental Examiners) for a justification to reduce the number of franchised dealers on the nine-member TxDMV board from two to one eschews the differences in Dental Examiners with its lack of state action supervision and the TxDMV's make-up and active state supervision.

In Dental Examiners, the North Carolina State Board of Dental Examiners is charged with regulating the practice of dentistry. The board's principal duty is to license dentists on behalf of the state in accordance with the North Carolina Dental Practice Act (Act).

This eight-member dental board included six licensed and practicing dentists who are *elected by other licensed dentists*; one dental hygienist who is licensed to practice dental hygiene in North Carolina; and, one person who is a citizen and resident of North Carolina who is neither licensed to practice dentistry or dental hygiene, i.e., one public member.²²

The Act denied voting participation by both the dental hygienist and the public member in any dental board matter involving the issuance, renewal, or revocation of a license to practice dentistry in North Carolina. The Act also stated that the public member cannot participate or vote in any matter involving the issuance, renewal, or revocation of the license to practice dental hygiene in North Carolina.²³

The Act did not specify that teeth whitening service is the practice of dentistry. After receiving complaints that non-dentists were performing the service, the dental board issued cease and desist letters to non-dentist teeth whitening providers causing the non-dentists to cease performing their teeth whitening services.²⁴

The Federal Trade Commission (FTC) filed an administrative complaint alleging that the dental board's exclusion of non-dentists from teeth whitening services is unfair and anti-competitive. The dental board argued state-action immunity. This argument was denied by an Administrative Law Judge (ALJ) who determined that the dental board must be actively supervised by the State of North

²¹ 135 S. Ct. 1101 (2015).

²²N. C. GEN. STAT. § 90-22(b) (2015). One of the remaining two members is a dental hygienist elected by other hygienists and the other member is a consumer appointed by the Governor.

²³*Id.*

²⁴*Id.* at 1104.

Carolina to claim immunity.²⁵

The ALJ concluded that the dental board unreasonably restrained trade and the Fourth Circuit affirmed, stating that a state agency is considered a private actor and subject to Midcal's²⁶ active supervision requirement when the agency is "operated by market participants who are elected by other market participants."²⁷

Judge Keenan concurred in a separate opinion to emphasize the court's narrow holding as the dental board's *election* by market participants is critical to its holding and suggested that if the dentists had been appointed or elected by state government officials pursuant to a state statute, the active supervision argument would be much weaker.²⁸

The Supreme Court affirmed, holding that "because a controlling number of the dental board's decision makers are active market participants in the occupation it regulates, the dental board can invoke state-action antitrust immunity only if it is subject to active supervision by North Carolina."²⁹

On its face, the facts in the North Carolina Dental Examiners case are decidedly distinguishable from the TxDMV. The two classes of franchised dealers on the TxDMV are not elected by other franchised dealers, as were the dentists in Dental Examiners. Each TxDMV board member is appointed by the governor with the advice and consent of the senate³⁰ unlike the North Carolina dentist-elected board members.

The TxDMV nine-member board includes only two franchised dealers—not a majority of the board, as in Dental Examiners where six of the eight board members were dentists. In addition, the two franchised dealer members are required to be from "different classes," which includes motorcycle

²⁵Parker v. Brown, 317 S. Ct. 307 (1943). (The U. S. Supreme Court's approval of the state regime in Parker can be understood to support an approach of considering a member of a board as a market participant for control only if that participant is in *the precise market that is regulated*.)

²⁶California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., 100 S. Ct. 937 (1980). (In this instance, the U. S. Supreme Court determined that a private entity can be protected by state-action immunity if their conduct is taken pursuant to a state policy and the state actively supervises.)

²⁷N. C. State Bd. of Dental Examiners v. FTC, 717 F.3d 359, 370 (4th Cir. 2013).

²⁸*Id.* at 376.

²⁹*Id.* at 1104.

³⁰TEX. TRANSP. CODE ANN. § 1001.021(a).

franchised dealers; heavy duty truck, engine, transmission, or rear axle franchised dealers; recreational vehicle franchised dealers; and, automobile, light and medium duty truck franchised dealers.³¹

The requirement that the TxDMV franchised dealers are appointed by the governor with the advice and consent of the senate as well as the requirement that the two franchised dealers be from different classes, guarantees that there is no market participant that controls any precise market that is regulated by the agency, as required by Parker (See Footnote 25).

The active supervision by the state of Texas and with no controlling number of decision makers as franchised dealers, allows that the state-action antitrust immunity doctrine is alive and well at the TxDMV. The franchised dealers are appointed by the governor with the advice and consent of the senate—not chosen by an election of other franchised dealers as allowed by the North Carolina Dental Practice Act.

The North Carolina dental board included eight out of the six members as licensed dentists; whereas, the TxDMV only has two franchised dealers—from different classes—out of a nine-member board. The precise market that is regulated by each franchised dealer is very different, i.e., today, the franchised dealer complement is an engine dealer and a light-duty automobile dealer. There is no market participant control that can be attained by any class of a franchised dealer board member.

Additionally, all TxDMV board members participate and vote in any matter before the board—unlike the dental hygienist and public member in Dental Examiners. The North Carolina Dental Practice Act states: “The dental hygienist or the consumer member cannot participate or vote in any matters of the Board which involve the issuance, renewal or revocation of the license to practice dentistry in the State of North Carolina.”³² There is no statutory or regulatory prohibition for a TxDMV public or non-franchised dealer member to vote on any issue, as required in the North Carolina Dental Practice Act.

Finally, the independent dealer and the manufacturer or distributor are not operational participants in the franchised dealer market. The non-franchised dealer does not sell and is neither franchised nor licensed to sell a new motor vehicle, motorcycle, recreational vehicle, a new truck, engine, transmission, or rear axle.³³ A manufacturer or distributor board member may not own, operate, control, or act in the capacity of either a franchised or non-franchised dealer, except in limited

³¹*Id.*

³²*Id.* at § 90-22(b).

³³TEX. OCC. CODE ANN. § 2301.252.

circumstances,³⁴ and thus this representative board member does not participate in a franchised dealer's market.

The state-action antitrust immunity doctrine is upheld at the TxDMV as the two separately classed franchised dealers, the independent dealer, and the manufacturer or distributor representative represent different licenses; different issues; and different markets; therefore, the TxDMV board is not market-driven aligned as in Dental Examiners. Again, the TxDMV board is appointed by the governor with the advise and consent of the senate—ensuring that Dental Examiners is not an issue.

TADA Recommendation

The legislature's clear-sightedness is evidenced by including franchised dealer members on the board. Two franchised dealers is the minimum number that is necessary for board guidance and discernment. The franchised dealer's knowledge and experience benefit the public and the state in its regulation of this all-important industry.

The presiding officer is chosen by the governor and the governor's appointment should remain at the pleasure of the governor as adopted in 2009.³⁵

TITLE FRAUD³⁶

TADA supports the TxDMV's efforts to combat title fraud. The various examples of title fraud outlined in the Staff Report, i.e., sales tax fraud; title washing; selling vehicles with flood damage; odometer fraud; rebuilt salvage fraud,³⁷ cost TADA members in revenue as well as good will. TADA concurs in advancing reasonable means to combat title fraud. TADA recognizes title fraud is a cost to the public and to the state and again, supports sound actions combating title fraud.

The recent flooding and subsequent motor vehicle title issues raised by Hurricane Harvey exhibit the TxDMV's ability to respond to a natural disaster of dramatic proportions. TADA commends Director Whitney Brewster, Mr. Jeremiah Kuntz, the Director of the Vehicle Titles and Registration division, and the board for their leadership regarding additional staffing that was necessary to title and register vehicles during the state's recent disaster. The agency's and board's nimble response to the industry and to the public in order to continue to title and register vehicles is commendable and much appreciated by TADA.

³⁴*Id.* § 2301.476.

³⁵TEX. TRANSP. CODE ANN. § 1001.023(a) (Vernon Supp. 2017).

³⁶Staff Report at 21 - 29.

³⁷*Id.* at 21.

TADA Recommendation

Continuing to combat fraud is of utmost concern to all Texans. TADA supports this effort through training and reasonable user access to the state's registration and title system under the agency's and board's guidance.

ENFORCEMENT³⁸

According to the Staff Report, the motor carrier complaints are 57.23% of the total number of complaints received by the TxDMV. Common violations by dealers include failure to timely transfer a title; improper use of a temporary paper tag; and advertising.³⁹

Title Transfer

A licensed dealer is required to register, title, and remit any required motor vehicle sales tax on behalf of a purchaser, with certain exceptions.⁴⁰ These requirements placed upon the licensed dealer also allow for a reasonable time to comply as long as the seller is making a good faith effort. This statutory good faith effort recognizes that release of liens and issues with trade-ins which are outside of the dealer's control, often create obstacles to satisfy the dealer's registration, title, and sales tax responsibilities. With this recognition, the legislature determined that equitable title passes to the vehicle purchaser at the time the vehicle is the subject of a sale and is enforceable by either party.⁴¹

A title transfer may not be transferred immediately after a sale because not all parties to a purchase or sale transaction are timely in their required actions, such as the lender's required lien release as well as the buyer's completion of all necessary paperwork. In order to address these issues, the state protects the consumer through the equitable title determination. It also cannot be understated that a dealer has every incentive to timely transfer title as payment for the motor vehicle is frequently tied to the timely transfer and lien perfection on the title.

Advertising

As to the advertising concern, proper advertising by a licensee is an on-going educational enterprise as advertising agencies and dealership personnel are frequently re-cast. TADA appreciates the

³⁸Staff Report at 31-39.

³⁹*Id.* at 31.

⁴⁰TEX. TRANSP. CODE ANN. § 501.0234.

⁴¹*Id.*

TxDMV's efforts to continually educate the licensees and third-parties regarding the TxDMV advertising rules. The 2017 joint webinar with TADA and TxDMV's Ms. Corrie Thompson, the recently appointed Director for Enforcement, is continually referred to by TADA members and forwarded to third-party advertising agencies.

TADA finds Ms. Thompson is responsive to the franchised dealers and an example is the action recently taken upon a TADA request to add a dealer complaint form to the agency's dealer portal. TADA believes this new form added to the dealer portal will assist in advertising concerns.

The 1997 statutory provision⁴² requiring agency notification to a license holder and an opportunity by the license holder to "cure" an advertising violation, allows the license holder a means to correct the advertisement as well as to understand the particular rule. As a part of the cure procedure, the TxDMV may require a license holder to publish a retraction notice to effect an adequate cure. A retraction notice must:

1. Appear in a newspaper of general circulation in the area in which the alleged violation occurred;
2. Appear in the portion of the newspaper devoted to motor vehicle advertising, if any;
3. Identify the date and the medium of publication, print, electronic, or other, in which the advertising alleged to be a violation appeared; and
4. Identify the alleged violation of the advertising provision and contain a statement of correction.⁴³

The advertising rules (*See Exhibit 1*) that franchised dealers as well as other licensees must comply, are beneficial to the public, the industry, and the state; yet, they can be challenging. The statute allowing for a notice of the deficient advertisement and an opportunity to correct the advertisement, and the regulation providing for a retraction notice, is reasonable and should remain in its current form.

⁴²Act of June 11, 1997, 75th Leg., R.S., ch. 639, § 15, 1997 Tex. Gen. Laws 2185, 2192 (codified as an amendment to Art. 4413(36), Vernon's Revised Texas Civil Statutes) (now codified in Tex. OCC. CODE ANN. § 2301.203(c)).

⁴³43 TAC § 215.270(c). The current rule including a retraction notice was adopted in 2012 (37 *TexReg* 2087 (March 23, 2012)).

Prior to the adoption of the current rule, the agency proposed and adopted a rule in response to 1997 amendment allowing a complaint against a licensee alleging a violation of an advertising provision only if the agency can show the licensee received a notice and an opportunity to cure the violation and that the licensee committed a subsequent violation of the same advertising provision within the period beginning 6 days and ending 12 months after the licensee received the notice. (23 *TexReg* 12,300 (December 4, 1998)). The agency's 1998 "12-month" rule response to the "cure" provision was repealed in 2012. The current rule allows the agency to send a licensee one notice and one opportunity to cure the advertising violation.

TADA Recommendation

TADA is confident in the newly appointed Director for Enforcement. TADA is eager to continue working with the TxDMV in educating and informing the members of the necessary regulatory and statutory requirements, including the TxDMV's advertising rules, and recommends retaining the "cure" provision found in § 2301.203(c), Occupations Code.

LICENSING⁴⁴

General

The TxDMV's licensing process is responsive to the franchised dealers and the division has overseen many improvements. Mr. Daniel Avita, Director of the Motor Vehicle Division, has guided the division through many advancements and TADA is very appreciative of the division's improvements, particularly the advanced timeliness in obtaining and renewing a license.

Lease, Lessor, Lease Facilitator

The "lease facilitator" license is necessary to retain. The "lease," "lessor," and "lease facilitator" definitions and licenses were made a part of the statute in 1995.⁴⁵ The 74th Legislature recognized the need to license all aspects and parties who interact with the public regarding distributing motor vehicles, including a motor vehicle lease.

It is incumbent upon the state to license the participating parties who interface with the public in the leasing of a motor vehicle. The state's licensing of this aspect of the motor vehicle industry is necessary to ensure a sound system of distributing and selling motor vehicles as well as to prevent fraud, unfair practices, discrimination and impositions or any abuse of a lessee by overseeing the leasing of motor vehicles.

The leasing of a motor vehicle entails a vehicle purchase. As such, the registering, titling and sales tax remittance as well as the advertising and interaction with the public must be compliant with the state's statutes and regulations.

The interrelationship and interaction of all of the parties to a lease transaction should be continued as TxDMV licensees in order for the public and other licensees to have recourse and the state to continue to have administrative oversight as to this segment of the distributing and selling of motor vehicles. The 74th legislature recognized this need and as leasing continues, particularly as a part of

⁴⁴Staff Report at 41 - 49.

⁴⁵Act of June 8, 1995, 74th Leg., R.S., ch. 345, 1995 Tex. Gen. Laws 2869.

the new subscription services in the industry, it should remain a part of the TxDMV's oversight.

Shows and Exhibits

The demand for notice and approval of a motor vehicle show or a motor vehicle exhibit continues and is a necessary purpose of the agency. The responsibility for motor vehicle shows and exhibits is one aspect of protecting the public and the state as well as addressing the agency's objectives outlined in § 2301.001, Occupations Code.

A person cannot engage in the business as a dealer without a dealer's general distinguishing number for each location from which the dealer conducts business.⁴⁶ Requiring a license for each location from which a dealer buys and sells motor vehicles allows for the state to oversee the conduct at these locations. A benefit to the TxDMV receiving notice of a motor vehicle show and exhibit ensures that a sale of a motor vehicle may not occur except at a licensed location.

If the state is not aware of a motor vehicle show or exhibition or if it does not have the stated jurisdiction over a motor vehicle show or exhibition, then non-compliance with the state's sales requirements, licensing requirements, as well as concerns for the public, may arise.

Doing away with the agency's show and exhibit notice and approval allows a seller, including a lawless non-licensee or broker, to conduct a "show" or "exhibit" under the state's publicly perceived imprimatur; sell a motor vehicle; and leave town. The buyer of that vehicle may not know how or where to contact that seller. This concern abounds if issues of ownership, transfer of title, odometer concerns, recall notices, motor vehicle sales tax remittance, and other issues such as damage disclosure arise regarding sales by a seller at a non-licensed location or by a non-licensee or broker. To continue to combat selling at unlicensed locations, it is incumbent upon the state to be aware of "show" and "exhibit" locations.

In order to fulfil the legislature's charge to the TxDMV, a motor vehicle show and a motor vehicle exhibit must be known to the agency. This information is key to ensuring compliance with the statutory requirements placed on the licensees as well as to prevent fraud on the buying public and the state.

TADA Recommendation

The lease, lessor, and lease facilitator's definitions and licenses are necessary to ensuring a sound system of distributing and selling motor vehicles. In order to continue oversight for the benefit of the public and state, administering the motor vehicle leasing business should be maintained. As motor vehicle ownership and sales and a combination of such including leasing, transforms into new areas such as motor vehicle subscriptions, the agency should not cede an element of the distribution of motor vehicles to find that it must come back and request oversight of these entities again and at

⁴⁶TEX. TRANSP. CODE ANN. § 503.021 (Vernon 2013).

a later time.

As motor vehicle shows and exhibits continue to grow and multiply, the need for agency oversight including notice and approval, accelerates. Again, in order to ensure that the selling of motor vehicles is conducted by licensees in accordance with the state's statutory and regulatory requirements and to prevent fraud and unfair practices, the notice and approval of a show or exhibit and its participants by the agency is necessary. Without such notice, the agency will not have the benefit of knowing when or where a show or exhibit is conducted and thus compliance and enforcement regarding lawful sales, transfer of titles, sales tax remittance, and recall concerns, may all wane.

IT INVESTMENTS⁴⁷

TADA is aware of the continuing investment by the TxDMV in the agency's information technology. The agency is actively improving licensing, registration and title functions, and lien releases. TADA commends Director Brewster, the agency's personnel, and the board in its technology focus and modernization.

TADA Recommendation

The information technology improvements made by the TxDMV, such as the webDEALER function, allows dealers to perform the necessary title work more promptly and benefits the county tax-assessor collector, the purchaser, and the dealership as well as the state. Based on the agency's past technology enhancements and the agency's stated goals, TADA believes that it will continue to develop and update its systems as well as identify new opportunities to modernize and improve.

TADA agrees that the TxDMV should continue for the next 12 years as it continues to perform a pivotal role for all Texans.

CONCLUSION

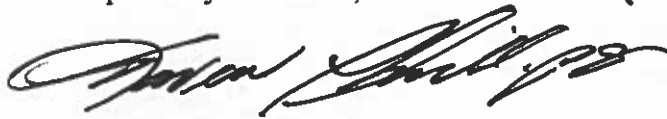
This agency and the various commissions and boards that have overseen the motor vehicle industry since 1971 in all of its many forms, continues to perform a necessary role for the public, the state, and the industry. The agency's evolution as the Texas Department of Motor Vehicles now includes the motor carrier industry and titling and registering motor vehicles for the state.

The TxDMV's responsibilities should continue. TADA concurs with the staff of the Sunset Advisory Commission in its recommendation to continue the Texas Department of Motor Vehicles

⁴⁷Staff Report at 51 - 58.

and on behalf of TADA's members, looks forward to working with the agency and board going forward.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Karen Phillips', written in a cursive style.

Karen Phillips
General Counsel/EVP

Attachment: Exhibit 1
43 TAC §§ 215.241 - 215.271
TxDMV Advertising Rules