

# **TEXAS MOTOR VEHICLE COMMISSION**

**December 1989**



---

# Table of Contents

---

|  | <u>PAGE</u> |
|--|-------------|
| <b>Background</b>  |             |
| Creation and Powers .....  | 1           |
| Policy-making Body .....   | 1           |
| Funding and Organization .....   | 2           |
| Programs and Functions .....   | 4           |
| <b>Results of Review</b>   |             |
| Overall Approach to Review .....   | 9           |
| Assessment of Need to Regulate   |             |
| Issue 1 - Continue Regulation .....  | 13          |
| Assessment of Organizational Alternatives  |             |
| Issue 2 - Continue current organization .....                                      | 15          |
| Recommendations if Agency is Continued   |             |
| Summary .....  | 17          |
| Policy-making Body   |             |
| Issue 3 - Require the governor to designate the chair .....                        | 19          |
| Overall Administration   |             |
| Issue 4 - Remove statutory fees and authorize commission to set them by rule ..... | 21          |
| Issue 5 - Remove requirement that the executive director be an attorney .....      | 23          |
| Issue 6 - Remove requirement that hearing examiners be attorneys .....             | 25          |
| Programs   |             |
| Issue 7 - Set standard criteria for administrative sanctions .....                 | 27          |
| Issue 8 - Remove certain enforcement sanction authority .....                      | 31          |
| Issue 9 - Eliminate protest against new dealerships .....                          | 35          |

---

---

# Table of Contents

---

|   | <u>PAGE</u> |
|---|-------------|
| <b>Results of Review</b><br>(cont.)   |             |
| Issue 10 - Establish timelines for resolving lemon law complaints .....                           | 39          |
| Issue 11 - Extend statutory time and mileage limits for lemon law eligibility .....               | 43          |
| Issue 12 - Ease the burden of proof for lemon law recovery eligibility .....                      | 47          |
| Issue 13 - Add serious safety hazards to grounds for lemon law recovery .....                     | 49          |
| Issue 14 - Reinstate agency's flexibility to establish reasonable allowance formula by rule ..... | 51          |
| Issue 15 - Authorize payment of incidental damages in lemon law cases .....                       | 53          |
| Issue 16 - Require titles of lemon vehicles to be marked .....                                    | 55          |
| <b>Across-the-Board Recommendations</b>   | 57          |
| <b>Minor Statutory Modifications</b>  | 59          |

---

## **BACKGROUND**



## Creation and Powers

The Texas Motor Vehicle Commission was created in 1971 with the enactment of the Texas Motor Vehicle Commission Code. The purpose stated in the code for creating the commission was "...to insure a sound system of distributing and selling new motor vehicles through licensing and regulating manufacturers, distributors, converters, representatives, and dealers of those vehicles...". In addition, regulatory activities help ensure compliance with manufacturers' warranties, as well as prevent fraud, unfair practices, discrimination, and other abuses of the state's citizens in transactions involving new motor vehicles.

The main responsibility of the commission is to ensure that all regulated persons comply with the code's licensing requirements relating to the distribution and sale of new motor vehicles in the state. The commission regulates activities of licensees and takes action against licensees where violations of the code or commission rules occur. The commission also serves as an adjudicative body to hear and decide contested cases filed with the agency.

The commission also has specific consumer protection responsibilities. It administers and enforces the provisions of the Texas "lemon law" and assists consumers in resolving complaints involving new motor vehicle warranty-repair problems or other problems involving licensees.

As a result of a Sunset Advisory Commission recommendation, in 1979 the law was amended to require that all new vehicle purchasers receive a notice explaining that complaints about warranty services could be filed with the commission. The responsibility expanded in 1983 with the enactment of the state "lemon law," which protects a consumer who purchases a new motor vehicle with defects that cannot be properly repaired. The legislature provided funding in 1987 to establish a separate consumer complaint division to administer the "lemon law" and resolve other warranty complaints.

## Policy-making Body

The commission has six members appointed by the governor and confirmed by the senate for staggered six-year terms. Members cannot serve two consecutive six-year terms. The commission members elect the chairman on an annual basis. Commission members must be citizens of the United States and residents of Texas. In addition, they must not have any interest in a business that manufactures, distributes, converts or sells new motor vehicles. The statute requires the commission to hold an annual meeting in September of each year, regular meetings as determined by a majority of the members, and special meetings upon request of the chairman, any two members, or the executive director.

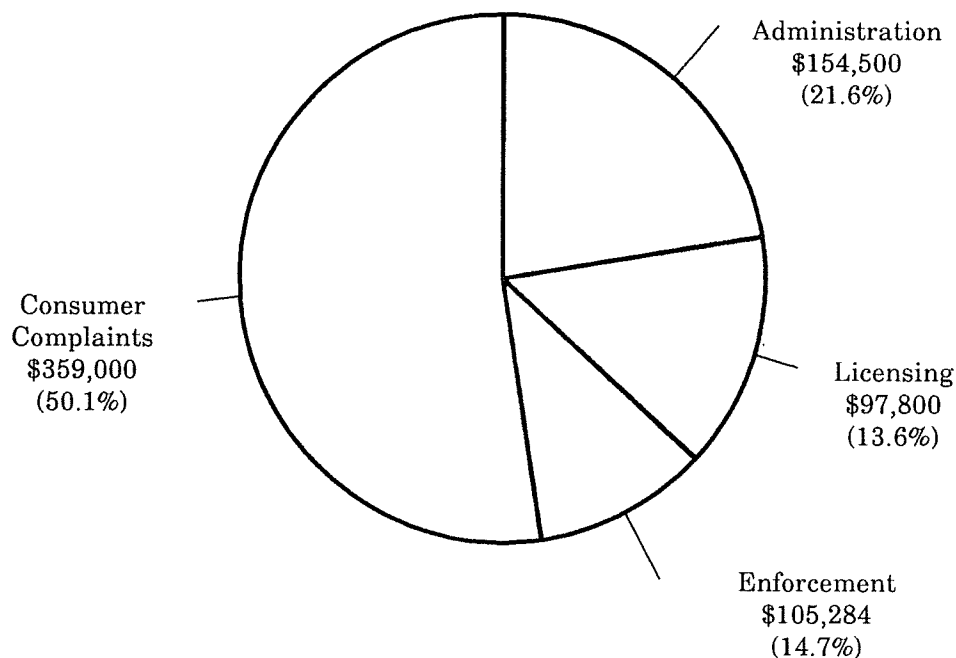
The duties of the commission include the selection of the executive director, approval of the agency budget, and oversight of the agency administration. In addition, the commission adopts rules as necessary for the implementation and enforcement of the code. Also, the commission functions as the final decision authority in all contested cases brought under the code. These include "lemon law"

cases, disputes between dealers and manufacturers or distributors, and protests of new license applications.

## Funding and Organization

In fiscal year 1989 the legislature appropriated \$682,747 to the agency from the General Revenue Fund. In addition, unexpected costs incurred in investigating and prosecuting a license revocation action against a licensee required an emergency appropriation of \$31,184 from the governor's office. Commission expenditures are divided into the four major activities shown in Exhibit 1. Revenues from the collection of filing and license fees and monetary administrative penalties consistently exceed the appropriated amounts. Exhibit 2 shows agency expenditures and revenues for fiscal years 1985 through 1989.

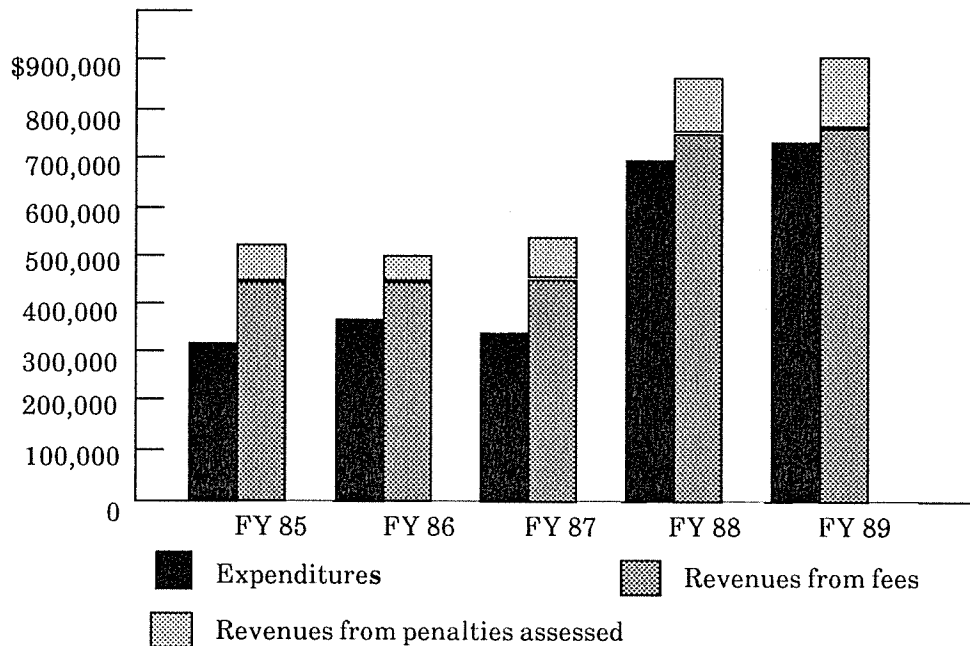
Exhibit 1  
Commission Expenditures by Activity  
Fiscal Year 1989



Note: The total amount expended in FY 1989 includes \$2,653 collected from photocopy cost reimbursement and sales of commission dealer lists.

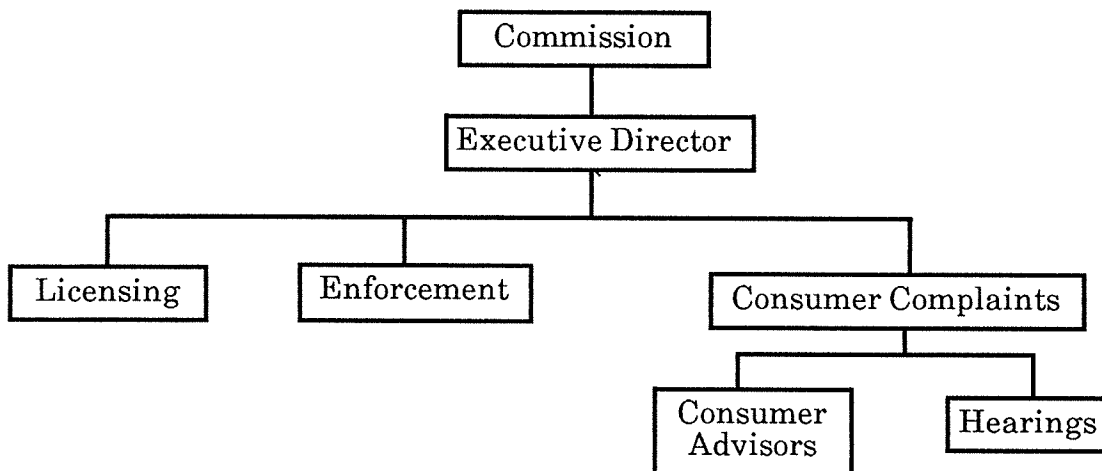


Exhibit 2  
Revenues and Expenditures  
Fiscal Years 1985-1989



The commission employs a staff of 22. The staff are employed in the agency's Austin headquarters. Exhibit 3 shows the organizational structure of the agency.

Exhibit 3  
Texas Motor Vehicle Commission  
Plan of Organization



## Programs and Functions

### Administration

The commission's executive director is responsible to the board for carrying out its policies and administering the agency's programs. This function includes accounting staff and a receptionist. In addition, the executive director serves as a hearing examiner in contested cases before the commission as agency workload requires. During fiscal year 1989, this function operated with five employees.

### Licensing

The Licensing Division receives license applications and issues new and renewal licenses. In fiscal year 1989, the commission issued over 3,500 licenses. Exhibit 4 shows the different types of licenses and the number issued. The commission mails renewal notices to the licensees at least 45 days before the expiration date of the license. The Licensing Division processes renewals after it reviews renewal applications and verifies that any prior deficiency has been corrected. If the licensee fails to renew, the commission assesses a penalty of 50 percent of the amount of the license fee for each 30 days the renewal is late. In addition, where the division finds licensing requirements not satisfied or violations of license requirements, it forwards the matter to the agency's enforcement staff for review and appropriate action.

Exhibit 4  
Distribution of Licenses  
Fiscal Year 1989

| Type of License                                       | No. Issued   |
|---|--------------|
| Manufacturer/Distributor                              | 133          |
| Converter   | 95           |
| Manufacturer/Distributor/Converter<br>Representatives | 1,202        |
| Dealer-A (200 or less new vehicle sales)              | 1,131        |
| Dealer-B (201-500 new vehicle sales)                  | 467          |
| Dealer-C (501-1,000 new vehicle sales)                | 294          |
| Dealer-D (1,001 or over vehicle sales)                | <u>261</u>   |
| <b>TOTAL</b>  | <b>3,583</b> |

The commission licenses individuals through the establishment of licensing procedures, formulation of license application forms, review of license applications filed with the agency, and contacting applicants to cure application deficiencies. Requirements for a license vary depending on the type of license. For example, requirements for a dealer license include: information to allow the MVC to determine the applicant's financial stability, integrity and experience; a copy of the

franchise agreement with the manufacturer; and a description of the dealer's physical facilities. A license for a manufacturer, distributor or converter (persons who alter a new vehicle into a different product and sell it as a new vehicle; e.g. vans, buses and ambulances) requires the applicant to provide a copy of each type of warranty agreement currently in force covering motor vehicles sold by the applicant and a list of all dealers and representatives that will act for the applicant in the state. In addition, a converter is required to include a description of the modifications made on vehicles to be sold. If the application is complete and satisfactory, the commission issues the license unless the application is subject to the protest procedure of the code.

Under certain conditions, an existing dealer may protest the issuance of a license. An application for a new dealership or for a relocation of an existing dealership, is subject to protest by any dealer of the same line-make in the same county or within 15 miles of the applicant. When the commission receives the application, it notifies these dealers of the application. If no protest is filed, the application is approved. If an existing dealer files a protest, the commission schedules an administrative hearing before a hearing examiner to receive evidence. This way, the commission determines whether the application should be approved or denied. After the hearing, the hearing examiner renders a proposal for decision and forwards it to the commission for consideration at a regularly scheduled meeting. The commission's decision can be appealed to a district court of Travis County or the Court of Appeals, Third District of Texas.

The agency collects license fees for licenses issued and penalties for late filings. All fees are established by statute and were increased significantly in 1987. The Licensing Division has a staff of three persons, including the assistant director for licensing and two secretarial-clerical employees.

### **Enforcement**

The purpose of the enforcement function is to secure compliance with the requirements of the code and commission's rules. For instance, the agency enforces requirements which prohibit the sale of vehicles by dealers at other than their licensed location and provisions prohibiting fraudulent practices. Likewise, the commission enforces rules designed to prohibit false, deceptive and misleading advertising by licensees.

Most enforcement actions result from complaints filed with the agency although a few are forwarded by the Office of the Attorney General. The commission evaluates these complaints to determine whether sufficient basis exists for issuance of a complaint or other formal action, or whether further investigation is necessary. Agency staff also conduct investigations and undertake enforcement actions on their own initiative. When the commission finds a violation of the code or commission rules, it issues a formal complaint against the licensee. Most complaints are settled by sanctions by agreement of all parties. When a complaint is contested, a hearing is held to receive evidence to determine whether a violation has occurred. The commission members make a final decision at a formal commission meeting. Commission decisions are subject to appeal to district court in Travis County or directly to the Court of Appeals, Third District of Texas.

The commission also acts as an adjudicative body in disputes between licensees. In the performance of this function the commission hears and decides contested cases

involving controversies between licensees. Examples of proceedings of this nature which have come before the commission include complaints such as alleged arbitrary and unlawful termination by a manufacturer of a dealer's franchise agreement, refusal by a manufacturer to approve the sale by a dealer of his/her dealership and franchise interest, with no detriment to the public or to the manufacturer shown, failure by a manufacturer to compensate a dealer for warranty work performed, and a requirement imposed by a manufacturer or its representative that a dealer purchase certain types of vehicles as condition to the dealer's being able to obtain other vehicles desired and needed by the dealer. In complaints of this nature, the commission receives evidence in an administrative hearing conducted in accordance with the provisions of the code and the Administrative Procedure and Texas Register Act, and renders a final decision based upon such evidence.

The assistant director for licensing serves primarily as the hearing examiner in adjudicative cases related to licensing. The executive director and the assistant director for enforcement also hear cases, as the workload requires and their time permits.

During fiscal year 1989, the Enforcement Division received 396 complaints. Of these complaints, 106 were consumer complaints against a licensed dealer but were resolved by agency staff through mediation. Of the remaining 290, 151 were alleged violations to the commission's code or rules. In 80 instances the violator agreed to the sanction, and in 13 cases a hearing was held. A total of \$166,300 in administrative penalties were assessed by the commission related to these violations. The Enforcement Division had two employees for fiscal year 1989.

### Consumer Complaints

The commission resolves consumer complaints regarding "lemon law" recovery and disputes related to inadequate or improper warranty work. Under the provisions of the lemon law, owners of new vehicles may file complaints with the commission to obtain the replacement of a vehicle or the refund of its purchase price. A statutory fee of \$35 must be paid to file a lemon law complaint. In order to be eligible for "lemon law" recovery the consumer must make a reasonable number of attempts to have the dealer or manufacturer correct the non-conformity, without success, and the non-conformity must substantially impair the use and market value of the vehicle. The law defines that a reasonable number of attempts have been made if the vehicle has been taken to a dealer four times for the same problem or the vehicle has been out of service more than 30 days.

The consumer complaint staff distributes information to the public about the lemon law and provides advice to consumers by phone and correspondence. Upon receipt of written complaints, the staff reviews complaints to insure that eligibility requirements of the law are satisfied. The staff first tries to resolve and settle complaints between the parties through a mediation process. If mediation is not successful, the commission schedules the complaint for a hearing. Hearings on consumer complaints are handled in the same manner as other contested cases before the commission.

In addition to the lemon law program, the consumer complaint division also handles consumer complaints involving new motor vehicle warranty repair problems. The process for those complaints is similar to the process for lemon law complaints, although relief available to consumers in these cases is limited to the

enforcement of the terms of the vehicle warranty. The consumer complaint division provides consumers a simple complaint resolution mechanism that does not require legal expenses or court costs. No fee is imposed to file warranty repair complaints that do not qualify for lemon law relief. During fiscal year 1989, the division held 231 hearings, 207 of which were lemon law cases and the remaining 24 were warranty performance related cases. The commission ordered manufacturers to repurchase defective vehicles in 81 cases. The consumer complaint division has a staff of 12 full-time employees.



## **RESULTS OF REVIEW**





## **Overall Approach to the Review**



## Overall Approach to the Review

### Prior Sunset Review

As part of the overall review of the Texas Motor Vehicle Commission, the staff report to the Sunset Advisory Commission prepared for the sunset review in 1979 was examined. In addition, the recommendations adopted by the Sunset Commission and legislation adopted by the legislature were examined as part of the current review of the agency.

The initial sunset report determined that the agency's licensure procedures did not appear to have severely restricted the number of new vehicle dealers. A review of the licensing function showed that the commission had not developed standards, other than those specified in statute, to evaluate dealer license applicants. Therefore, the commission's requirements for new dealers tended to be limited to assuring that manufacturer requirements were fulfilled. In addition, the review raised the question as to whether the protest process, another element of the licensing function, was truly effective.

The review also found that many licensees and consumers appeared reluctant to follow the complaint process to a hearing because of the time and expense involved. The review concluded that the reason was that the code did not provide remedies such as the payment of damages or costs by licensees found in violation of the code.

The sunset staff recommended that the MVC could be consolidated with an agency with an automated license processing, like the Department of Public Safety, and the attorney general's office could be responsible for resolving consumer complaints. This approach was expected to significantly improve the commission's manual licensing system with the advantages of automation. The consolidation of those functions was also expected to reduce areas of overlapping program responsibilities in the state and to free up additional resources for addressing agency problems. The staff also recommended the creation of an advisory board for the licensing agency composed of members of the licensed groups and the public.

Other operational changes recommended by the sunset staff included:

- removing the commission's authority to deny dealer's licenses;
- providing the commission with specific authority to order payment of complaint damages and attorney's fees by licensees found in violation of the law;
- requiring that purchasers of new motor vehicles be advised at the time of purchase of the responsibilities of the MVC regarding new vehicle warranties;
- placing agency funds in the State Treasury;
- suggesting that the commission implement a system of staggered license renewal;

- requiring dealers to report complaints received and recurring warranty repairs; and
- suggesting that the commission adopt in rules the licensing qualifications for manufacturers and dealers.

In 1978, based on the review of the agency, the staff analysis, and the hearing testimony, the Sunset Commission recommended that the agency be continued. The commission also recommended the following:

- expansion of the commission from six to nine members including five citizens at large, and requirement that only the public members be involved in actions to deny new dealerships;
- addition of conflict-of-interest provisions which would apply to all commission members and employees;
- authorization to members of the general public to participate in all commission hearings;
- requirement to notify all buyers of new motor vehicles of the complaint procedure;
- revision of complaint processing procedures to provide standard and timely disposition of complaints;
- requirement to appropriate funds for agency operations from the General Revenue Fund; and
- institution of a staggered license renewal process.

The sunset bill finally passed by the 66th Legislature did not adopt all of the recommendations made by the Sunset Commission. However, the agency funds were placed in the state treasury, public members were added to the commission, conflict of interest provisions for commission members and employees were included, and a staggered license renewal system and complaint procedures were specified in statute. In addition, other sunset across-the-board provisions were added to the statute. These provisions required, among other things, filing an annual financial report with the legislature and the governor, and auditing the financial transactions of the commission each fiscal year.

### Approach to Current Review

As part of the analysis of the agency's efficiency and effectiveness, the sunset review examined both the current operations of the agency and the findings and recommendations of the sunset staff, of the sunset commission, and action by the legislature which resulted from the review conducted in 1979.

In accordance with the Sunset Act the review included an assessment of the need to continue the regulating functions performed by the agency, whether benefits could be gained by performing the function through another agency, and finally, if the function is continued, whether changes are needed to improve the efficiency and effectiveness of the agency.

A number of activities were undertaken to make assessment in each of these areas. They included:

- review of previous sunset staff recommendations;
- review of documents developed by the agency, other state agencies in Texas and other states, federal agencies, and other sources containing background resource material;
- interviews with agency administrators and staff;
- attending commission meetings;
- interviews with personnel in other state agencies that have substantial interactions with the agency;
- telephone interviews with personnel in agencies in other states and the federal government; and
- meeting and telephone interviews with associations, industries, and other groups interested in or affected by the commission.

The results of the assessment of each of these areas are contained in corresponding sections of this report.



## **Assessment of Need to Regulate**





## **Assessment of Organizational Alternatives**



## Assessment of Need to Regulate

**ISSUE 1: State regulation of the new motor vehicle industry should be continued.**

### BACKGROUND

State regulation of an industry through licensure is justified if several conditions are present. First, the unlicensed activity of the industry should pose a serious risk to consumers' life, health and safety, or economic well being. Second, the benefits to the public should clearly outweigh any potentially harmful effects, such as costs of regulation, or decreases in the availability of the product or service. Finally, the complexity of the business is such that the consumer is not always able to fully determine product quality or adequately handle negotiations or disputed situations.

These three conditions were examined to assess whether they exist to an extent that would justify continued regulation. The review considered the conditions that existed when regulation of the motor vehicle industry began in Texas in 1971 as well as the findings in the 1978 staff review by the Sunset Advisory Commission. Further, the agency's current functions were evaluated.

Prior to enactment of the Motor Vehicle Commission Code, new vehicle dealers had little control over terms in franchise agreements and little power to protect themselves if manufacturers placed burdensome and arbitrary requirements on them. Also, manufacturers could withdraw a dealer's franchise with little or no cause or notice. Consumers had no effective remedy if dealer performance on warranty repairs was unsatisfactory.

The code was enacted to ensure a sound system of distributing and selling new motor vehicles, to provide for compliance with manufacturers' warranties, and to prevent frauds, unfair practices, discriminations, impositions and other abuses of the citizens of Texas. To meet these goals the code contains a process for licensing and regulating manufacturers of U.S.-built vehicles, distributors of foreign-built vehicles, franchised dealers of new vehicles, and converters (persons who alter a new vehicle into a different product and sell it as a new vehicle; e.g. vans, buses, and ambulances). Dealer protections are ensured through statutory control over certain provisions in franchise agreements and control of selected activities between manufacturers or distributors and their authorized dealers. Consumers benefit through the commission's authority to require dealer performance on warranty problems.

The evaluation of the need to continue state regulation indicated the following:

- ▶ The basic conditions on which initial regulation was based was found to exist in 1979 in the review by the staff of the Sunset Advisory Commission and they are still present today. No substantial evidence

was found during this review to modify the original approach to regulating the distribution and sale of new motor vehicles in the state.

- ▶ Forty-nine states regulate some aspect of the new motor vehicle industry. Only Alaska has no form of regulation over the distribution and sale of new motor vehicles.
- ▶ Consumers continue to need assistance in resolving issues with dealers and manufacturers. During fiscal year 1989 the agency received and resolved 106 consumer complaints against dealers, and the commission issued 81 orders to manufacturers to repurchase defective vehicles from consumers.
- ▶ Regulation of new vehicle dealers is necessary to protect the public from unfair or deceptive practices. During fiscal year 1989 the agency received and investigated 151 alleged violations of the law or commission rules and the commission assessed over 80 administrative penalties totalling \$166,300 for these violations.

### **RECOMMENDATION**

- The state should continue regulation of the new motor vehicle industry.

---

Continued regulation of the new motor vehicle industry in Texas will ensure consumers are adequately protected and activities between licensees are properly regulated.

### **FISCAL IMPACT**

Since the agency produces more in fees and other revenues than is appropriated back in general revenue funds, there will be no fiscal impact if the regulation is continued.

## Organizational Alternatives

**ISSUE 2: The Motor Vehicle Commission should be continued as a separate agency.**

### BACKGROUND

The review included an examination of benefits that might result in transferring any or all of the commission's responsibilities and functions to another state agency. Three criteria were used as the basis to consider transfer to another agency: the responsibility or function would be more compatible with those of another agency; the services would be performed or delivered in a more effective manner; and the functions would be performed in a more efficient manner at a lower cost.

Two agencies, the Texas Department of Highways and Public Transportation (TDHPT) and the newly created Texas Department of Licensing and Regulation (TDLR) were considered as logical organizational structures which could assume all the responsibilities of the commission. TDHPT is the primary state agency for transportation matters. It registers all motor vehicle dealers in the state and issues each dealer a number which allows the dealer to issue temporary license tags and transfer vehicle titles without paying sales tax on the transaction. The TDLR is structured as an umbrella regulatory agency to license businesses and occupations in the state.

Consideration was also given to transferring selected functions. Two areas were identified, the processing and record keeping activities of the licensing function and the lemon law program administered by the commission's complaint division. The TDHPT has an extensive automated system for motor vehicle licensing that contains data common to the commission's licensing process. Administration of the lemon law was considered for transfer to the Consumer Protection Division of the Office of the Attorney General. The division is known by many consumers and it frequently receives complaints and inquiries related to motor vehicles.

A review of the impact and benefits of transferring all or part of the agency's functions indicated the following:

- ▶ Transfer of all of the Motor Vehicle Commission's functions to either the TDHPT or the TDLR would not provide substantial improvements in economy or effectiveness or would not be compatible with the agencies for the following reasons:
  - The commission's responsibilities would not be compatible with the TDHPT since significantly different roles are performed by the governing bodies of the two agencies. A primary responsibility of the Motor Vehicle Commission is to resolve complaints and contested cases between licensees and between consumers and licensees. This responsibility requires a substantial amount of

time on the part of commission members and involves ruling on disputes between licensees and between licensees and consumers. These factors would not be compatible with the historical role and current responsibilities of the TDHPT commission.

- Transfer to the TDLR was regarded as inappropriate because no benefit would be achieved. While many activities performed by the agency would be compatible with those of the TDLR, nothing indicated that the effectiveness of motor vehicle regulation would be improved or that any measurable efficiencies would be achieved.
- ▶ Transfer of the processing and record keeping activities of the licensing function to the TDHPT was determined to provide no significant benefit because of the relatively small number of licenses issued by the commission (approximately 3,000 annually). Any cost savings gained by using TDHPT's large computer capabilities would be small and offset by the logistical problems and costs to the commission to connect to the TDHPT's computers.
- ▶ Transfer of the administration of the lemon law program to the Consumer Protection Division of the Office of the Attorney General would not be appropriate because the division does not administer programs of this kind. For example, the division investigates series of complaints to determine if patterns exist rather than investigating individual complaints and it does not conduct administrative hearings of contested cases.

## **RECOMMENDATION**

- **The Texas Motor Vehicle Commission should be continued as a separate agency.**

---

The programs and functions assigned to the Motor Vehicle Commission are appropriately placed in the agency as it is currently structured and no significant benefits would be achieved by transferring any duties or activities to another agency.

## **FISCAL IMPACT**

No fiscal impact will result from the commission's continuation because the fees collected exceed expenditures.

## **Recommendations if Agency is Continued**





## Summary of Recommendations

Although continued regulation of the new motor vehicle industry by the Texas Motor Vehicle Commission is recommended, a number of changes should be made to improve the commissioner's efficiency and effectiveness. A summary of these changes is in the following materials.

### Policy-making Body

First, the review examined the agency's governing body to determine if the size and composition was appropriate, that adequate safeguards exist to avoid conflicts of interest, and that the commission's role and functions were clearly defined. The review determined that the size and composition of the commission was appropriate, adequate safeguards existed, and that there was an appropriate balance in the commission's role and functions. However, a change is recommended to the manner in which the commission chairman is determined from a chairman elected annually by the commission members to a chairman designated and removed by the governor.

### Overall Administration

In reviewing the agency's overall administration, a change made by the 71st Legislature requires that the executive director and hearing examiners be attorneys. The review led to the conclusion that these requirements place unnecessary restrictions on the commission's selection of an executive director, and on the executive director's selection of hearing examiners. Recommendations for removing these requirements are in the report. Another recommendation in the report is to repeal statutory fee amounts and have the commission set the amounts. This would give the commission the flexibility to set fees in amounts reasonable and necessary to recover the agency's costs. Currently, the legislature is burdened with passing legislation to change those statutorily set fees as the agency's costs increase.

### Programs

#### Licensing

In assessing the licensing powers and procedures of the agency, attention was focused on the necessity and relevance of the current requirements for licensure. The review concluded that the provision that allows dealers to protest the agency's issuance of a license is unnecessary and restrictive, and a recommendation is included to remove this provision.

## **Enforcement**

The enforcement powers and procedures of the commission were changed significantly by the 71st Legislature. The commission enforcement authority was given new powers which raise constitutional questions relating to separation of powers between the judicial and executive branches of government. In addition, these added powers caused changes in the agency's law to make it prevail over the Administrative Procedure and Texas Register Act (APTRA) in the event that conflicts between the two arise. A recommendation is included in the report to remove these new powers and restore the APTRA as the prevailing authority over the agency's proceedings. Also, the review focused on the administrative sanctions that the commission uses to enforce the code. The review found that there were no guidelines to assess administrative penalties, the sanction most commonly used by the commission. A recommendation in the report proposes to change the code to include standard criteria for administrative sanctions and to require the commission to adopt rules regarding penalty assessments.

## **Consumer Protection**

The commission exercises a number of powers designed to protect consumers. An assessment was made to determine the fairness, effectiveness and efficiency of the consumer complaint process. The review identified that the current process for resolving consumer complaints under the "lemon law" in Texas is unnecessarily time consuming, costly, and burdensome for the consumer. In addition, the review found that the "lemon law" does not provide the level of protection to consumers that lemon laws are intended to provide. To improve the above concerns, recommendations in the report suggest that the commission should be required to render recommendations for decisions in lemon law cases within 90 days; that "incidental costs" should be paid to consumers in lemon law cases; and, that consumers in lemon law cases should not have to prove that both use and value of the vehicle are impaired. Other recommendations in the report extend the current statutory time and mileage limits for lemon law cases from 12 months or the mileage implied by the manufacturer's express warranty to 24 months or 24,000 miles; require that titles of vehicles repurchased under the lemon law be "branded;" and, require that serious safety hazards be included in the statute under the grounds for recovery under the lemon law. Additionally, another recommendation in the report provides greater flexibility in determining a reasonable allowance for the consumer's use of a vehicle in cases where the manufacturer must repurchase the vehicle.

The recommendations contained in this report would have an additional fiscal impact of approximately \$257,300 per year. This would be covered by fee increases.

**ISSUE 3: The statute should require that the governor designate the chairman of the commission.**

## **BACKGROUND**

The chairman of the Motor Vehicle Commission is elected annually by the members of the board. The Sunset Commission has routinely recommended that the governor appoint the chair on the basis of improving accountability to the chief executive. Except in unusual circumstances, this provision has been included in the statutes of agencies reviewed as a result of sunset recommendations. The governor selects the chair in many other state agencies such as the Board of Pardons and Parole, the Texas Department of Mental Health and Mental Retardation, the Texas Air Control Board, the Texas Water Commission, the Texas Department of Corrections and the Texas Department of Human Services. In addition, the majority of the agencies reviewed for the 71st Legislature had this provision in their statutes. Where it was not in statute, it was added as a result of sunset action.

## **PROBLEM**

The election of the chairman by the commission members each year does not provide the most direct method of ensuring a continuity of policy or accountability to the state's chief executive officer.

## **RECOMMENDATION**

- The statute should be changed so the governor designates the chair of the Texas Motor Vehicle Commission.

---

The person appointed as chair would continue in that position at the pleasure of the governor. This would promote accountability between the commission and governor and improve the ability of the board to conduct its business.

## **FISCAL IMPACT**

No fiscal impact would occur as a result of the recommendation.



**ISSUE 4: Statutory fees should be repealed to give the commission the flexibility to set fees in amounts to cover the costs of administering the law.**

## **BACKGROUND**

The Motor Vehicle Commission has nine license and filing fees set in statute. The fees vary in amount from \$35 for filing a "lemon law" complaint to \$750 for manufacturer and distributor licenses. Revenues are deposited in the General Revenue Fund and the agency's appropriations are from the General Revenue Fund. The legislature monitors agency operating costs and raises fees periodically to ensure that revenues recover the costs of administering the programs. Revenues generated from the collection of license and filing fees consistently exceed agency operating costs and there is no statutory requirement to balance fee revenues against operating costs.

Licensing fees in most state licensing agencies generally produce enough revenue to cover the cost of agency operations, but are not so large that there are excessive fund balances. Although fixed statutory fees do allow the legislature direct control over fee rates, an increasing number of governing boards have been authorized to set fees by rule.

Under the present system, the legislature must be advised when fees need to be changed which adds an unnecessary periodic burden to the legislative process. Further, when fees are adjusted, subsequent revenues in the short term may substantially exceed agency costs.

A review of the licensing process and its statutory fees indicate the following:

- ▶ Since the commission's creation in 1971, the legislature amended licensing and filing fees in 1979, 1983 and 1987.
- ▶ During the last seven fiscal years the revenues generated from license and filing fees have exceeded operating costs of the agency in the following amounts:

|                         |                        |
|-------------------------|------------------------|
| FY83 - \$ 26,352 - 11%  | FY87 - \$ 91,785 - 25% |
| FY84 - \$ 125,155 - 41% | FY88 - \$ 37,075 - 5%  |
| FY85 - \$ 128,030 - 40% | FY89 - \$ 24,831 - 3%  |
| FY86 - \$ 67,907 - 18%  |                        |

- ▶ Even though fees were increased in 1987, a fee increase may be required by the 72nd Legislature since operating costs are again approaching fees generated.

## **PROBLEM**

The legislature is frequently burdened with passing legislation to change statutorily set fees as the agency's operating costs increase. The rigidity of statutorily fixed fees prevents the commission from adjusting licensing and filing fees to a level necessary to recover agency operating costs without generating excessive revenues.

## **RECOMMENDATION**

- **Statutory fees set in the Texas Motor Vehicle Commission Code should be repealed. The commission should be authorized to set its fees by rule in amounts reasonable and necessary to recover the costs of administering assigned programs.**

---

This approach would provide the commission the flexibility to increase or lower licensing fees based on operating costs of the agency. Commission set fees would also relieve the legislature of the burden of passing legislation to change statutorily set fees. This change would allow the commission to periodically review the appropriateness of fees and to have oversight over adjustments made. Legislative oversight of the commission's fee setting authority would continue as a result of the biennial appropriations process which considers anticipated revenues generated through fees.

## **FISCAL IMPACT**

If fees are set periodically in amounts estimated to recover operating costs, the state may experience minor revenue losses. If fees over the past seven years were set so that revenues did not exceed costs by more than 10 percent, the amount of revenue in excess of costs would have been reduced from \$501,135 to \$222,216, or an average of \$39,846 less per year.

**ISSUE 5:** The statutory requirement that the executive director be a lawyer should be removed to give the Texas Motor Vehicle Commission greater flexibility in determining personnel qualifications.

## BACKGROUND

The 71st Legislature added a statutory requirement that the executive director of the Texas Motor Vehicle Commission must be a licensed attorney. The statute was silent on any qualifications for the position prior to this change.

The general practice of the state is not to have statutory qualifications for the executive administrator of an agency, but rather to allow the governing board or commission to set the qualifications for the position. This practice gives the governing body the flexibility it needs in determining the overall scheme of management of the agency. Although some specific requirements have existed in statute in the past, few exist today.

A review of the question concerning statutory qualifications and duties indicated the following:

- ▶ Only two agencies have specific statutory qualifications for their executive heads, the Texas Department of Health and the Texas Department of Highways and Public Transportation. The commissioner of health is required to be a licensed physician and the engineer-director must be a licensed professional engineer.
- ▶ The statutory requirement that the commissioner of the Department of Mental Health and Mental retardation be a licensed physician was removed in 1987.

## PROBLEM

The newly added statutory requirement that the executive director be a licensed attorney places an unnecessary restriction on the commission's selection of an executive director and may limit the commission in selecting a person it deems best qualified for the position.

**RECOMMENDATION**

- The statutory requirement that the executive director be a licensed attorney should be removed.

---

This change will remove statutory qualification for the executive director and will allow the commission to define the qualifications it deems most necessary for the administration of the agency at such time the position becomes vacant. Further, the commission's authority will be consistent with those of most other boards and commissions in state government as well as the trend to remove restrictive qualifications for executive administrators.

**FISCAL IMPACT**

There is no fiscal impact.



**ISSUE 6:** The statute should be changed to remove the requirement that the agency's hearings examiners be licensed attorneys, and the executive director should be given the flexibility to determine necessary qualifications.

## **BACKGROUND**

The 71st Legislature added a provision to the agency's statute that requires all hearing examiners in the agency to be licensed attorneys. Prior to the change the statute was silent on any qualifications for these positions.

The Motor Vehicle Commission Code requires that a hearing shall be conducted in all contested cases as defined in the Administrative Procedure and Texas Register Act. Currently, all staff who conduct hearings are licensed attorneys.

Not all the hearings conducted by the agency are so complex that they require a licensed attorney as the hearing examiner. Hearings that probably require a licensed attorney as the hearing examiner are those involving consumer complaints against licensees or alleged code or rule violations by licensees. Typically, parties in these hearings are represented by counsel and complex legal issues frequently arise. By contrast, hearings on lemon law issues are more routine and seldom involve complex legal issues. A person trained in conducting hearings could effectively serve as the hearing examiner in these cases.

Statutory qualifications for particular jobs in Texas state government are rare. Unless the job is so complex that a particular credential or background is necessary, the general policy has been to give the agencies the flexibility to determine the particular skills needed to perform a given task. Hearings in state agencies are currently conducted by a variety of different types of personnel and are not limited to lawyers.

An assessment of the general state policy relating to qualifications and duties of hearing examiners indicated the following:

- ▶ No instance could be found where an agency's statute required that persons conducting administrative hearings be licensed attorneys. A survey was made of ten major licensing and regulatory agencies that have complex issues before them. While some of these agencies used licensed attorneys in the hearing examiner role, none of their statutes required that the examiners be attorneys. Further, the state classification officer knew of no such requirement in any agency's statute.
- ▶ The Texas Railroad Commission and the comptroller's office do not use licensed attorneys to conduct administrative hearings on certain contested cases that come before their agencies. The Railroad Commission uses highly qualified technical staff to conduct hearings on

many oil and gas cases. The comptroller often uses auditors to conduct hearings on disputed tax cases.

### **PROBLEM**

The newly added statutory requirement that the agency's hearing examiners be licensed attorneys places an unnecessary restriction on the executive director's selection of persons for these positions. The requirement adds a level of training and education not necessary for all hearings and limits the executive director in selecting persons that may otherwise be qualified to competently perform in the positions.

### **RECOMMENDATION**

- **The statutory requirement that agency hearing examiners be licensed attorneys should be removed.**

---

The executive director of the commission will have the authority to determine the qualifications for persons who perform the function of a hearing examiner in the agency. This authority will ensure that the executive director is allowed to identify the level of education, knowledge and experience required to the various hearing examiner positions and appoint the most qualified person to meet the requirements of the position. Unnecessary qualifications will not be placed on a hearing examiner position if those qualifications are not necessary for the competent performance of the duties and responsibilities assigned to a properly trained person.

### **FISCAL IMPACT**

No fiscal impact is expected at this time. However, some savings may be realized in the future if some hearing examiner positions are reclassified and placed into lower pay groups.

**ISSUE 7: The commission's statute should provide guidelines to ensure that administrative penalties are equitably assessed and commensurate with the seriousness of the violations.**

## **BACKGROUND**

The Motor Vehicle Commission has a range of enforcement tools to ensure compliance with the code and commission's rules and regulations. These include the authority to suspend or revoke a license, assess administrative penalties, issue cease and desist orders, and seek injunctive relief through the attorney general's office. Of the administrative sanctions available to the commission, administrative penalties are the most commonly used. The 71st Legislature increased the maximum amount the commission can assess for an administrative penalty from \$2,000 per violation per day to \$10,000 per violation per day. However, the agency's statute has never included, nor has the commission ever adopted, guidelines to follow as it administers these penalties.

Guidelines for the administration of penalties provide consistency and fairness to the enforcement of the law. Circumstances surrounding a violation can vary and the nature and amount of a penalty should match the nature and extent of the violation.

During the last few sessions, the legislature has given a number of regulatory agencies the authority to assess administrative penalties. In doing so, it has included guidelines in statute, or required them to adopt rules indicating how the penalties would be applied. Without some form of guidelines or rules to follow, a regulatory body can be inconsistent in assessing penalties for similar violations committed under similar circumstances and not appropriately different where circumstances vary.

A review of the enforcement process and its impact indicates the following:

- ▶ Regulatory agencies like the Texas Department of Health, the Department of Agriculture, the Water Commission, the Railroad Commission, and the Funeral Services Commission have adopted guidelines in rules for the assessment of administrative penalties.
- ▶ During the last session, the legislature gave the Structural Pest Control Board administrative penalty authority and modified the administrative penalty authority of the Department of Agriculture. In both instances the adopted statutory language provides guidelines on how to assess administrative penalties. Also, the newly restructured Department of Licensing and Regulation was provided statutory guidelines for its assessment of administrative sanctions. In these cases the legislature required the agencies, when assessing administrative penalties, to consider such factors as the seriousness of the violation, the history of previous violations, the amount necessary

to deter future violations, and/or the licensee's efforts to correct the violation.

- ▶ Prior to changes made by the 71st Legislature, the commission had authority to assess administrative penalties between \$50 and \$2000. A review of the application of these penalties indicate that during fiscal years 1988 and 1989 approximately 73 percent of all administrative penalties assessed by the MVC for advertising violations were \$500 and 18.6 percent were for \$1,000. Interviews with agency staff determined that the standard penalty for a first violation by an automobile dealer is \$500. There was no variation in the amount because of the circumstances or nature of the violation. The dealers that were assessed \$1,000 penalties had a prior violation or had multiple violations. Again, there was little or no variation in the penalty amounts even though the nature and circumstances of their infractions varied.
- ▶ An example of the need for appropriate variation in the use of sanctions and penalties was illustrated in how a dealer in business for over 30 years was penalized by the commission. An unintentional error was made by the dealer's sales manager when the sales manager placed an ad in the local newspaper. The resulting violation was the first violation ever cited against the dealer. The dealer was assessed the standard \$500 penalty for a first advertising violation. A lesser amount or a written reprimand may have been equally effective to deter further violations.

## **PROBLEM**

Unlike many other regulatory agencies, the Motor Vehicle Commission's current approach to assessing administrative penalties does not ensure that the amount of the penalty matches the nature and severity of the violation and may allow inequitable treatment to violators of the Motor Vehicle Commission Code or commission's rules.

## **RECOMMENDATION**

- **The Motor Vehicle Commission statute should be changed to include standard criteria for administrative sanctions and the commission should be required to adopt rules regarding penalty assessments.**

---

This change would provide the commission with guidelines to assess administrative penalties similar to other regulatory agencies. In addition, this approach would ensure fair and consistent application which is particularly important because the maximum penalty amount has just been increased to \$10,000 per violation per day.

**FISCAL IMPACT**

The amount of administrative penalties may vary under the proposed standards depending on the violation. Therefore, the amounts cannot be estimated at this time.



**ISSUE 8:** The statute should be changed to remove certain enforcement sanctions and authority given to the agency because the provisions are unprecedented in Texas, may be unconstitutional, and should be used only with court involvement.

## BACKGROUND

The commission has sanction and enforcement powers including the power to suspend or revoke licenses, issue administrative penalties and take other actions deemed necessary to regulate the motor vehicle industry. The commission's enforcement powers were broadened by the 71st Legislature to include:

- sanctions for contempt;
- cease and desist orders 'in the form of temporary and permanent injunctions'; and,
- statutory stays.

In addition, provisions were added which make the code prevail over any conflicts these new enforcement powers may create with the Texas Administrative Procedure and Texas Register Act.

Sanction for contempt allows the commission to reprimand a person for willful disregard or disobedience of an order it issues. The authority to issue cease and desist orders "in the nature of temporary and permanent injunctions", is a combination of two concepts with the apparent effect of allowing the commission to issue injunctions. Injunctive power would allow the commission to order parties to cease activities that are not necessarily violations of the code or commission rules. The term "statutory stay" is not specifically defined in Texas law but generally a stay is a suspension of a case or some designated proceeding within the case. An example of the commission's use of stay power might be to require a vehicle manufacturer to continue to serve a dealer until a disputed case involving a franchise withdrawal has been resolved by the commission.

State licensing and regulatory agencies are quasi-judicial in nature and the presence of some judicial types of powers is relatively common. These agencies are administrative bodies that are required to investigate facts, or ascertain the existence of facts, hold hearings and draw conclusions from these facts as a basis for official actions, and to exercise discretion of a judicial nature. A licensing board's actions may result in a licensee's loss of right to practice, a monetary penalty, or both. Some licensing boards are authorized by statute to issue cease and desist orders, allowing the boards to demand parties to stop violations or suspected violations of statute or rules that the boards are authorized to enforce. These characteristics are common to licensing and regulatory bodies in Texas and other states to allow them to effectively enforce their responsibilities and to take action when violations occur.

However, except for the Motor Vehicle Commission Code, there appears to be no other precedent in Texas to grant at the sole discretion of a licensing board or commission the use of sanctions for contempt, cease and desist orders in the nature of temporary and permanent injunctions, and stay powers. The agencies' statutes may contain similar enforcement tools but authority to impose these disciplinary measures is held by a court, initiated by the agency or the attorney general, and issued by the court on a case-by-case basis. This is the normal practice in Texas as well as other states.

A review of the Motor Vehicle Commission's sanction and enforcement authority indicated the following:

- ▶ Of twenty five Texas licensing and regulatory agencies sampled, all their statutes included the authority to initiate suits for injunctive relief; none were authorized to issue injunctive-type orders solely on their own action.
- ▶ No Texas governing board or commission of the 25 sampled had authority to sanction any person for contempt. Only two of the statutes specifically authorized the court to issue a contempt order if a person failed to comply with a board or commission order.
- ▶ The states of California, Florida, Illinois, New York, Michigan, Minnesota, and Wisconsin which have systems similar to Texas were surveyed regarding their licensing and regulatory agencies' authority to use sanction for contempt, cease and desist orders in the nature of temporary and permanent injunctions, and stay powers at the sole discretion of an administrative agency. Persons contacted in various offices familiar with their state's overall regulatory processes indicated that such powers are reserved for their court systems.

## **PROBLEM**

The Texas Motor Vehicle Commission has been empowered to use significant enforcement authority solely at its discretion. It may sanction for contempt, issue cease and desist orders in the nature of temporary and permanent injunctions, and exercise stay powers. While state licensing and regulatory agencies are authorized to use quasi-judicial powers, there is no precedent in Texas to delegate these three judicial authorities to a licensing agency. The use of these powers by the commission raises constitutional questions on the separation of powers between the judicial and executive branches of government. Lengthy legal proceedings could ensue if the commission chose to use such powers. In addition, the Motor Vehicle Commission code has been made to prevail over the Administrative Procedure and Texas Register Act where conflicts between the two may arise.



## RECOMMENDATION

The agency's statute should be changed to:

- remove the commission's power to issue sanction for contempt, cease and desist orders in the nature of temporary and permanent injunctions, and stay orders. These sanctions should be authorized in the Motor Vehicle Commission Code for use by a district court upon request of the commission or the attorney general.
- restore the Administrative Procedure and Texas Register Act as the primary authority over agency practices and proceedings.

---

These sanction authorities were added to the commission's general powers by the 71st Legislature. The delegation of these judicial powers is an unprecedented delegation of judicial powers to the quasi judicial powers customary to administrative licensing and regulatory agencies. The use of these powers by the commission could be challenged on constitutional ground of separation of powers. Requiring the agency or the attorney general to request the court to issue these sanctions would align the agency's enforcement procedures with those of other regulatory agencies in Texas and would nullify a potential constitutional problem. Restoring the Administrative Procedure Act as the prevailing authority over agency proceedings achieves the consistency in state agency administrative law that the Act was intended to provide.

## FISCAL IMPACT

None.



**ISSUE 9: The provision that allows a licensed dealer to protest the establishment of a new dealership or the relocation of an existing dealership should be removed from the statute.**

## **BACKGROUND**

The Texas licensing process for a new motor vehicle dealer requires the applicant to pay a \$150 licensing fee and to submit information regarding the applicant's qualifications for a license. The primary information required includes data to determine the applicant's financial stability, integrity and experience, a copy of the franchise agreement with the manufacturer, and a description of the dealer's physical facilities.

As part of the dealer license application process, Texas law allows an existing dealer of new motor vehicles to protest the establishment or relocation of another dealership of the same line-make (e.g. Ford cars and light trucks) in the same market area. The statute requires the Motor Vehicle Commission to notify all dealers of the same line-make located in the same county or within a 15 mile radius of the applicant's proposed location or relocation. If any existing dealer protests the application, the commission must conduct a hearing and may deny the protested license application unless the applicant establishes good cause for the requested dealership license.

Texas is one of thirty eight states that allow "protests" of a dealer license application and is among the twenty seven states that allow protest of relocation of existing dealers. However, sunset recommendations in Florida and Tennessee proposed abolishing or curtailing protest provisions. Legislation that allowed protest of applications was recently vetoed in the state of Washington.

While restricting competition in the market place through state regulation may be appropriate, it should be done only if there is overriding benefit in terms of health, safety, or welfare to the public. The purpose of the protest provision is to provide regulation that prevents over-saturation of dealerships in the market place. Excessive competition may jeopardize the solvency of the dealership and the buying public may be harmed because of reduced quality of service.

Accordingly, it is not in the interest of a prospective dealer or manufacturer to invest in a market where potential sales are not attractive. A prospective dealer faces substantial investment in costs in real estate, inventory and personnel in establishing a new dealership. Manufacturers will likewise avoid over-saturation of a market because it is to their benefit to have strong, stable and well established dealers. Therefore, a manufacturer conducts thorough market studies of an area before a dealer is selected and a franchise is granted. The manufacturer has the same interest in market vitality when an existing dealer applies to relocate.

In practice, it is questionable whether the protest provision achieves its objective. Since the commission approves the majority of applications, the primary effect is

to delay the approval of the application for licensing. The scheme of protected dealer markets, through protest, allows an existing dealer to delay a manufacturer from franchising an additional dealer or an existing dealer from relocating. This denies competitive entry into the business of retailing new motor vehicles and often results in substantial costs to the applicant, the protestant and the commission.

A review of the license application protests process and its impact indicate the following:

- ▶ During fiscal years 1987, 1988 and 1989, 567 car, truck and motorcycle dealer license applications were filed. Forty nine (8.6%) of the applications were protested. During the same period, the commission issued orders in thirty-seven cases, thirteen of them as a result of a formal hearing. During this period only one motorcycle dealer license was denied because of the protest provision. However, on September 6, 1989 the commission issued an order to deny an application for relocation of an automobile dealership.
- ▶ The thirty-seven protest cases decided by the commission during fiscal years 1987, 1988 and 1989 had an average time length of approximately 280 days from date of filing of protest to order of the commission. The range was 90 days or less to 840 days, with 7 exceeding 540 days (18 months).
- ▶ According to a Federal Trade Commission report issued in 1986, delayed or impeded entry into a market results in higher costs for consumers. The results of the report indicated that in 1978 the entry laws raised the average price of the cars used in the study about six percent, and that the laws cost consumers over \$140 million that year. In addition, the report concluded that given the current prevalence of restrictive entry laws, the cost to all U.S. car buyers could run in excess of \$3 billion per year.

## **PROBLEM**

Allowing licensed dealers to protest the license application for a new dealership, or the relocation of an existing dealer, is ineffective as a method to actually prevent over-saturation of a market. It results in unnecessary expense and delay in the licensing process and increases new car prices for consumers.

## **RECOMMENDATION**

- **The statutory provision which allows licensed dealers to protest the granting of a new dealers license or the relocation of an existing dealer should be repealed.**

---

Under the recommended approach, dealer licenses and relocations would be granted as long as the applicant complies with the commission's requirements. This will result in less delay and expense for applicants seeking new or relocated

dealerships and lower costs to consumers by increasing competition in the market place.

### **FISCAL IMPACT**

There will be a direct cost savings of \$700 annually in mailing costs because the agency will no longer be required to notify existing dealers of new dealer applications. There will be no fiscal impact on staff because the activities related to protests are performed by six different staff and no positions could be eliminated. The staff will be freed to perform other activities.



**ISSUE 10: The statute should be amended to set timelines for resolving lemon law complaints. If the timelines are not met, the consumer should be allowed to file suit in court.**

## BACKGROUND

The agency is required by statute to receive and resolve consumer complaints pertaining to the lemon law. The statute requires the commission to adopt rules and conduct hearings to implement and enforce the lemon law provisions in the Code. The agency has adopted an informal mediation process which provides both parties to the complaint an opportunity to resolve the dispute prior to a full hearing. This informal process includes activities such as correspondence between consumers and manufacturers via the agency staff as well as offering both parties the opportunity to have the agency's staff mechanic attempt to diagnose and resolve the problem. If the complaint is not resolved at this informal stage, a hearing is conducted by a hearings officer who subsequently recommends action to the full commission.

The consumer who wishes to use the provisions of the lemon law in a private law suit must exhaust the agency's administrative process before he or she may file a private lawsuit. The agency's administrative process takes six to eight months from the time the complaint is filed to its final resolution. The statute has no time lines established for the resolution of these complaints nor has the commission established any.

Administrative complaint processes should generally meet several criteria. First, they must allow the consideration of all pertinent facts by an unbiased person or group of people. Second, they must provide for a determination or resolution at the conclusion of the process. Finally, they must be handled in a timely manner to avoid undue hardship on either the complainant or the defendant. Other states, as well as federally recommended warranty mediation programs, have specific time requirements for the resolution of these kinds of cases.

A comparison of the agency's current methods for resolving cases to the criteria above and a review of other complaint resolution processes indicated the following:

- ▶ The agency has a fair process which provides for unbiased hearing officers to consider the facts of each case. The agency also provides for resolution of complaints through an informal process or through a full hearing. These procedures upon completion have resulted in settlement of the complaint through informal processes prior to a full hearing, vehicles being restored to full working condition, restitution for the consumer or denial of relief for the consumer. However, the six to eight month process for achieving resolution was found to be excessive. In addition, the defect(s) must be supported by evidence at

the hearing, obliging the consumer keep the vehicle in its defective state until that time.

- ▶ A review of the statutes from the ten other states that have adopted state operated lemon law programs showed mandatory time frames for complaint resolution in all of these states. The statutory time frames for resolution ranged from 30 days to 65 days. The most common resolution period required that a final decision be rendered within 45 days from the date the complaint was filed by the consumer.
- ▶ Other similar complaint resolution processes were identified which have considerably shorter time frames. For example, rules related to the federal Magnuson-Moss Warranty Act require a time frame for resolution of warranty arbitration procedures of 40 days from the filing of the complaint.
- ▶ The current time frame for resolution of the complaints have resulted in unnecessary burdens on the consumers. They include loss of potential repurchase price resulting from additional mileage on the vehicle and costs of alternative transportation. The loss to a consumer in the potential repurchase price for a six-month delay in the hearings process would be approximately \$400. This amount is based on the average cost of a 1987 vehicle, the average number of miles traveled per vehicle per year, and the method used by the Motor Vehicle Commission to determine repurchase price.
- ▶ In addition to the burdens that the lengthy hearings process places on the consumer, the law further restricts the consumer from alternative forms of complaint resolution by prohibiting the consumer from filing a private lawsuit using the Texas lemon law until they have exhausted the administrative remedies available through the agency.
- ▶ Other state agencies have set timelines in an effort to ensure timeliness and avoid undue hardship to complainants. People filing complaints with the Texas Commission on Human Rights are afforded the opportunity to file a civil lawsuit if the commission has not resolved the complaint within 180 days of the date the complaint was filed.

## **PROBLEM**

In comparison with similar resolution processes the current process for resolving consumer complaints under the lemon law in Texas is unnecessarily time consuming, costly, and burdensome for the consumer.



## RECOMMENDATION

The statute should be modified to:

- require the hearing officer to recommend a resolution to the commission within 90 days from the date the complaint was filed with the commission.
- authorize a consumer to file a private lawsuit under the provisions of the lemon law if the hearing officer has not recommended a resolution within the prescribed 90-day period.

---

The changes recommended above would result in the considerable reduction of time it takes to resolve a lemon law case. In addition, by allowing the consumer to file a private lawsuit if the agency fails to recommend a resolution, the consumer is provided another avenue for resolution.

## FISCAL IMPACT

The agency has estimated that there will be need for one additional full time support staff person to support the faster pace at which the commission will have to work. The cost of this staffing increase would be approximately \$26,000 in the first fiscal year and approximately \$23,000 thereafter.



**ISSUE 11: The statute should be amended to expand consumer protection by extending the current statutory time and mileage limits from 12 months or the manufacturer's express warranty mileage to 24 months or 24,000 miles.**

## **BACKGROUND**

Currently, consumers in Texas are eligible to file a lemon law complaint with the Texas Motor Vehicle Commission based on defects occurring during the first 12 months or within the mileage period stated in the manufacturer's warranty, whichever comes earlier. The law requires that a reasonable number of attempts be made to have the vehicle repaired. Further, in order to alleviate the burden of proof for consumers, the law defines specifically the conditions that meet the "reasonable number of attempts" criteria. This criteria prescribes that the consumer must either attempt to have the vehicle repaired four or more times for the same defect or the vehicle has to be out of service for 30 or more days within the first 12 months or within the manufacturer's express warranty period, whichever comes first. Generally, if these conditions are met, the consumer becomes eligible to seek the remedies provided under the lemon law, including vehicle repurchase, vehicle replacement or simply repair of the defect.

Lemon laws were adopted by states to protect the rights of new car owners by providing statutory remedies that in effect, require the manufacturer to live up to warranty agreements. In order to uphold and enforce the warranties, the time frames in which consumers are eligible for protection under the lemon law should be consistent with the manufacturer's warranty periods. Logically, the protection would not be serving its purpose if a large number of consumers were experiencing substantial and irreparable warranty problems outside the lemon law's time frame for protection.

Information from the agency and recent studies from the New York Attorney General's Office, the National Highway Traffic and Safety Administration, and the National Conference of State Legislators point to a need for greater consumer protection in the area of vehicle warranties.

A review of current information pertaining to the coverage provided by lemon laws and warranties indicated the following:

- ▶ During 1982 to 1985, at the time that most states enacted lemon laws, most manufacturers were offering a 12 month/12,000 mile warranty. Consequently many states adopted a lemon law time frame that provided consumer protection for the same 12 month/12,000 mile period. Since that time, manufacturers have expanded their warranty coverage. Currently, all manufacturers are offering some type of warranty that extends beyond the 12 month/12,000 mile period. For example, the three largest U.S. manufacturers are all offering extended powertrain warranties, and many other manufacturers are offering full warranties for 36 months or 36,000 miles.

- ▶ Fourteen states have lemon laws that provide an extended time frame or mileage period, providing consumer protection that is consistent with manufacturers' expanded warranty coverage. There are a variety of month and mileage combinations that these states have enacted. For example,
  - two states provide lemon law remedies for the duration of the manufacturers express warranty;
  - two states provide lemon law remedies for a 24 month/ 24,000 mile period;
  - five states provide coverage for a 24 month/18,000 mile period;
  - two states provide lemon law remedies for a 12 month/15,000 mile period; and
  - five other states provide a 12 month or manufacturer's express warranty mileage eligibility period, but only require that the first occurrence of the nonconformity occur within the first 12 months or within the warranty mileage period. The additional occurrences of the nonconformity must occur within a longer time frame.
- ▶ Studies conducted by the National Highway Traffic and Safety Administration (NHTSA) found that substantial nonconformities are either not corrected or do not appear within the standard 12 month/12,000 mile period. Various investigations by NHTSA into serial nonconformities revealed the following;
  - 68 percent of the complaints received concerning the occurrence of sudden acceleration in certain 1981 through 1984 vehicles occurred after 15,000 miles;
  - 80 percent of the complaints received concerning the occurrence of "throttle sticking" in certain 1984 through 1988 vehicles occurred after 15,000 miles; and
  - 40 percent of the complaints received concerning the loss of power brake assist in certain 1980 vehicles occurred after 24 months.
- ▶ The New York Attorney General's Office sampled closed files of consumers who won favorable decisions or settled cases with the manufacturer in 1987. The sample indicated that 49 percent of those consumers' vehicle defects were not repaired or had not appeared within the first 12,000 miles.
- ▶ A study committee from the National Conference of State Legislatures recommended a lemon law eligibility period of 24 months/24,000 miles. The recommended coverage would apply only to those items that are covered by the manufacturer's warranty. In those instances where a nonconformity is covered for a shorter period of time, such as a 12 month/12,000 mile warranty item, the first occurrence of the nonconformity would have to occur within the applicable warranty

period. Subsequent occurrences of the nonconformity would have to occur within the 24 month/24,000 mile period in order for the consumer to meet the eligibility requirements for lemon law remedies.

- ▶ During a one month period in the summer of 1989, 78 (21%) out of 398 telephone contacts that the agency received were not eligible for processing by the agency because the vehicle nonconformities did not occur during the first 12 months, within the manufacturer's express warranty mileage period or the time had lapsed for the consumer to file a lemon law complaint.

## **PROBLEM**

The Texas lemon law is more restrictive than that provided by a number of other states and shorter than the majority of manufacturer's warranties. The current level of protection does not afford remedies to consumers for certain problems that consistently occur after the current statutory time or mileage periods.

## **RECOMMENDATION**

The statute should be changed to:

- provide eligibility for lemon law relief to new car owners for a period of 24 months or 24,000 miles, whichever comes first, for problems that are covered by the manufacturers warranty;
- require consumers to demonstrate a reasonable number of attempts to repair the vehicle. A reasonable number of attempts should be defined as either four repair attempts for the same defect or 30 days out of service within the first 24 months or 24,000 mile period of ownership; and
- parallel the recommendation of the National Conference of State Legislators to compensate for a manufacturer's warranty that is shorter than 24 months or 24,000 miles. The first occurrence of the problem would have to occur within the applicable warranty period and subsequent occurrences would have to occur within the first 24 month/24,000 mile period.

---

This recommendation will ensure that consumers have lemon law remedies available to them for at least 24 months or 24,000 miles in the event that the manufacturer is unable to bring the vehicle into conformity with the manufacturer's express warranty. For example, if the defect in question was only covered under the manufacturer's warranty for 12 months or 12,000 miles, then the defect would have to have appeared within that warranty period. But, the consumer would have up to 24 months or 24,000 miles to fulfill the "reasonable number of attempts" conditions. This change from the current 12-month or manufacturer's express warranty will be more consistent with manufacturer's existing warranties and parallel the growing trend in other states.

**FISCAL IMPACT**

A fiscal impact is difficult to calculate. Although there is one other state that operates under 24 month/24,000 mile lemon law period that also has a state operated program, it is not possible to compare this program with Texas' program because of the significant differences in the ways the programs are administered. Agency staff estimate two additional hearing examiners and three additional support staff will be needed to handle the increased number of complaints resulting from expanding the time frame that consumers are eligible to file lemon law complaints. The additional staff and related costs total approximately \$175,000 in the first fiscal year. Thereafter, the annual cost will be approximately \$165,000.

There will be an increase in cost to the manufacturers resulting from consumers being eligible for repurchase substantially longer. The amount of increase cannot be estimated at this time.

**ISSUE 12:** The statute should be changed so a consumer should only be required to prove impairment of use OR value of a vehicle to recover under the lemon law; the consumer should not have to prove that both use AND value are impaired.

## BACKGROUND

Currently, the Motor Vehicle Commission Code details several conditions that must be met for consumers to be eligible to seek remedy under the lemon law. One of these requirements is that the defect or defects under dispute must substantially impair both the use and value of the vehicle. If the consumer cannot prove impairment to both use and value, they are ineligible for relief under the lemon law.

Consumers should expect that a vehicle will maintain a reasonable level of use as well as a generally predictable market value for a specified period of time. Manufacturers recognize this expectation through warranty protection of both mechanical and cosmetic features of a vehicle and guarantee that the vehicle will meet certain standards for a specified period of time. Other states recognize the concept of warranty protection to apply to use AND value by allowing lemon law relief for impairment of either condition.

A review of the available information regarding the conditions of eligibility for lemon law recovery indicated the following:

- ▶ Lemon laws in 28 other states protect consumers from problems that effect either the use or the value. Recovery is based on impairment to only one of these conditions, not both.
- ▶ The agency does not keep data that would show the actual number of cases dismissed because a consumer was unable to show both conditions. However, information was found in agency files about situations involving defective paint on vehicles, one of the most common examples of impaired value. Although defective paint does not impair the use of a vehicle, it can substantially impair the vehicle's value. In these situations the commission was unable to order repurchase of the vehicles because the problem did not substantially impair the use, only the value of the vehicle.

## PROBLEM

A vehicle can be worthless to the consumer if either the use or value is substantially impaired. Texas lemon law requirements deny this fact and place an unnecessary burden on consumers to prove that both conditions are met before they can seek recovery under the law.

**RECOMMENDATION**

- The statute should be modified to allow a consumer to proceed under the lemon law when the defect or condition substantially impairs the use OR value of the vehicle, but should not require both conditions to be met.

---

Consumers should be eligible for lemon law recovery if they can demonstrate that problems exist that substantially impair either the use or value of their vehicles. This change in statute will ensure that consumers are not denied access to lemon law remedies because they cannot demonstrate impairment to both conditions.

**FISCAL IMPACT**

The agency has estimated that there will be a 25 percent increase in lemon law hearing-related activities. The agency estimates it will need one additional hearing examiner plus one additional support staff for this. The costs for the additional staff will be approximately \$75,000 the first fiscal year and \$70,000 for each year thereafter.



**ISSUE 13:** The statute should be amended to add serious safety hazards to the grounds for recovery under the lemon law in order to protect consumers from unsafe vehicles. The statute should also be changed to decrease the number of repair attempts the consumer must make, if the problem is a serious safety hazard.

## BACKGROUND

Currently, the Texas lemon law does not address or provide special consideration for serious safety hazards. In order to be eligible for repurchase under the lemon law provisions, a consumer must show that the defect substantially impairs the use and value of the vehicle. The consumer must also make a reasonable number of attempts to have the vehicle repaired.

The statute provides guidelines indicating that four attempts to repair the same defect or an accumulation of thirty days out of service for repair are both considered reasonable attempts to repair the vehicle. A lesser number of repair attempts or fewer days out of service places the consumer in position of having to prove that their attempt to repair the vehicle qualifies as a reasonable attempt at repair. While a safety hazard clearly constitutes an impairment to both the use and value of the vehicle, under the Texas lemon law, consumers must meet the required four repair attempts or 30 days out of service, or prove that a lesser number of repair attempts or days out of service qualifies as reasonable in their situation.

Consumers should expect a new vehicle to meet certain standards of performance. Not only should a consumer be able to expect that a new vehicle will be operable and maintain a predictable level of value, as is provided in current law, the consumer should expect that the vehicle will not pose a safety hazard. Many other states' lemon laws provide consideration of serious safety hazards as grounds for recovery and some states have reduced the burden of proof for consumers in these cases. Often state safety laws dictate the importance of safety features by prohibiting the operation of vehicles that do not meet certain safety standards.

The concept of "reasonable number of attempts" was defined in state lemon laws to eliminate the burden to a consumer of proving what constituted "reasonable" under normal circumstances. Defects that pose a safety hazard to the consumer present a special circumstance and consumers should not be expected to meet the same conditions to fulfill the "reasonable number of attempts" criteria.

Safety hazards range from defective brakes and steering systems to faulty windshield wipers and horns. A consumer that is compelled to drive a vehicle that has a defective braking system until they have met the four repair attempts criteria could be in a life threatening situation. Compelling consumers to drive a vehicle that poses a serious safety hazard long enough to meet the current

"reasonable number of attempts" criteria could present undue risk to the consumer as well as to other motorists.

A review of the information concerning safety as a condition of impairment indicated the following:

- ▶ Twenty-one other states include "safety" as a specific condition that makes consumers eligible for lemon law remedies.
- ▶ Five of these 21 states have recognized a safety hazard as a condition that warrants special consideration in the "reasonable number of attempts" criteria. For example, the lemon law in the state of Washington assumes that two or more repair attempts on the same serious safety defect is a reasonable number of attempts. In West Virginia the consumer must have attempted to have the "life threatening" defect repaired at least once to meet the "reasonable number of attempts" condition.

## **PROBLEM**

Consumers are not clearly eligible for repurchase if the condition of impairment is a safety hazard. Although the agency has ordered repurchase on a vehicle that presents safety hazards, the consumer must prove that the safety hazard impairs the use and the value of the vehicle. Further, consumers must meet either the four repair attempts or thirty days out of service criteria or prove that a lesser number of repair attempts was reasonable due to the defects in question being a safety hazard.

## **RECOMMENDATION**

The statute should be modified to:

- include a safety hazard as a condition of impairment; and
- define two attempts as the "reasonable number of attempts" when a safety hazard is the defect in question.

This change will ensure that conditions which impair the safety of a vehicle qualify as a condition of eligibility under the lemon law. The recommendation will also ensure that consumers do not have an undue burden of proof in cases where the condition or defect in question constitutes a serious safety hazard, but only need to show two repair attempts in cases of safety defects.

## **FISCAL IMPACT**

The agency has indicated that they do not anticipate any additional costs resulting from this recommendation.

**ISSUE 14: The lemon law statute should be changed to reinstate the agency's flexibility to account for a "lemon's" decreased value to its owner during the time after the problem arises.**

## BACKGROUND

The Texas lemon law requires a manufacturer to repurchase a vehicle from the vehicle's owner when the vehicle is determined to be a "lemon". The actual repurchase of a vehicle can occur many months after the time the defect first appears. During this period, the average consumer still needs to use the vehicle even though its reliability, and therefore its value to the consumer, is often significantly impaired. Many states have recognized this fact and have developed formulas which account for this period of impaired use. These formulas, which consider the purchase price, mileage and life span of a vehicle, are used in calculating the repurchase price the manufacturer must pay the consumer if the vehicle is determined to be a lemon and ordered by the commission to be repurchased. Texas used such formula until changes made to the MVC's statute last session clouded the agency's authority to do so.

During the 71st Legislative Session, in 1989, the statute was amended to read as follows:

"A reasonable allowance for use shall be that amount directly attributable to use of the motor vehicle when the vehicle is not out of service for repair."

Agency staff have interpreted this amendment to remove their ability to use a formula which considers the quality of usage before and after the defect has been reported. This has the affect of reducing the amount the owner of a lemon is "re-paid" when the manufacturer is required to repurchase the vehicle.

A review of the available information regarding reasonable allowance for use provisions revealed the following:

- ▶ Ten other states give consideration to the quality of vehicle usage before as well as after the appearance of the defect.
- ▶ According to the staff of the bill's sponsor and representatives of the Texas Automobile Dealers Association, the intent of removing the language pertaining to the reasonable allowance was to increase the agency's flexibility in developing a fair and reasonable formula.
- ▶ Agency staff have indicated that the modified language decreases the degree of flexibility they have in developing a formula that they consider to be fair and reasonable for all parties since it does not allow the formula to provide for an adjustment after the first repair attempt is made on a defect that substantially impairs the vehicle's use.

- ▶ A comparison was made of two formulas and their impact on the adjustment made to the repurchase price for the consumer. The first formula, similar to the one used by the commission before its statute was recently modified, considers an adjustment of one-half the allowance rate for use after the first attempt to repair the defect. If this formula was applied to a situation where the vehicle had a purchase price of \$15,000, a life expectancy of 100,000 miles, a first report of defect at 3,000 miles and was repurchased at 6,000 miles, the allowance for use deducted from the repurchase price would be \$675. In this same example, the allowance deducted would be \$900 if no adjustment was made for the mileage after the defect occurred, or \$275 that the consumer would not be reimbursed. If these same conditions and formula were applied to a different situation where the first defect occurred at 3,000 miles and the vehicle was repurchased at 14,000 miles versus 6,000 miles, the allowance deducted from the repurchase price would be \$1,275 and \$2,100 respectively, or \$825 that the consumer would not be reimbursed.

## **PROBLEM**

Recent law changes have created ambiguity in the "reasonable allowance for use" provisions in the Code. The intent of the recent change was to provide greater flexibility for the agency. Agency staff have interpreted the changes to diminish the level of flexibility that they have in developing the most fair and reasonable formula.

## **RECOMMENDATION**

The statute should be changed to:

- clarify that the commission may develop a formula that gives consideration to the impaired use of the vehicle before as well as after the defect is first reported to the dealer.

---

These changes clarify the agency's authority to establish an allowance rate that recognizes the period of impaired use. This modification will ensure that the agency staff has the flexibility to develop a formula that is fair to both the manufacturer and the consumer.

## **FISCAL IMPACT**

There will be no fiscal impact to the agency. The manufacturers could experience a change in repurchase costs depending on the formula that the Commission adopts as rules.

**ISSUE 15: The Texas Lemon Law should be changed to specify that certain "incidental costs" related to the operation of a defective vehicle be reimbursed to the consumer when the vehicle is repurchased by the manufacturer.**

## BACKGROUND

Currently, the Texas lemon law provides consumers with remedies when they have purchased a vehicle that does not measure up to the manufacturer's warranty standards. The commission can order the manufacturer to repair the defect in question or order the manufacturer to repurchase or replace the vehicle. If the commission orders a manufacturer to repurchase a consumer's vehicle, the amount paid to the consumer includes the original purchase price, plus sales tax, title, registration and documentary fees, less an amount that is considered a reasonable allowance for the consumer's use of the vehicle. No consideration is given for any incidental costs or damages incurred by the consumer due to the defect that caused the repurchase.

Consumer protection laws should provide a reasonable level of assurance that consumers will be protected against bearing any unreasonable expenses attributable to purchasing faulty products or services. Unfortunately, consumers incur frequent, incidental expenses that are directly attributable to purchasing and driving a vehicle that is a lemon. Examples of typical costs include rental cars, taxi and bus fares, air fare, motel bills, phone charges, vehicle storage costs and towing charges. Reimbursement of those kinds of expenses to the consumer by the manufacturer is often required under lemon laws in operation in states other than Texas.

A further review of the information pertaining to product related damages and damages related to motor vehicles revealed the following:

- ▶ The Texas Motor Vehicle Commission does not collect information about incidental damages or the number of consumers requesting reimbursement. However, the agency was able to find examples in which consumers requested compensation for incidental expenses that were related to owning a defective vehicle. For example, one consumer listed over \$5,300 in incidental type expenses. These costs included vehicle registration, phone calls, hotel costs, truck rental to transport the vehicle to the hearing, and compensation for time off work and aggravation.
- ▶ Examples from another state were found that indicate that there is a wide range of possible costs associated with owning a faulty vehicle. One case example indicated that the consumer received \$100 for reimbursement of phone bills, copying and postage costs.
- ▶ Twenty other state laws allow incidental damages to be paid to consumers in vehicle lemon law cases. Eight of these states have state

administered lemon law arbitration programs that are similar in nature to the Texas program. Damages most commonly listed in other state lemon laws include sales taxes, registration fees, title fees, towing charges, and alternative transportation costs. The Texas Motor Vehicle Commission's rules authorize reimbursement of costs that are included in the purchase price of the vehicle such as sales taxes, registration fees and title fees. However, costs that are associated with the vehicle being faulty, such as towing, alternative transportation costs and travel related expenses, are not reimbursable under current law or rules.

- ▶ Manufacturer's arbitration boards often include various incidental damages in their settlement agreements. For example, Ford Motor Company's mediation manual lists the following items to be considered by their own arbitration programs as reimbursable to consumers: rental cars, taxi, air and bus fares, motel stays, phone calls, road service work and sales taxes.

## **PROBLEM**

Currently, Texas consumers incur out-of-pocket expenses that are directly attributable to having a vehicle that is a lemon. The lemon law does not allow consumers to be compensated for these types of expenses although compensation is allowed by other states and manufacturer arbitration programs.

## **RECOMMENDATION**

- **The statute should authorize payment to consumers of incidental costs associated with purchasing a faulty vehicle. Permissible incidental costs would include the following items:**
  - alternative transportation costs;
  - towing charges; and
  - phone charges and lodging costs.

---

This recommendation will ensure that consumers are being duly compensated for incidental but real costs associated with owning a faulty vehicle. Providing a detailed list of allowable damages in statute will ensure that these elements of lemon law cases are not the subject of debate between the consumer and the manufacturer.

## **FISCAL IMPACT**

There will be no cost to the agency, but there may be an increase in costs to the manufacturers that are compelled to pay for costs under the new provisions.

**ISSUE 16:** The statute should require that titles of vehicles repurchased under the lemon law are clearly marked to show they are lemons to protect subsequent purchasers of the vehicles.

## BACKGROUND

The Texas Motor Vehicle Commission is given the authority to order manufacturers to repurchase or replace a vehicle that is determined to be a lemon. During fiscal year 1989, the commission ordered manufacturers to repurchase 81 vehicles. Defective vehicles are also repurchased through the manufacturer's arbitration process, which is an independent process set up by the manufacturer. Currently, the Texas lemon law does not address the disposal of the vehicles once they are repurchased by the manufacturers. Discussions with manufacturers representatives and agency staff indicate that the manufacturers generally make the necessary repairs to a repurchased vehicle and wholesale it at an auction.

Consumer protection laws establish a standard that protects consumers from deceptive and misleading trade practices. In support of this standard many states have adopted statutory provisions which prohibit, or substantially restrict the resale of repurchased vehicles or require disclosure to prospective buyers that the vehicle has been repurchased. These provisions serve to put consumers on notice that they are purchasing a vehicle that has had problems in the past.

A review of information about repurchased vehicles and the laws of other states indicated the following:

- ▶ Twenty other states have provisions which require disclosure on repurchased vehicles. This is done in a variety of ways including "branding" the title, notification on the window sticker, and statement of disclosure on the retail purchase contract.
- ▶ Nine of these states forbid the resale of repurchased vehicles or provide that certain conditions must be met in order to resell the vehicle.
- ▶ The Division of Motor Vehicles at the Texas Department of Highways and Public Transportation currently requires special labeling for vehicles that have been reconditioned or have been flood damaged.

## PROBLEM

Texas consumers are not informed when they purchase a vehicle that was repurchased under the lemon law or under the manufacturer's arbitration process. There are no requirements that the vehicle be repaired prior to resale. Failure to disclose that a vehicle is a lemon or failure to correct the defect prior to resale can expose the buyer to the same problems that were judged unacceptable for the original buyer.

## RECOMMENDATION

- The statute should be modified to:
  - require notification to the Texas Department of Highways and Public Transportation;
  - require title marking of all vehicles repurchased under the lemon law or manufacturers' arbitration programs;
  - require disclosure to the buyer, and make failure to disclose a violation of the Deceptive Trade Practices Act;
  - require the Motor Vehicle Commission to maintain complete and current records of repurchased vehicles; and
  - provide a process in the Motor Vehicle Commission to remove the lemon designation from the title if the commission is satisfied and the defect has been corrected.

---

Currently, there are no requirements that purchasers of vehicles previously repurchased under the state's lemon law or through a manufacturer's arbitration program be informed of the condition of the product they are purchasing. This recommendation will ensure that manufacturers and dealers disclose to prospective buyers of used vehicles if the vehicle was repurchased under the lemon law or through an arbitration process. The recommendation also provides the manufacturer with an opportunity to prove to the Texas Motor Vehicle Commission that the defect(s) or condition(s) have been corrected so the lemon designation can be removed from the title.

## FISCAL IMPACT

The State Department of Highways and Public Transportation estimates that the costs associated with branding the title and preparing an addendum indicating the date and reason for repurchase would be \$8,100 for computer programming and clerical activities in the first fiscal year and \$1,100 for clerical activities for each subsequent year. The Texas Motor Vehicle Commission has estimated that there will be no measurable costs associated with their additional duties.



## **Across the Board Recommendations**

---

---

From its inception, the Sunset Commission identified common agency problems. These problems have been addressed through standard statutory provisions incorporated into the legislation developed for agencies undergoing sunset review. Since these provisions are routinely applied to all agencies under review, the specific language is not repeated throughout the reports. The application to particular agencies are denoted in abbreviated chart form.

---

---

| Texas Motor Vehicle Commission |          |             |   |
|--------------------------------|----------|-------------|---|
| Applied                        | Modified | Not Applied | Across-the-Board Recommendations  |
|                                |          |             | A. GENERAL  |
|                                |          | *           | 1. Require public membership on boards and commissions.   |
| X                              |          |             | 2. Require specific provisions relating to conflicts of interest.   |
|                                |          | *           | 3. Provide that a person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.           |
|                                |          | *           | 4. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee.                    |
| X                              |          |             | 5. Specify grounds for removal of a board member.   |
|                                |          | *           | 6. Require the board to make annual written reports to the governor, the auditor, and the legislature accounting for all receipts and disbursements made under its statute. |
|                                |          | *           | 7. Require the board to establish skill-oriented career ladders.  |
|                                |          | *           | 8. Require a system of merit pay based on documented employee performance.  |
|                                |          | *           | 9. Provide for notification and information to the public concerning board activities.  |
|                                |          | *           | 10. Place agency funds in the treasury to ensure legislative review of agency expenditures through the appropriation process.   |
|                                |          | *           | 11. Require files to be maintained on complaints.   |
| X                              |          |             | 12. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.  |
| X                              |          |             | 13. Require development of an E.E.O. policy.  |
| X                              |          |             | 14. Require the agency to provide information on standards of conduct to board members and employees.   |
| X                              |          |             | 15. Provide for public testimony at agency meetings.  |
| X                              |          |             | 16. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions.  |
| X                              |          |             | 17. Require development of accessibility plan.  |

\* Already in law.

**Texas Motor Vehicle Commission**  
(cont.)

| Applied | Modified | Not Applied | Across-the-Board Recommendations  |
|---------|----------|-------------|---|
|         |          |             | <b>B. LICENSING</b>   |
|         | X        |             | 1. Require standard time frames for licensees who are delinquent in renewal of licenses.  |
|         |          | X           | 2. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date.          |
|         |          | X           | 3. Provide an analysis, on request, to individuals failing the examination.   |
|         |          | X           | 4. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.                                 |
|         |          | X           | 5. (a) Provide for licensing by endorsement rather than reciprocity.<br>(b) Provide for licensing by reciprocity rather than endorsement. |
|         |          | *           | 6. Authorize the staggered renewal of licenses.   |
|         | X        |             | 7. Authorize agencies to use a full range of penalties.   |
|         |          | *           | 8. Specify board hearing requirements.  |
| X       |          |             | 9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.     |
|         |          | X           | 10. Authorize the board to adopt a system of voluntary continuing education.  |

\*Already in law.

## **Minor Statutory Modifications**

---

---

Discussions with agency personnel concerning the agency and its statute indicated a need to make minor statutory changes. The changes are non-substantive in nature and are made to comply with federal requirements or to remove out-dated references. The following material provides a description of the needed changes and the rationale for each.

---

---

**Minor Modification to the  
Texas Motor Vehicle Commission**

| Change  | Reason  | Location in Statute                   |
|---|---|---------------------------------------|
| Delete requirement that the State Auditor audit the financial transactions of the agency during each fiscal year. | To remove out of date language because the State Auditor performs a single state-wide audit of all accounts, books, and financial records of state government, and issues a report of such audit. | Article 4413 (36)<br>Section 2.10 (c) |





**Texas Motor Vehicle Commission**

**Report prepared by:**

**Ron Allen**

**Carlos Gonzalez-Pena**

**Kelley Jones**

**Tim Graves**

**Sunset Advisory Commission  
P. O. Box 13066, Capitol Station, Austin, Texas 78711**

**(512) 463-1300**

