

TEXAS MOTOR VEHICLE COMMISSION

Staff Report

to the

Sunset Advisory Commission

April 20, 1978

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INTRODUCTION

This report is submitted pursuant to Section 1.06, Subsection (3) of the Texas Sunset Act and contains a review of the operations of the Texas Motor Vehicle Commission. Termination of the Texas Motor Vehicle Commission has been scheduled for September 1, 1979 unless it is continued by law.

The material contained in the report is divided into three major sections: background, review of operations and conclusions. The Background section contains a brief history of legislative intent and a discussion of the original need for the Texas Motor Vehicle Commission. The Review of Operations section contains a review of the operation of the agency, and uses the self-evaluation report submitted by the agency as the basis of review unless noted. The information contained in the self-evaluation report was verified, and additional data were obtained through interviews and review of agency files and other data sources. The Conclusions section summarizes the import of material developed in the individual criteria, from the standpoint of whether or not Sunset criteria are being met, and develops approaches relative to these findings.

This report is designed to provide an objective view of agency operations, based on the evaluation techniques utilized to date. Together with pertinent information obtained from public hearings, a factual base for the final recommendations to the Legislature will be provided.

BACKGROUND

HISTORICAL DEVELOPMENT

Regulation of automobile manufacturers and dealers by federal and state governments represents an attempt to strike a balance between manufacturers and suppliers. The automobile dealer and the automobile manufacturer share a common goal: to sell new automobiles and derive a profit for both the dealer and the manufacturer. The dealer represents the manufacturer's distribution system, providing representation in a given area through substantial investments in plant, equipment, personnel, inventory and promotion. In return, the manufacturer provides a marketable product as well as the opportunity to sell financing, insurance, accessories, repair parts and service.

Despite the mutual profit incentive, this relationship has not always been a harmonious one since various business strategies produce different payoffs for each party. In addition, there has not always been complete agreement about the rights and duties of each party formalized in the franchise agreement. Dealers felt disadvantaged by their lack of control in the dealer-manufacturer relationship, the existence of specific business practices considered abusive, and the disproportionate balance of power held by the corporation. Manufacturers responded that some dealers were either inefficient, poor salesmen or willing to operate at less than full capacity. Since lower sales meant ultimately higher priced cars to the public, any significant alteration in the dealer-manufacturer relationship would result in fewer units sold, rising costs and lower profits for all. While conceding that abuses and coercion existed, the manufacturers argued that dealers, through a franchise, have been given the opportunity to earn a great deal of money; and the price for such opportunity is performance.

As early as the 1920's, dealers tried unsuccessfully to deter objectionable

business practices through contractual arrangements. However, these early franchise agreements were constructed in a manner that required dealers to sell enough cars and invest enough capital to satisfy the manufacturer but promised the dealer nothing in return. The high costs of pursuing a dubious legal remedy acted as a further handicap to the individual dealer.

The National Automobile Dealers Association (NADA) was created to seek remedies to problems experienced by its members. NADA, through its ability to hire professional negotiators and legislative lobbyists to raise objections without risking retaliation and through its access to top management, had assembled resources greater than those available to the individual dealer. Automobile dealers, through NADA and state dealer organizations, sought to invoke state and federal authority to alter the balance of power between dealers and manufacturers. These efforts spanned a period from the 1930's to the present and resulted in various state and federal statutes being enacted to protect dealers.

Federal involvement in this area increased during the 1950's with the occurrence of drastically increased sales quotas and widespread cancellations of franchises. At this time, NADA sought legislation to end coercion from factory representatives as well as unfair termination of franchises. Though these were real problems, they were directly related to one of NADA's primary concerns: the territorial security of dealers. If franchises became more difficult to cancel, a dealer who wanted to make higher profits on fewer units need not be so concerned about his share of the market area since convenience factors and consumer behavior would ensure at least a satisfactory profit to the dealer. Congressional hearings resulted in the passage of the Dealers Day in Court Act which was designed to improve communications between dealers and top management and to

rectify the inequities reflected in franchise agreements. In 1963, the enactment of the Automobile Information Disclosure Act indirectly acted to further curb some of the abuses dealers felt that manufacturers encouraged through unremitting sales pressure. Federal concern was evidenced again in 1967 when the 90th Congress conducted hearings concerning allegations by dealers charging manufacturers with unfair competition with franchised dealers. These hearings resulted in several bills being introduced which would have prevented invasion of the retail marketing areas of franchised dealers by their own franchisor and have defined unfair methods of competition within the meaning of the Federal Trade Commission Act. None of the legislation proposed at this time was enacted into law.

The earliest organized efforts to effect state legislation resulted in statutes being passed in three midwestern states as early as 1937. In many states, dealers were better organized and had more impact on the drafting of state legislation than at the federal level where the manufacturers exerted greater influence. The protection offered by state statutes provided an alternative to the protection offered under federal statutes where the dealer was required to engage in expensive litigation while maintaining an ongoing contractual relationship with the manufacturer. State efforts have been subject to continued attack by automobile manufacturers who have challenged the constitutionality of such regulation on the grounds that these statutes are unconstitutionally vague, uncertain, an unwarranted burden on interstate commerce and an example of special interest legislation.

Texas joined states regulating these activities in 1971 when the Sixty-second Legislature enacted an administrative-licensing statute creating the Texas Motor Vehicle Commission and providing for the licensing and regulation of manufac-

turers, distributors, and franchised dealers of new motor vehicles. The Act defined "motor vehicles" to include automobiles, trucks, motor homes and other motor vehicles designed to transport persons and property on the public highway. This definition was expanded to include motorcycles in 1973.

Administration. The Motor Vehicle Commission consists of six members appointed by the Governor with the advice and consent of the Senate to six-year overlapping terms. Two of the members are chosen from the public at large with the remaining members required to be licensed dealers, no two of which are franchised to sell the motor vehicles manufactured or distributed by the same person or subsidiary or affiliate of the same person. The Commission is required to hold a regular annual meeting in September of each year to elect a chairman and vice-chairman and to hold regular meetings at intervals specified by the majority of members. Special meetings may be held at the request of any two Commission members. A majority of the Commission, including at least one public member, constitutes a quorum to transact business.

The Commission is granted the authority to make, amend and enforce any rules required to implement this Act and to govern proceedings brought before the Commission. The Commission is additionally authorized to issue orders and make such determinations necessary to carry out the Act. A hearing process is provided to make findings of fact and decisions necessary to the administration of the statute and any rules and regulations promulgated by the Commission.

The Commission is directed to appoint an executive director to serve as the chief administrative officer of the Commission. The executive director, in turn, shall appoint staff authorized by the Commission.

Funding. The Commission's activities are funded through license fees paid under this Act and deposited with the State Treasurer to the Motor Vehicle

Commission Fund. The Commission may use this fund for salaries, wages, per diem, professional and consulting fees, grants, loans, contracts, travel expenses, equipment, office rent and expense and other necessary expenses incurred in carrying out its duties under the Act as provided by legislative appropriation. Any unexpended balance remaining in the Motor Vehicle Commission Fund at the end of each biennium is to be transferred to the General Revenue Fund. Fee amounts are specifically set out in the statute.

Responsibilities. The Commission's primary responsibilities are those of licensing and enforcement. In fulfilling the legislative mandate to license all persons acting as a dealer, manufacturer, or distributor of new motor vehicles, the Commission licenses qualified applicants, processes annual license renewals and collects necessary fees.

With regard to enforcement responsibilities, the Commission is directed to regulate various activities of the licensees prohibited by the Act as well as activities covered under rules promulgated by the Commission. Enforcement is based on voluntary compliance and limited to investigation of charges of violations and complaints brought to the attention of the Commission. The Commission adjudicates proceedings or cases involving disputes between dealers and manufacturers where a violation of the Motor Vehicle Code is alleged to have occurred. The Commission also serves as a forum for consumer complaints involving new motor vehicle warranty repair problems, assisting in the resolution of such complaints where necessary. The Commission may revoke or suspend a license or cause a civil suit to be instituted in a district court for injunctive relief to restrain any individual from continuing the violation or threat of violation or for the assessment of civil penalties of not less than \$50 or more than \$1,000 per day for each day or act of violation.

COMPARATIVE ANALYSIS

To determine the pattern for regulation of the relationship between new motor vehicle dealers and manufacturers throughout the United States, a survey of the 50 states was conducted. The following discussion outlines the manner that this regulation has been addressed in other states.

The need to regulate the dealer-manufacturer relationship is currently expressed through legislation in 38 of the states surveyed. Twenty-three of these states, including Texas, meet this expressed need through a separate regulatory board or commission which administers the licensing effort. Four states have boards composed exclusively of motor vehicle dealers, while 13 states, including Texas, require that dealers constitute a majority of the membership. Board composition in the remaining six states ranges from no dealer members in one state, to dealers representing one-half of the board membership in two states and dealers representing less than a majority in three states.

Thirteen of the states surveyed, including Texas, indicate that the revenue sources for the regulatory body are derived from fees collected. In Texas, licenses are renewed annually. This annual renewal system is used in all but one of the states surveyed. Texas does not administer an examination as a licensing requirement. Only two states require such examination. Enforcement activities in 17 states, including Texas, involve investigation of complaints from consumers regarding new car warranties. Hearings are conducted inside the regulating agency in Texas and 13 other states.

States which regulate new motor vehicle dealers and manufacturers indicate the necessity for performing the basic functions of licensing, enforcement and administration. These basic functions also constitute the primary operating elements of the Texas Motor Vehicle Commission.

REVIEW OF OPERATIONS

Criterion 1

The efficiency with which the agency or advisory committee operates.

The review under this criterion centered on financial data and other records of the agency. This information was analyzed to determine if funds available to the agency had been utilized in a reasonable manner to achieve the purposes for which the agency was created and to determine if areas existed in which greater efficiency of operations could be achieved.

Administration

The Commission's staff currently consists of five individuals employed on a full-time basis, including the Executive Director, an Administrator of Technical Programs and three support staff. None of these employees are required to be bonded. The organizational chart provided in the agency's self-evaluation report indicates the commission's staff resources are allocated along functional lines with dealer licensing and renewals and enforcement in the form of resolution of consumer and dealer complaints designated as the primary functions.

New motor vehicle dealer manufacturer and representative licenses are primarily the responsibility of the Administrator of Technical Programs supported by a secretary. This process generates a significant amount of paperwork, most of which appears to be handled whenever possible through the use of form letters. The volume of such activity can be measured by the existence of 27 form letters covering topics which include the following: 1) acknowledgement of the receipt of applications, 2) notification of licensing requirements, 3) requests for information on changes in ownership, location, or additional lines and 4) notification of delinquent renewal payments.

Initial contact with the agency generally begins at the point when the manufacturer has approved an individual's franchise application. The applicant then makes application for a New Motor Vehicle Dealer's License from the Motor Vehicle Commission. The Commission requests information from the following sources: 1) photocopies of the first and last pages of the franchise agreement, 2) recent financial statements, 3) statements summarizing the business ability, experience and integrity of the applicant, 4) a description of the physical facilities specifying number of square feet devoted to sales, service and parts, 5) statements specifying the number of employees devoted to sales, parts department, service functions and administrative functions, 6) and statements specifying average inventories of new motor vehicles, parts, used motor vehicles and other items maintained by the dealership. At this point all licensees holding franchises for the same line of new motor vehicles within the same trade area (within 25 miles) will be notified. If the protest period (10 days) expires without a protest being filed, the dealer may proceed with further plans or construction, notifying the Commission when the dealership is ready for inspection prior to beginning operation.

Although the option to renew all licenses on a staggered schedule was authorized in 1973, this option has not been exercised. As a result renewal activities require the assistance from all clerical support staff during the period from September to December in addition to limited temporary help hired during this period. The services of the Board of Control were considered and rejected by the former Executive Director and are not currently under consideration. As a result, much of the work presently associated with license renewal is performed without automated support.

The agency's report of total number of licenses issued in the last three fiscal years shown in Exhibit I-1 indicates the total number of licenses issued remaining relatively stable.

EXHIBIT I-1

	1975	1976	1977
Dealer Licenses	2,327	2,324	2,280
Renewals	1,845	2,194	2,076
New Applications	482	130	204
Replacements	94	85	80
New Points	388	87	67
Mfg./Distributor Licenses	122	124	139
Renewals	81	104	111
New Applications	41	20	28
Replacements	1	4	4
New	40	16	24
Representatives	1,019	1,034	1,139
Total Licenses Issued	3,468	3,482	3,558

The Technical Administrator engages in significant amounts of travel connected with the licensing of new dealerships. Since manufacturers have approved an applicant for franchising prior to their initial application to the Commission, the Commission's oversight function is primarily directed at preventing new dealerships from opening without meeting minimum criteria viewed as necessary to protect the public.

The criteria used in these inspections fall into the three categories listed on the following page.

- A. Sales
 - 1. Paving or Blacktopping
 - 2. Outside Display Area
 - 3. Vehicle Showroom
 - 4. Offices and Administrative Area
 - 5. Furniture
 - 6. Personnel (sales and administrative)
 - 7. Utilities Operations
 - a. telephone
 - b. plumbing
 - c. lighting
 - 8. Sales Forms, Contracts
 - 9. Vehicles Available

- B. Parts
 - 1. Parts Inventory
 - 2. Parts Bins
 - 3. Personnel
 - 4. Order & Sales Forms

- C. Service
 - 1. Service Area Completed
 - 2. Make Ready or Pre-Delivery Capability
 - 3. Lifts Operational
 - 4. Body and Paint Shop
 - 5. Tools and Equipment
 - 6. Personnel
 - 7. Repair Order Forms and Other Forms

Agency personnel indicated that primary attention is given to review of criteria under Parts and Service since it is felt that the adequacy of these functions impact on the consumer. The actual license will not be issued and the dealership cannot operate until such requirements are met. The Executive Director indicated that trips are scheduled so as to maximize contact with dealers in the area; and although not every dealership will be inspected before the issuance of a license, in many cases contacts will be made with dealers periodically from the time of initial construction until the issuance of the license.

Enforcement of prohibitions through complaint administration is handled by the Executive Director supported by a secretary. Again much of this procedure involves the transmission of form letters where appropriate. Letters are sent to acknowledge complaints, inform dealers of pertinent complaints, as well as follow

up letters to determine status or close the file. Pending files appear to be reviewed in timely fashion with decisions on closure of such complaints made by the Executive Director. All complaints are cross-indexed by individual, dealer and chronologically for reference.

The executive director not only supervises the disposition of complaints but also fulfills, in his capacity as a lawyer, various other line functions. He directs the preparation and implementation of the hearing process by the Commission as well as engaging in investigative travel where necessary. It must be noted, however, that the involvement of the executive director in the functional activities of this agency necessitates less time being devoted to the planning and establishing of goals, policies, procedures and standards, one of the primary functions of a director or manager. While examination of the agency revealed the use of established and consistent procedures and reasonable internal controls for an agency of this size, additional attention to planning and the allocation of resources could produce increased efficiencies in operation.

The agency does employ a secretary-accountant to carry out bookkeeping functions; and examination of the most recent audit report verifies the existence of acceptable accounting controls, although the Commission's practice of recognizing revenues from the Departmental Suspense Account was considered at variance with generally accepted accounting principles.

The staff is responsible for the planning and preparations for all Board meetings and hearings. Board meetings are held approximately 5-7 times per year. Each Board member receives \$25.00 per day for each day he is engaged in the duties of his office, and is reimbursed for actual travel and related expenses incurred in the performance of his duties. Exhibit I-2 indicates the frequency of meetings held since 1975 and the attendance of various Commission members.

EXHIBIT I-2

Commission Members Attendance
Fiscal Years 1975-1977
Motor Vehicle Commission

Current Members	Term of Office	Attendance at Meetings		
		1975 (5)	1976 (6)	1977 (7)
Dan Boone *	December 20, 1977 to Oldsmobile Dealer September 1, 1983	-	1	5
Gordon Bailey, Sr.	December 20, 1977 to Lincoln-Mercury Dealer September 1, 1983	-	-	-
James M. Carnes	September 18, 1975 to Volkswagen Dealer September 1, 1981	1	6	6
John N. Cleveland	September 18, 1975 to Chrysler-Plymouth Dealer September 1, 1981	1	4	6
Robert L. Ragsdale	September 18, 1975 to Public Member September 1, 1979	-	5	5
Erwin A. Elias, Chairman	May 23, 1974 to Public Member September 1, 1979	4	5	6
<hr/> Past Members <hr/>				
Curtis Gunn	June 23, 1971 to Chevrolet Dealer September 1, 1977	5	4	-
W. O. Bankston, Chairman	June 23, 1971 to Lincoln-Mercury Dealer September 1, 1977	5	4	4
Jack McKenzie	July 8, 1971 to Volkswagen Dealer September 1, 1975	4	-	-
Jack Ray	December 1, 1972 to Public Member September 1, 1975	3	-	-
Fenner Tubbs	July 8, 1971 to Chrysler-Plymouth Dealer September 1, 1975	3	-	-

*Mr. Boone was appointed 10/15/76 to fill the unexpired term of Mr. Curtis Gunn; he was reappointed to a full term 12/20/77.

Analysis of travel and per diem expenses incurred by the members for fiscal years 1975 (\$2,469.12), 1976 (\$2,536.56) and 1977 (\$2,418.45) indicates that such expenses have remained relatively stable and when compared with increased operating expenses constitute a declining percentage of total operating expenses.

Funding

A detailed presentation of Board expenditures as a percentage of total expenditures for fiscal year 1977 is presented in Exhibit I-3. The analysis shows that the largest component of cost is associated with personnel, a pattern typical of other licensing agencies of similar size.

Exhibit I-4 shows not only historical data on revenues and expenditures of the Commission, but also projections for fiscal years 1978 through 1982.

An analysis of past expenditures shows the cost of regulation has risen from \$87,514 in 1972 to \$135,376 in 1977 or 55 percent in six years. While much of the escalation in costs can be attributed to inflation and to increases in personnel expenses, the fact that personnel costs constitute a significant proportion of this agency's budget and such costs are not expected to decrease in the future should not be ignored in consideration of the future status of the Commission's staff size or scope of responsibilities.

Exhibit I-4 also illustrates the accounting practice followed by the Commission of initially depositing license fees and penalties in a Departmental Suspense Account in the State Treasury. This procedure is deemed necessary since fees and penalties are often paid under protest and payment of such fees are potentially refundable until the expiration of a 90-day period for filing suit. Rather than recognize revenues on a timely basis from the suspense account, in practice the Commission clears only those amounts needed to provide working funds. The policy of retaining earned but unrecognized revenues in the suspense account

EXHIBIT I-3

Motor Vehicle Commission
Expenditure Summary for Fiscal Year 1977

Category & Item	Amount	Percent of Total
<u>Personnel Costs:</u>		
Salaries & Wages	\$ 83,944.00	61.0%
Benefits	<u>11,091.93</u>	8.0%
	<u>95,035.93</u>	<u>69.0%</u>
<u>Board Expenses:</u>		
Per Diem	875.00	.5%
Travel	<u>1,543.45</u>	<u>1.5%</u>
	<u>2,418.45</u>	2.0%
<u>Operating Expenses:</u>		
Printing Supplies, Materials	2,767.38	2.0%
Postage	3,500.00	2.5%
Telephone, Telegraph	5,327.36	4.0%
Travel-Employees	8,414.12	6.0%
Rentals, Office Space	8,736.00	6.3%
Other Rentals	3,817.33	3.0%
News Clipping Service	219.78	.2%
Court Reporting Services	1,037.05	1.0%
Audit Fee	2,958.37	2.0%
Other Operating Expenses	<u>2,600.36</u>	<u>2.0%</u>
	<u>39,377.39</u>	<u>29.0%</u>
Total	<u>\$136,832.13</u>	<u>100.0%</u>

EXHIBIT I-4

Analysis of Revenues and Expenditures: Motor Vehicle Commission

FISCAL YEAR	REVENUES		EXPENDITURES	FUND CASH BALANCE	SUSPENSE BALANCE	TOTAL	TRANSFERS TO GENERAL REVENUE
	EARNED	RECOGNIZED					
1972	112,551	90,025	87,514	2,511	22,525	25,036	
1973	120,438	92,425	90,784	4,152	50,538	54,690	
1974	119,475	99,593	99,561	4,185	70,420	74,605	
1975	135,476	111,601	110,729	5,057	94,295	99,352	
1976	134,463	127,925	131,012	2,020	100,883	102,903	1,951
1977	142,888	141,169	135,376	3,267*	102,602	105,869	4,459*
PROJECTIONS							
1978	155,473	150,582	149,092	4,757	107,493	112,250	
1979	164,083	162,767	161,156	6,368	108,809	115,177	
1980	172,693	174,086	173,220	7,234	107,416	114,650	
1981	181,303	186,210	185,284	8,160	102,509	110,669	
1982	189,913	198,334	197,348	9,146	94,088	103,234	

*The 1977 Audit determined that the Motor Vehicle Commission should transfer an additional \$4,546.62 to the State General Revenue Fund for Fiscal Year 1977.

directly affects the amounts to be transferred from the Motor Vehicle Commission Fund to the General Revenue Fund at the close of each biennium, as provided by Section 2.10, Article 4413 (36), V.A.C.S. As a result only \$6,410.00 has reverted to the general fund since the Commission's creation and approximately \$102,602 was retained in the Suspense Account at the end of fiscal year 1977.

This practice, considered at variance with generally accepted accounting principles, has been noted consistently in reports by the State Auditor. It has been recognized that had the Commission not delayed the recognition of at least a portion of these revenues, the transfer of the unexpended balance as specified in the statute would have resulted in insufficient working funds remaining to begin the next fiscal year. Although an option (staggered renewals) was given to the Commission as early as 1973 which would have provided more consistent revenues and alleviated some of the agency's problems with liability management and any problems associated with reversion, this option has never been implemented. There was also no evidence that any attempt had been made to amend Section 2.10 as recommended by the Auditor to provide that the amount required to be transferred to the State's General Fund be the expended balance, less an amount equal to the Commission's budgeted expenditures for at least the first quarter of the next fiscal year.

Exhibit I-5 indicates a schedule of the Commission's current fee structure. These fees have never been amended though the self-evaluation report indicates that the agency foresees such an increase in the future. Given the relatively stable number of licenses issued and escalating costs of operation Exhibit I-4 confirms that, all factors remaining unchanged, expenditures will begin to outstrip revenues during the next biennium. Any staff increases or changes in scope would only hasten the occurrence of this situation. The need for any fee increases to licensees

is also dependent on whether Section 2.10 is amended to insure reversion to the General Fund or whether the statute is amended to rescind reversion to the fund and fee increase proposals are denied until the Commission utilizes the funds already contributed by licensees for regulation of their occupation.

EXHIBIT I-5

Schedule of Current Fees

<u>Activity</u>	<u>Fees</u>
Manufacturers and Distributors	\$200.00
Dealers who sold more than 200 new motor vehicles during the preceding calendar year.	50.00
Dealers who sold less than 200 new motor vehicles during the preceding calendar year.	25.00
Manufacturer or Distributor Representative	25.00

Summary

While the Motor Vehicle Commission carries out its functions in a generally efficient manner, the review of its operations suggests that there are several potential areas for cost savings, most particularly in the areas concerned with implementation of staggered renewals and the automation of various licensing procedures. While there is evidence of certain management controls and procedures to collect information necessary to effect timely management decisions as well as some functional specialization, the small size of this agency dictates that the executive director assume multiple line and staff functions which leaves less time for planning, organizing, directing and controlling-the primary functions of a director or manager.

Review of the revenues and expenditures of the Commission as well as the

accounting policies employed suggests that consideration of issues associated with Section 2.10 be resolved before any changes in fee structure are approved by the legislature.

Criterion 2

An identification of the objectives intended for the agency or advisory committee and the problem or need which the agency or advisory committee was intended to address, the extent to which the objectives have been achieved and any activities of the agency in addition to those granted by statute and the authority for these activities.

The review under this criterion centered on an identification of the agency's statutory objectives as they related to the perceived need and the extent to which agency methods used can reasonably be expected to achieve those objectives. Statutes were reviewed to determine if objectives described in the self-evaluation report presented an accurate reflection of statutory duties. Agency viewpoints were sought to provide additional clarification; and appropriate files were reviewed to collect and verify selected data presented under this criterion.

The overall objective of the Motor Vehicle Commission is identified in its enabling legislation, Article 4413(36), V.A.C.S. -- "to exercise the state's police power to insure a sound system of distributing and selling new motor vehicles through licensing and regulating the manufacturers, distributors, and franchised dealers of those vehicles to provide for compliance with manufacturer's warranties, and to prevent frauds, unfair practices, discriminations, impositions, and other abuses of our citizens." To fulfill the overall objective reflected in the statement above, the operation of the agency is divided into two primary functions: licensing and enforcement.

Licensing

Licensing of individuals within the new motor vehicle sales and distribution system consists of two major elements: meeting licensing requirements and, for

dealer applicants only, being subject to protest by existing dealers in the vicinity of the proposed dealership.

The Code mandates the Commission to "establish the qualifications of manufacturers and dealers". The agency objective derived from this mandate is to insure that standards are met by applicants in order to adequately protect the public. However, the Commission has not developed licensure requirements for manufacturers, distributors, and representatives other than the completion of applications containing statutorily required information. Table III-1, included within the analysis of the following criterion identifies this required information. Since the Commission requirements are limited to submission of an application and accompanying data, licensing of these three types of individuals may be thought of as essentially a registration process.

The Commission through its rule-making authority can set formal standards for the dealer. As a practical matter, the range of standards is limited in that setting of standards which are less stringent than those of the manufacturer's requirements would serve no purpose. The manufacturer may withhold franchise approval until its standards are met. The Commission could, through its rule-making authority, set standards which are higher than those of the manufacturer. To date the Commission has not adopted, as a part of its published rules, any formal standards. However, the Commission currently applies informal standards to be met which exceed the designated information required by statute. The additions are primarily concerned with physical plant requirements specified by the manufacturer in the franchise agreement.

Implementation of informal standards has focused on assuring that a dealership is not licensed until certain criteria are met. These criteria, identified

in the previous section, have been developed by the staff into a working checklist to insure that a dealership is prepared to serve the public. The checklist is informal in nature and the criteria can be waived if there is substantial compliance. The criteria can and have been used in some instances to make issuance of a dealer's license contingent on improvements of a dealer facility and clearly serves the purpose of standards to be met on the part of a new dealer.

Although the checklist is not, per se, provided to license applicants, the staff makes certain that applicants are aware of the criteria contained within the list. A significant portion of one staff member's time is spent in traveling to dealer applicant locations to assure compliance with the criteria. However, though the Commission staff does spend considerable time implementing the checklist, these criteria have not been formally established as qualifications of the Commission.

Because the checklist is informal, no application denial by the Commission is required to implement the criteria. The license is simply not issued until compliance is obtained. In almost all cases, applicants meet the standards as an ordinary part of preparing for business. However, because the checklist is not part of Commission rules, applicants do not have the assurance of consistent application of clear standards. Nor do applicants have the protection of appeal procedures which accompany more formal decisions. Due to the informal nature of these requirements, their application can be subject to question in terms of consistency and appropriateness.

In addition to general licensing requirements, the Code also stipulates one specific procedure which must be followed for all dealer applicants. Upon receipt of a dealer application, all dealers of the same line within the same county or 25 miles of the proposed dealership have ten days in which to protest. If an

application is protested, the applicant must prove to the Commission good cause for a new dealership. This procedure is common among other regulated economic activities such as financial institutions and transportation. The objective of such a procedure is to protect licensees from unfair competition which could harm the public.

Between September 1, 1976 and August 31, 1977, 74 applications eligible for protest procedures were received by the Commission. In every case, notification was sent by registered mail to licensed dealers of the same line within the proposed trade area informing them of receipt of the application. Protests were received against 22 of the applications. In seven instances, applications or protests were withdrawn eliminating the need for a hearing. One protested application was judged by the Commission to be a replacement, not a new dealership, and thus ineligible for protest under the Code. Twelve protested dealerships were brought to hearing stage and two were awaiting a hearing as of March 1978.

Of the 12 applications receiving hearings, one protest and one application were subsequently withdrawn, one was pending a decision in March 1978, and nine had been determined by the Commission. Of the nine applications receiving Commission orders, eight were approved and one disapproved. Comparing the number of new applications (74) to the number denied (1), the Commission's regulatory authority cannot be judged to have been used in a restrictive manner during fiscal year 1977. The Commission's standards for determining good cause appear to have been reasonable throughout the agency's existence -- only three licenses have been denied as a result of 53 protests during the past seven years.

Exhibit II-1 presents information showing changes in the number of dealers licensed in Texas during the past three years (earlier information was not readily available). This exhibit shows that although 230 new dealerships entered the marketplace that terminations accounted for 274 fewer dealers for a net reduction of 44 dealerships during the three-year period. Exhibit II-2 compares Texas to the nation in numbers of dealers and vehicles sold. This comparison shows Texas significantly exceeding the sales performance of the nation as a whole, but also indicates a more rapid rate of decrease in the number of dealers in Texas than is the national experience.

EXHIBIT II-1

Changes in Dealerships, 1975-1977
Motor Vehicle Commission

	<u>1975</u>	<u>1976</u>	<u>1977</u>
Dealerships of beginning of year	1,845	2,152	2,133
New dealerships	388*	87	67
Terminations	<u>(81)</u>	<u>(106)</u>	<u>(87)</u>
Dealerships at end of year	<u>2,152</u>	<u>2,133</u>	<u>2,133</u>

*This figure includes 312 motorcycle dealerships which were licensed for the first time as the result of an amendment to the Code bringing motorcycle dealers under the Commission's jurisdiction.

EXHIBIT II-2

Texas and U.S. Comparisons, Vehicle Sales and Dealers
1975 - 1977
Motor Vehicle Commission

	1975	1976	1977	Percent Increase/ Decrease
<u>Texas</u>				
Sales*	733,498	882,990	1,024,980	+40%
Dealers	2,152	2,133	2,113	- 2%
<u>U.S.</u>				
Sales*	10,659,257	12,809,494	14,217,117	+33%
Dealers**	24,511	24,290	24,145	- 1%
<u>Texas as Per Cent of U.S.</u>				
Sales	7%	7%	7%	-
Dealers	9%	9%	9%	-

*Cars and trucks only.
**Automobile dealerships only.

Enforcement

The second major function of the Commission is also identified by a specific statutory mandate in the Code, to "insure that the distribution and sale of motor vehicles is conducted as provided herein. . . ." The overall objective of this mandate is to insure that the rights of individuals granted by contract or by statute are protected. The enforcement function consists of two elements defined by the type of statutory provisions which are enforced -- prohibitions against licensee actions and complaints regarding warranty repairs.

The Code gives the Commission general authority "to prevent frauds, unfair practices, discriminations, impositions, and other abuses. . . ." The Code also

prohibits specific acts on the part of dealers, manufacturers, distributors, or representatives. The objective of the agency's enforcement function is to insure that the remedies available to the Commission are used in a fair and equitable manner to prevent prohibited practices by licensees. Although the statute contains prohibitions against actions by both the dealing and manufacturing sides of the new motor vehicle system, the main thrust of the prohibitions is to protect dealers against unreasonable manufacturer's actions. The specific prohibitions address particular problems which have been seen to develop between dealers and manufacturers.

The prohibitions included within the Code are specified in Exhibit III-1 and compared to similar provisions by other states in Exhibit III-3. In general, however, the Code's 11 prohibitions are thorough in their coverage of potential manufacturer's abuses and are viewed by dealers in other states as being in many ways a list to emulate. Particularly, there are three prohibitions which address key issues between dealers and manufacturers. Section 5.02(3) provides 60-day prior written notice and the requirement to prove good cause upon protest before the termination of any dealership. Section 5.02(6) prohibits preventing a transfer of dealership unless detriment to the public or the manufacturers is shown. Section 5.02(9) provides that warranty service performed by dealers will be reimbursed by manufacturers at retail rates within 60 days of a claim for compensation. Together these prohibitions make illegal some of the most serious dealer concerns, and the Commission indicates that the very existence of the prohibitions has altered the behavior of manufacturers toward dealers.

The Commission plays a neutral role in the enforcement of these prohibitions, and the staff seeks to avoid any discussion of the merits of an alleged violation. Commission rules specify the manner in which alleged violations are to be

submitted to initiate enforcement proceedings. The rules, along with sections of the Code, also establish procedures for calling adjudicative hearings, making findings and recommendations to the Commission, ordering actions as required to effect the Commission's decision, and appealing Commission orders. The role of the Commission and staff throughout, however, is more that of a judicial body than of a prosecuting office.

Results of Commission proceedings regarding enforcement of the Code's prohibitions are shown in Exhibit II-3. There are two patterns particularly important to note from this exhibit. Not one Commission proceeding regarding prohibitions has been decided against a manufacturer. On the other hand, the number of proceedings resolved prior to hearing suggests that the process itself encourages a willingness to compromise.

Based on this analysis, the Commission's activity in enforcing prohibitions against unfair practices appear to meet the objectives of providing fair and adequate remedies.

The Commission presently assists in the resolution of complaints by owners of new vehicles who do not feel they have received adequate repair service under a new car warranty. Warranties are provided by the manufacturer, but warranty repair service is provided by the dealer. The amount of reimbursement, the time required for reimbursement, and the extent of responsibility for this work have all been controversial issues between dealers and manufacturers. The consumer has, at times, suffered as a result of these disagreements. In addition, there are situations in which a dealer, providing warranty service, may honestly disagree as to whether a warranty is applicable or whether satisfactory repairs have been made. The Commission performs a facilitating role in satisfying both consumer and

EXHIBIT II-3

Resolution of Commission Proceedings
 Resulting from Statutory Prohibitions Against Manufacturers
 1973-77
 Motor Vehicle Commission

	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>Totals</u>
<u>Sec. 5.02 (3) Termination of a Dealership</u>						
Termination Denied	-	-	-	-	-	-
Termination Upheld	2	3	-	2	3	10
Pending	-	-	-	-	1	1
Withdrawn (Without hearing)	-	-	-	1	2	3
Resolved (Without hearing)	-	1	2	-	1	4
<u>Sec. 5.02 (6) Sale or Transfer of Dealership</u>						
Transfer Upheld	-	-	-	-	-	-
Transfer Denied	-	-	-	-	-	-
Pending	-	-	-	-	-	-
Withdrawn	-	1	-	1	-	2
Resolved	-	3	1	2	2	8
<u>Sec. 5.12(a) Warranty Reimbursement</u>						
Warranty Claim Upheld	-	-	-	-	-	-
Warranty Claim Denied	-	-	-	-	1	1
Pending	-	-	-	-	2	2
Withdrawn	-	-	-	-	1	1
Resolved	-	-	-	-	2	2
TOTALS	2	8	3	6	15	34

dealer when a new vehicle owner contacts the agency concerning a warranty repair problem.

The authority for performing this function is not statutorily specific. Authority is interpreted from the general authorizing language of the statute. Section 1.02 identifies as one of the Act's purposes "to provide for compliance with manufacturer's warranties ..." and Section 3.01 says that " (t)he Commission has the powers and duties specifically prescribed by this Act and all other powers necessary and convenient to carry out its responsibilities." Authority for the informal investigation and assistance roles performed by the agency in the resolution of warranty complaints comes from these two sections. However, the agency also has statutorily specific authority to "hold a hearing on all unsatisfied complaints to determine whether there has been a violation of the Act." Taken as a whole, this allows the agency to provide the consumer making a warranty complaint with a mechanism to resolve the problem. The objective of the agency's work in this area is to insure compliance with consumers' warranty agreements.

Exhibits presented in Criterion 6 display the agency's success in satisfactorily resolving the complaints that it receives and the time required for resolution. These indicate that the Commission has been effective in aiding in the resolution of warranty complaints. That this function is considered important by the Commission is reflected by the staff time allocated to its performance. Staff estimates suggest that the agency allocates nearly 25 percent of its effort to the resolution of complaints -- making this the single most time-consuming function that the Commission performs.

The amount of effort presently applied to this function compared to the number of complaints which the agency resolves suggests that the agency could

perform this function more effectively. Some efficiencies could result from changes in current procedures used in performance of this task, although the agency's size places a very real limit on efficiencies of this sort. Regardless of changes producing increased efficiency, the agency is not performing other tasks, which limits its effectiveness. Essentially, no effort is presently made to inform potential warranty complainants of the Commission's authority, and too little effort has been expended in keeping other consumer-complaint groups informed of the enforcement mechanism available through the Commission. As a result, many warranty complaints which might be resolved by the Commission never reach the first stage of the agency's complaint procedures.

Summary

The Commission performs two major functions, licensing and enforcement, each of which contain two elements.

The Commission's licensing function consists of establishing licensure qualifications and providing a protest mechanism for dealer applicants. The objective of insuring that standards adequate to protect the public are met by licensee applicants has not been fully met because the Commission has never established formal standards for licensees. It cannot be determined whether the Commission is meeting its objective of protecting licensees from unfair competition without unduly restricting competition. However, it can be noted that the Commission has denied only three dealer's licenses out of 53 protests from other dealers during the agency's seven-year existence.

The Commission's second major function, enforcement, consists of activity regarding prohibited licensee practices and consumer warranty complaints. The fact that a board whose membership is heavily weighted with dealers has not made

one determination against a manufacturer, and that compromise appears to be encouraged by Commission procedures, indicates that the objective of insuring fair and adequate remedies against abusive practices by licensees is being met. Concerning the second enforcement element, although the Commission provides an effective procedure for resolution of new vehicle warranty complaints, by not notifying new vehicle owners regarding the agency's authority, it limits its ability to determine if the overall objective of providing for compliance with new vehicle warranties is being satisfactorily achieved. It is difficult to determine the scope of actions which might be necessary to enforce statutory provisions concerning prohibitions and warranty satisfaction since the Commission initiates no independent activity to determine if alleged or potential violations have occurred.

Criterion 3

An assessment of less restrictive or other alternative methods of performing any regulation that the agency performs which could adequately protect the public.

The review under this criterion centered on analyses of the agency's regulatory functions in terms of 1) changes over time in the restrictive nature of agency functions, as seen in the agency's statutory history; 2) significant effects of this regulation on the public and the industry; and 3) alternative methods of performing the agency's regulatory tasks. These analyses were obtained through the agency's self-evaluation report, literature concerning occupational licensing, and surveys of similar licensing functions in other states.

Restrictiveness of governmental regulation is determined both by restrictions requisite to licensure and restrictions on the practice of licensees. For purposes of this review, requirements for licensure regardless of their individual merits are identified as restrictions and are evaluated to determine if alternative methods are feasible. Similarly, standards imposed on licensed individuals are identified as restrictions for this analysis and are reviewed against less restrictive alternatives. Initially this review examines the evolution of the present statute.

Statutory Changes

In three legislative sessions since the Motor Vehicle Commission Code was passed in 1971, five changes have been made affecting the Code's restrictiveness. Exhibit III-1 provides a summary description of the original 1971 statute and the amendments to the Code since that time.

In 1975 the definition of "motor vehicle" was amended to include two-wheeled vehicles, thus adding motorcycle dealerships, representatives, manufacturers, and distributors within the regulatory jurisdiction of the Motor Vehicle Commission.

EXHIBIT III-1

Summary of Legislative Changes
Motor Vehicle Commission, 1971-1977

Year	Licensing	Enforcement	Administration
1971	<p><u>REQUIREMENTS</u> Completion of application showing the following:</p> <p><u>Dealers</u></p> <ul style="list-style-type: none"> - Financial resources - Business integrity - Business ability and experience - Franchise agreement - Physical facilities for sales and service - Parts and accessories - Inventory - New vehicle inventory - Other information required by Commission <p><u>Manufacturers, Distributors and Representatives</u></p> <ul style="list-style-type: none"> - Financial resources - Business integrity and experience - Facilities and personnel for serving dealers - Other information required by Commission <p><u>Manufacturers</u></p> <ul style="list-style-type: none"> - List of distributors, representatives, and franchised dealers, their locations and contract terms - Terms and conditions of all warranty agreements - Delivery and preparation obligations of dealers, and schedule of compensation 	<p><u>PROHIBITIONS</u></p> <p><u>Dealers</u></p> <ul style="list-style-type: none"> - Require a buyer to purchase unordered special features as a condition of sale and delivery - Use false, deceptive, or misleading advertising - Fail to perform delivery and preparation agreements - Fail to fulfill warranty agreements - Operate without a valid license or in violation of code or Commission rules <p><u>Manufacturers, Distributors, and Representatives</u></p> <ul style="list-style-type: none"> - Require a dealer to accept or pay for unordered vehicles or parts - Fail to deliver vehicles or parts publicly advertised as being available for delivery - Terminate a dealer franchise without 60 days written notice citing specific grounds and if protested prove good cause for termination - Use false, deceptive, or misleading advertising - Prevent change of dealership financial structure - Prevent the sale of interest or change of management in a dealership unless detriment to the public, the manufacturer, or the distributor is shown 	<p><u>COMPOSITION OF COMMISSION</u></p> <ul style="list-style-type: none"> - Six members - Four dealers, no two of whom are franchised for the same vehicle lines - Two public representatives - Six year terms - Other requirements - U.S. citizenship - Texas residency - 10 years experience for first dealer appointees <p><u>RESPONSIBILITIES OF COMMISSION</u></p> <ul style="list-style-type: none"> - Hold annual meetings in September; others as required - Elect chairman and vice-chairman - Deposit license fees in Treasury - Administer Code - Establish qualifications of dealers and manufacturers - Issue 20-day prior notice of hearings to licensees and concerned parties - Prescribe application forms

EXHIBIT III-1
Cont.

Year	Licensing	Enforcement	Administration
1971 Cont.	<u>Distributors</u> - Manufacturer for whom distributor will act - Whether manufacturer is licensed - Warranties for vehicles sold - Responsibility for warranty compliance - Terms of contract with manufacturer - Dealers with whom business will be transacted - Warranty responsibilities <u>FEES</u> <u>Amounts</u> - Manufacturers \$200 - Distributors \$200 - Representatives \$ 25 - Dealers - With previous year sales more than 200 new vehicles \$ 50 - With previous year sales with less than 200 new vehicles \$ 25 - Late Fee - 50% of fee for each 30 days default <u>Deposition</u> - State Treasury, Special Fund - "Motor Vehicle Commission Fund" - Expenditure as provided by Legislative appropriation - Biennium unexpended balance transferred to general revenue	<u>Manufacturers, Distributors, & Representatives</u> - Require a dealer to secure promissory notes, security agreements, or insurance policies - Fail to fulfill delivery, preparation, or warranty agreements with dealers - Fail to compensate dealers within 30 days for service and parts provided under manufacturer's delivery, preparation, and warranty agreements; warranty labor compensated at the dealer's retail rate - Operate without a valid license or in violation of Code or Commission rules <u>POWERS</u> - Make, amend, and enforce rules - Make determinations and issue orders - Hold hearings, administer oaths, receive evidence, issue subpoenas, and make findings of fact - Institute or request Attorney General to institute legal proceedings, including suits for temporary restraining orders, temporary and permanent injunctions - Delegate hearings authority to Commission members, executive director, employees, or contracted individuals - Deny, revoke, or suspend license for the following reasons: - Unfitness of applicant under standards set by the Code or Commission rules - Misrepresentation on application or other information filed with Commission - Willful failure to comply with Code or Commission rules	Cont. <u>RESPONSIBILITIES OF EXECUTIVE DIRECTOR</u> - Act as chief administrative officer - Maintain minutes of proceedings - Maintain files and records - Employ staff - Attest Commission orders

EXHIBIT III-1
Cont.

Year	Licensing	Enforcement	Administration
	<p><u>GENERAL PROVISIONS</u></p> <ul style="list-style-type: none">- Information to be kept current- Separate license required for each dealership location- Change of dealership location to another municipality, requires new license as if original application- Licenses valid for one year from issuance- Issuance between August 31 and December 1	<p><u>Powers Cont.</u></p> <ul style="list-style-type: none">- Failure to maintain license qualifications- Willfully defrauding a retail buyer- Willful violation of other laws relating to sale, distribution, financing, or insuring vehicles- Act or omission by any individual representing a licensee which would cause action to be taken against a licensee- Deny license because of previous revocation- Deny a dealer application unless good cause is shown for a new dealership if community or metropolitan area has dealers adequately representing the same franchise line- Partially revoke or suspend manufacturer or distributor license limited to a particular geographic area, business aspect, or dealer group- Inspect books and records of licensees in connection with hearings <p><u>PENALTIES</u></p> <ul style="list-style-type: none">- Civil penalties of \$50-\$1000 per day per violation- Deposit in General Revenue Fund	
1973	<p><u>GENERAL PROVISIONS</u></p> <ul style="list-style-type: none">- Commission authorized to stagger license renewals throughout year		

EXHIBIT III-1
Cont.

Year	Licensing	Enforcement	Administration
1975	<u>REQUIREMENTS</u> - "Motor vehicle" redefined to include two-wheeled vehicles, bringing motorcycles within Commission regulation	<u>PROHIBITIONS</u> <u>Manufacturers, Distributors, and Representatives</u> - Preventing succession to a dealership by a legal heir or devisee not allowed unless shown to be detrimental to the public, manufacturer or distributor	
1977	<u>REQUIREMENTS</u> - "Franchise" redefined to include all contracts under which rights and obligations are granted or imposed - Included on manufacturer application: a statement indicating compliance with prohibition dealing with compensation of dealers for warranty work <u>GENERAL PROVISIONS</u> - Provision concerning change of location amended so that prior to any change of dealership location, a new license is required as if an original application	<u>POWERS</u> - Increased the area in which if a franchise line has a dealer a new license may be denied unless good cause is shown <u>PROHIBITIONS</u> - Amended the prohibition regarding compensation for warranty service to assure monetary payment to dealers by manufacturers at the non-warranty retail repair rate	

Since no special provisions particular to the licensing of motorcycles were added, all businesses related to the sale of new motorcycles were required to be licensed and made subject to regulation beginning in May 1975. As a result of this change 312 motorcycle dealerships were licensed for the first time during Fiscal Year 1975.

Also in 1975 an eleventh prohibition was added to the statutory provisions affecting manufacturers, distributors, and representatives. This new prohibition made it impossible to refuse to honor a legal heir or devisee's claim to a dealership under the will of a dealer or laws of descent and distribution, unless the succession was shown to be detrimental to the public, manufacturer, or distributor.

In 1977 the Code was amended to give the Commission greater authority in denying licenses. Statutory language had previously provided that a dealer's license could be denied if a dealership of the same line was operating in the same community or metropolitan area. This section was modified to allow denial if an existing dealership was in the same county or within 25 miles of the proposed site.

Also in 1977 a change was made in the language that required a new license, to be processed as if it were an original application, if a dealership was relocated to another municipality. The new law stated that any change of dealership location required a new license processed as if original, and that this license be applied for prior to relocation.

Finally, the 1977 amendments modified the prohibition concerning manufacturers' compensation to dealers for warranty repairs. This change assured dealers of payment for warranty work at a rate no less than that charged to retail customers for the same type of non-warranty work.

In summary, the five major changes in the Code since its passage in 1971 have made the Commission's regulation more restrictive. One change included within

regulatory restrictions a group previously excluded, two changes further restricted dealers in obtaining licenses and relocating dealerships, and two changes added to the prohibitions in manufacturers regarding succession of dealerships and remuneration to dealers for warranty work

Less Restrictive Methods

In assessing the restrictive aspects of the Texas Code, all 50 states were reviewed to determine the extent of regulation of motor vehicle distribution and sales systems. It was found that forty-five states license individuals related to motor vehicle sales or distribution. Six of these states focus legislation on the area of retail sales only, regulating, through licensing, such activities as advertising, fraud, and fulfillment of written agreements between buyers and sellers. Thirty-nine states also use licensing powers to regulate the relationship between motor vehicle dealers and manufacturing-distribution systems. Of the forty-five states which license, 23 have established specific boards or commissions to implement this regulation.

Of these 23 states which utilize state boards to implement legislation, 22 license manufacturers, 18 license distributors, 19 license representatives, 23 license dealers and 16 license salesmen. The last category, salesmen, is the only one not licensed by the Texas Commission.

States differ in the types of vehicles which are included within the scope of motor vehicle sales and distribution regulation. New vehicles are covered in all 23 states, and motorcycles are licensed in a high percentage of cases. Most states' laws also cover used cars, with only a few covering non-self-propelled vehicles, such as trailers.

The usual time period for licensure is one year. Hawaii and Pennsylvania are exceptions with 2-year licenses.

Fees charged for licensing in other states and Texas are shown in Exhibit III-2. This comparison shows that Texas has lower licensing fees than the average among other states for dealers and representatives. However, Texas is well above average in licensing fees charged manufacturers and distributors.

EXHIBIT III-2

Comparison of Motor Vehicle Commission
Licensing Fees - Texas and Other States

<u>Type of License</u>	<u>Other States</u>				<u>Texas Initial & Renewal</u>
	<u>Initial</u>		<u>Renewal</u>		
	<u>Range</u>	<u>Average</u>	<u>Range</u>	<u>Average</u>	
Dealer	\$21-200	\$ 62	\$ 21-200	\$57	\$ 50*
Representative	4-200	38	4-100	36	25
Manufacturer	10-250	107	10-250	94	200
Distributor	5-250	75	15-250	81	200

*\$25 for dealers with sales of less than 200 vehicles.

A requirement in some 12 states is that licensees be bonded for amounts ranging from \$2,000 to \$20,000. Texas does not require this arrangement.

Procedures and information required of applicants for licensure vary greatly among states and according to the type of license. Two states, Colorado and Kansas, use examinations as a determinant of fitness for licensure. Manufacturers and distributors may obtain licenses in most states through what amounts to a registration process.

By contrast, salesmen and dealers applying for a license in most states, including Texas, must provide the licensing commission with detailed information on applications. This information may be grouped under the broad headings of personal, business and physical plant data.

Personal qualifications are determined through information provided concerning moral character, experience and business integrity. Additionally, references may be checked and fingerprints processed.

For dealers, business qualifications are determined through financial statements, credit reports, franchise agreements and the presence of qualified management. The acceptability of a dealer's physical plant and inventory is determined through an inspection to verify: 1) sales facilities, including lease, compliance with zoning requirements, showroom, signs and vehicle inventory; and 2) service facilities, which must include adequate facilities, sufficient personnel, and necessary parts and accessories inventory.

Upon protests of other dealers in a given locality, commissions in 13 states, including Texas, have the power to deny licensure to a dealer applying for an initial license. In such cases, the burden falls on the applicant to show good cause why a license should be issued.

Other reasons for denying, suspending or revoking manufacturers' and dealers' licenses are shown in Exhibit III-3. It should be noted that no one state's regulations encompass all stated violations.

From the material in this exhibit, it may be seen that the number of restrictions placed on manufacturers in Texas exceeds the number placed on dealers. Some practices covered by laws in other states are not covered in Texas. However, several restrictions practiced in Texas are not common in other states.

Of the three major restrictions placed on Texas dealers, one, a prohibition on false or deceptive advertising, is contained in all but one of the corresponding state statutes. Over half of the statutes also require dealers to perform warranty service contained in manufacturers' warranty agreements. And nearly half of the other states also require dealers to prepare vehicles as agreed in franchises with manufacturers.

EXHIBIT III-3
 Grounds for Denial, Suspension, or Revocation
 of Licenses in Texas and Other States
 Motor Vehicle Commission

○ = Common to other states
 X = Found in Texas
 No Mark = Present but not common to other states

	Dealers	Manufacturers
Unfitness	X	X
Misstatement or misrepresentation in application	X	X
Noncompliance with or violation of laws or regulations	X	X
Fraudulent business practices	X	X
No good cause for a dealership if the same line-make is already represented in vicinity	X	
Require retail buyer to purchase special features or accessories not ordered	X	
False, deceptive or misleading advertising	X	X
Failure to perform obligations in connection with delivery and preparation of a new motor vehicle	X	X
Failure to comply with warranty agreements	X	X
Operate without valid license	X	X
Require or attempt to require dealer to order or accept delivery of any motor vehicle, parts or accessories involuntarily		X
Failure to deliver new vehicles, parts, and accessories in reasonable quantities and within a reasonable amount of time		X
Unfair termination of dealer franchise		X
Unfair non-renewal of dealer franchise		X
Unfair threats to cancel dealer franchise		○
Preventing change in capital structure		X
Preventing sale or transfer of dealership		X
Unfair cancellation of distributor franchise		
Require or attempt to require dealers to secure promissory notes, security agreements, or insurance policies		X
Failure to compensate dealers for warranty work at retail rates and within reasonable time of receipt of claim		X
Prevent or refuse to honor succession to a dealership by legal heir		X
Unfair methods of competition		
False or fraudulent income tax returns		
Dealing through unlicensed salesmen		
Failure to keep established business place	○	
Dealing in stolen motor vehicles		
Charging interest in excess of 15% per annum		
Unfair or unconscionable business practices	○	
Failure to deliver within 60 days new vehicles advertised for immediate delivery		○
Failure to use transportation facilities selected by the dealer in delivering new vehicles		
Failure to keep written agreements with buyers	○	
Failure to furnish or keep bond or insurance policy		

Of the eight major prohibitions placed on manufacturers licensed in Texas only one restriction was imposed by most other states - that of forbidding termination of a franchise without good cause.

Only one other Texas prohibition against requiring dealers to accept unordered vehicles or parts is contained in a majority of similar statutes.

Three other prohibitions contained in the Motor Vehicle Commission Code are found in a large number, though not a majority, of states with corresponding statutes--prohibitions regarding delivery of unordered vehicles and parts, paying dealers less for warranty work than the dealers would charge retail customers, and failing to fulfill delivery preparation and warranty agreements.

Other Texas prohibitions are imposed in only a few of the corresponding states. Additionally, Texas law does not include as violations several acts which are prohibited in other states.

Complaints from the general public on these and other matters are received in all states regulating the activity except Ohio. All states regulating the activity except Colorado, Idaho, Ohio and West Virginia have authority to resolve warranty complaints.

The range of possible penalties for violations varies among states and includes civil and criminal proceedings, license suspension and revocation, fines, injunctive relief and payment of damages. Commissions typically have the power to suspend or revoke licenses, levy fines and institute criminal proceedings. In Texas, only civil proceedings, license suspension and revocation, and injunctive relief are possible.

Criminal prosecution is not provided in the Texas statute, although it is an alternative in most other states. Fines, sanctions, and collection of monetary damages are available in some other states.

Alternate Methods of Regulation

Under alternate methods of operation, there are three principal options: independent agencies, boards which are part of another agency, or no board at all. Eleven states have separate agencies to carry out the functions as does Texas.

Twelve states have boards or commissions which are part of another agency. Variations in this arrangement include boards with powers to make policy; boards with powers limited to hearing appeals of license and enforcement decisions, and boards with only authority to advise the agency concerning decisions. Typically, boards which are part of a larger agency are combined with departments of motor vehicles, of public safety, or of motor transportation.

Twenty-seven states have no board or commission at all. Some states included in this category have no licensing requirements at all. In the balance of cases, the functions may be the responsibility of more than one agency. These agencies include departments of motor vehicles, law enforcement, licensing and the Secretary of State.

Summary

The Motor Vehicle Commission Code, although relatively new, has become more restrictive in the years since its initial passage. Although most other states do require licensing of dealers, manufacturers, distributors, and representatives, Texas license fees vary from the norms of other states. Also, the authority given the Motor Vehicle Commission to deny new dealer licenses, if a new dealership is not shown to be in the public interest, is not provided in the majority of other states. Finally, the prohibitions found in the Texas Code are more restrictive, particularly on manufacturers, than in most other states. However, acts which are considered to be violations in many other states are not covered by the Texas Code.

Criterion 4

The extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies.

The review of this criterion was directed at evaluating the agency's definition of its target population. The existence of other similar populations was explored and the extent of any overlap and duplication of services offered was analyzed. When applicable, the review also dealt with any efforts to establish coordinative relationships between agencies serving similar target groups and to minimize any duplication of services. This information was collected through discussions with agency personnel, review of statutes and rules, and the identification of other agencies with the potential ability to offer these same services.

Overlapping Functions. The Texas Motor Vehicle Commission is mandated by Article 4413(36), V.A.C.S. to insure a sound system of distributing and selling new motor vehicles, to provide for compliance with manufacturer's warranties, and to prevent fraud, unfair practices, discrimination and other abuses related to the distribution and sale of new vehicles. Therefore, in carrying out its responsibilities, the Commission serves three distinct populations: new motor vehicle dealers; purchasers and owners of new motor vehicles; and new motor vehicle manufacturers, distributors and representatives.

Although the Motor Vehicle Commission does not share target populations with any other state regulatory agency, it performs many functions common to regulatory agencies in general. Exhibit IV-1 provides a display comparing specific

EXHIBIT IV-1

Comparative Regulatory Functions

Barber Examiners	Cosmetologists	Motor Vehicle Commission	Nursing Home Administrators	Public Accountancy	Structural Pest Control Board	
X	X	X	X		X	establish qualification standards independently
			X			qualification standards suggested by national organization
X	X		X		X	develop written examinations
			X	X		utilize national exams
X	X		X	X	X	process exam applications
X	X		X	X	X	evaluate qualifications for examination
X	X		X			prepare and send candidate ID cards
X	X		X	X	X	collect and process exam fees
						administer exams annually
				X		administer exams semi-annually
X	X		X		X	administer exams on multiple occasions
X	X		X		X	administer multiple exams
			X	X		national exam grading procedure
X	X		X		X	agency exam grading procedure
X	X		X	X	X	record and report grades
X	X		X	X	X	prepare and distribute certificates of registration
X	X	X	X	X	X	process annual license renewal
X	X	X	X	X	X	collect renewal fees
		X		X	X	mail notification of delinquency
X	X		X	X		reciprocal registration processed independently
						reciprocal registration processed thru national org.
X	X		X	X		collect reciprocal registration fees
X	X	X	X	X	X	receive and investigate complaints
X	X				X	field investigation capability
X	X	X	X	X	X	issue warnings
X	X	X	X	X	X	consult legal counsel reference violations
X	X	X		X	X	invoke injunctive powers
X	X	X	X	X	X	arrange agendas for Board meetings
X	X		X	X	X	administer Board meetings
			X	X		prepare roster
			X	X		distribute roster
	X		X	X		coordinate activities with educational institutions

regulatory tasks of the Commission and five other state regulatory agencies. Because the Code does not require examination for licensure and reciprocal licensing is not meaningful in the context of motor vehicle dealers and manufacturers, common regulatory functions in these areas are not performed by the Commission. However, the exhibit does indicate that several licensing and enforcement responsibilities performed by the Commission bear functional similarities to those of other Texas licensing agencies.

Although the Commission's target populations are not shared by other licensing agencies, they are shared with several state administrative agencies. The Attorney General's Consumer Protection Division, for example, shares with the Motor Vehicle Commission the responsibility of assisting in the resolution of complaints made by new car owners regarding warranty agreements.

The Attorney General's Office is required to enforce provisions of the Deceptive Trade Practices Act (Business and Commerce Code, Chapter 17, Subchapter E). This statute mandates the Attorney General to bring legal proceedings against individuals found to be engaging in deceptive trade practices. In response to this mandate, the Consumer Protection Division was established in 1974 to receive complaints from citizens concerning suspected violations of the Act. Among the types of complaints received by this Division are those relating to new motor vehicle warranty repairs; and, thus, an overlap of responsibility with one of the target populations of the Motor Vehicle Commission is created.

The Commission has acted to minimize duplication regarding this shared target population. When the Motor Vehicle Commission receives complaints regarding matters in which it has no jurisdiction, the complaints are referred to the Attorney General's Office which has a wider range of jurisdiction.

Although the Commission has attempted to publicize its existence and the

nature of its responsibilities, during the review , personnel were identified in both the Attorney General's Consumer Protection Division and the regional office of the Federal Trade Commission (FTC) who were unaware of the specific responsibilities and procedures of the Motor Vehicle Commission relative to motor vehicle warranty complaints. The observation was made by representatives of both the Attorney General's Office and the FTC that the Motor Vehicle Commission is in a more advantageous position to resolve complaints because of the potential of license revocation. However, complaints which might also have been filed with the Motor Vehicle Commission have often been directed toward other agencies.

Another agency interacting with the Commission's target population is the Comptroller of Public Accounts. A tax is levied on every motor vehicle sold equal to one-tenth of one percent of the total purchase price. This tax is collected by the local county tax assessor who in turn forwards 98 percent of the money collected to the State Comptroller. (Article 7047k-1)

The Department of Public Safety is also concerned with one segment of the Commission's target population: motor vehicle dealers. The Department certifies inspection stations for two-year periods, many of which are operated by dealers at their place of business. (Article 6701d, Section 141)

The Department of Highways and Public Transportation also interacts with motor vehicle dealers and manufacturers. Dealers and manufacturers, instead of having to register each vehicle in their possession, may apply for special license plates to allow them to operate the vehicle on the streets or public highways. In addition, the dealer may issue temporary cardboard tags which may be used by the purchaser for 20 days to operate an unregistered vehicle bought from the dealer. (Article 6686)

Thus, except for the consumer complaint function of the Attorney General's Office, the other three agencies discussed in this analysis, in effect, do not duplicate any of the functions of the Motor Vehicle Commission.

Consolidation Potential. A survey of the 45 states which regulate motor vehicle dealers, manufacturers, distributors, and their representatives revealed that this function is most frequently placed in Departments or Divisions of Motor Vehicles. Certain distinct advantages were found from placing this responsibility within a larger agency with similar functions or groups served.

One advantage of placing the regulatory function in a larger agency, according to the survey, was that economies of scale could be obtained. Administrative costs are minimized and more efficient utilization of staff and equipment can result in balanced workload and more effective regulation.

Responsibilities generally associated with Departments of Motor Vehicles in other states are: registration of vehicles; issuance of certificates of title; issuance of regular and dealer license plates; driver's licenses; inspection of vehicles; and licensing of individuals within the vehicle sales and distribution system. The state agencies in Texas which perform these functions are the Department of Public Safety (DPS) and the Department of Highways and Public Transportation (Highway Department). DPS issues driver's licenses and conducts inspections of vehicles, while the Texas Highway Department conducts registration of vehicles, issues certificates of title as well as regular and dealer license plates. These tasks are generally carried out in other states by the Department of Motor Vehicles.

The Texas Railroad Commission, although not regulating motor vehicle dealers and manufacturers, does perform functions which are similar to those of the Texas Motor Vehicle Commission. The Transportation Regulation Division of the Railroad Commission carries out the regulation of common carriers -- motor bus companies -- (Article 911a). Like the Motor Vehicle Commission, the Railroad

Commission issues certificates to bus companies operating in this state; determines the necessity for such a service upon the receipt of an application; receives protests to certificate applications; and conducts hearings.

It should be noted that while none of the three agencies mentioned above has complaint resolution activities, all have field offices which could be valuable in this regard, as well as in the licensing and enforcement functions. Most importantly, these agencies have staffs large enough to obtain the advantages of economies of scale and the benefits of specialization found in larger state departments.

Summary

The Motor Vehicle Commission performs many functions common to regulatory agencies in general. In addition, the Commission shares its target population with other state administrative agencies such as the Attorney General's Office, the State Comptroller, DPS, and the Highway Department. Other states have placed the regulation of the motor vehicle industry and its related functions in one state agency -- a Department of Motor Vehicles. Thus, the advantages of economies of scale and the benefits of specialization can be utilized more efficiently and effectively.

Criterion 5

Whether the agency has recommended to the legislature statutory changes calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates.

The review under this criterion centered on statutory changes which affect the operations of the agency. In the period covering the last three legislative sessions, the review focused on both proposed and adopted changes in the law; prior to that period, the staff review was limited to only adopted changes. In analyzing these changes, the approach was taken that a statutory modification must be of clear benefit to the state's citizens to be considered to be in the interest of the public.

Exhibit V-1 presents a tabular synopsis of the proposed legislative changes relating to the regulation of the new motor vehicle industry. As discussed in the Background section, manufacturers have exerted a greater influence at the national level than have dealers. Thus, legislative changes at the state level have primarily been aimed at altering the balance of power in favor of the dealer, and much of the legislation enacted at the state level has provided an alternative to federal legislation.

Sixty-fourth Legislature

S.B. 688, broadened the definition of "motor vehicle" to include motorcycles. This amendment was requested by the Texas Motorcycle Dealers Association and, according to the self-evaluation report, was not objected to by the Commission, although the staff workload was increased. Motorcycle dealers and manufacturers were, thus, included under the same statutory regulation as that relating to other new motor vehicle dealers and manufacturers. Accordingly, the Commission's

EXHIBIT V-1

Tabular Synopsis of Proposed Legislative Changes
1973-1977

Session	Bill	Proposed Change	Action
63rd (1973)	S.B. 831	Gave certain agencies the option of adopting a system under which licenses expired on various dates during the years.	Adopted
64th (1975)	S.B. 688	Redefined "motor vehicle" to include motorcycles. Prohibited motor vehicle manufacturers, distributors, and representatives from preventing the succession to a dealership under a will or the laws of descent and distribution, unless shown to be detrimental to the public interest.	Adopted
65th (1977)	S.B. 535	Required a statement to be included in an application for a manufacturer's license showing compliance with Subdivision (9), Section 5.02 of the Act. Required a dealer to apply for a new license prior to a change in location. The Commission was authorized to deny a license to a dealer if the same line-make vehicle is then represented in the county or within a 25-mile area of the proposed dealership by another dealer, unless good cause is shown.	Adopted
	H.B. 1279	New Department of Business and Professions -- to include Motor Vehicle Commission.	Failed

authority was expanded. In addition, S.B. 688 prohibited manufacturers and distributors from preventing the succession to a dealership by legal heirs unless it was shown to be detrimental to the public interest. This would prevent a manufacturer from arbitrarily terminating an agreement after the death of a dealer. On the other hand, a manufacturer could be forced to honor an agreement indefinitely, unless it could be determined in hearings before the Commission that such a succession would be detrimental to the public interest or to the representation of the manufacturer. Both the Texas Automobile Dealers Association and the Texas Motorcycle Dealers Association favored S.B. 688.

Sixty-fifth Legislature

Of significant impact also, S.B. 535, enacted in 1977, made three changes to the Code. First, an application for a manufacturer's license was required to include a statement showing compliance with Section 5.02, Subdivision (9), relating to the requirement that manufacturers and distributors reimburse dealers the same amount for warranty repair work as that charged other customers. This requirement prevents manufactureres from reimbursing dealers at lesser amounts for warranty work than what a dealer would normally charge a customer. The second change to the Code required dealers to apply for a new license prior to a change in location. And finally, the third change authorized the Commission to deny a license to a dealer if the same line-make vehicle is then represented in the same county or within a 25-mile area of the proposed dealership site by another dealer, unless good cause is shown. These two changes would, in effect, prevent a manufacturer from forcing a dealer out of business by opening or moving another dealership within the vicinity without prior notification and consent of the

Commission. However, because of these statutory changes, the potential of restricting commerce exists on the part of the dealer with the approval of the Commission.

Summary

It should be noted that in the past two sessions, the legislative changes requested by the dealer associations have been adopted. Both the Texas Motorcycle Dealers Association and the Texas Automobile Dealers Association favored S.B. 688. The Automobile Dealers Association supported S.B. 535 while, according to the self-evaluation report General Motors Corporation was against it, although there is no record that a corporate spokesman testified at hearings. The changes made by this legislation expanded the authority of the Commission as well as offered more protection to the dealer against potential abuses by the manufacturer. Records of committee testimony show that the Commission did not testify at hearings. This section has shown the following:

1. The Motor Vehicle Commission has never recommended any legislative changes.
2. The only legislative changes that have been recommended and subsequently adopted have been proposed by the dealer associations.
3. The major changes that have been adopted have been aimed at offering more protection to the dealer against potential abuses by the manufacturer.

Criterion 6

The promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The review under this criterion centered on: 1) an identification of the type and frequency of complaints received by the agency, 2) the adequacy of administrative procedures used to process these complaints, and 3) the appropriateness and patterns of actions taken to address the complaints. Information for the review was obtained through interviewing agency staff, examining complaint files, and analyzing data presented in the agency's self-evaluation report.

A complaint to the Motor Vehicle Commission occurs when a party contacts the Commission that an alleged violation of the Code or of the Commission's rules and regulations has taken place and asks it to intervene to correct the matter. Complaints can be made by anyone affected by the law, i.e., manufacturers, dealers, consumers, etc.

Complaint Processing

While the Commission has not documented the procedures for handling complaints, the self-evaluation report presents the internal procedures currently used by the staff. Complaint processes can be divided into three major groups: complaints by licensees against other licensees, complaints by individuals against licensees, and miscellaneous complaints. The Commission does not utilize special complaint forms; a letter is sufficient.

Complaints by licensees against other licensees generally are complaints from dealers against manufacturers. When a complaint is received, it is recorded in a mail log. The executive director reviews the complaint to determine whether it is

within the Commission's jurisdiction. If it is, the complaint is recorded in a docket book, assigned a number, and scheduled for a hearing. Notice of the hearing is given to all concerned persons by certified mail not less than 20 days before the hearing. Prior to the hearing, a pre-hearing conference is held by the executive director with the parties involved to consider a possible settlement or resolution. If such does not occur, the hearing is held with the executive director acting as hearing officer. Upon conclusion, a recommended decision is issued by the hearing officer to the Commission. All parties are notified prior to the Commission's decision and given the opportunity to comment on the hearing report, findings of fact, and conclusions. The Commission then renders a decision in open meeting.

The second group, complaints by individuals against licensees, are generally those from consumers against dealers. The Code specifically stipulates that a retail buyer of a new motor vehicle may make a complaint concerning defects in a new motor vehicle which are covered by the warranty. The complaint must be made through certified letter. If the dealer does not correct the defects covered by the warranty within 30 days, the owner may further complain through another certified letter to the dealer with copies to the manufacturer or distributor and the Commission. Although the statute stipulates that a certified letter is necessary, the Commission generally accepts complaints made by telephone or non-certified mail.

When a consumer complaint is received by the Commission, it is recorded in a mail log and reviewed by the executive director to determine if it is within the Commission's jurisdiction. If it is not, it is referred to the appropriate agency. Complaints within the Commission's jurisdiction are recorded in a consumer complaint log. A file is then prepared and includes all correspondence received and sent by the Commission. A letter is sent to the complainant to acknowledge

receipt of the complaint. Letters are also sent to the dealer and to the manufacturer or representative to request comments and action to resolve the complaint. If the complaint is not resolved, further correspondence is sent and a telephone or personal investigation is conducted. If the complaint remains unresolved, the complainant is informed of the right to request a hearing. If a request for hearing is made, the complaint is recorded in a docket book, assigned a number, and scheduled for a hearing. The same hearing procedures apply as those discussed for the previous group.

Other types of complaints (e.g., complaints by an individual against the Commission), if in written form, are recorded in the mail log upon receipt. These are then reviewed by the executive director to determine appropriate action, depending on the nature of the complaint. No action is required by the Commission itself unless it later develops into a hearing. A separate file is kept for all telephone complaints within the Commission's jurisdiction. An individual file is not prepared until further written communication is received. Then it is handled according to the type of complaint and follows the appropriate procedures.

Complaint Analysis

The following table shows a breakdown of complaints received by the Commission for the three fiscal years under consideration:

EXHIBIT VI-1

Complaints
Fiscal Years 1975 - 1977

Type	1975	1976	1977
Commission v. Licensee	1	1	14
Individual v. Licensee	119	237	355
Individual v. Commission	1	3	--
Licensee v. Licensee	4	9	15
Total	125	250	384

An increase in complaints can be seen over the past three years. Consumer complaints (Individual v. Licensee) account for over 90 percent of all complaints received by the Commission. The analysis, hereafter, will only be of the complaints received in fiscal year 1977.

There were 14 complaints, in fiscal year 1977, of the Commission v. Licensee type. The Commission at times receives telephone calls or correspondence from anonymous individuals, a dealer, Better Business Bureaus, etc. alerting it of violations of its advertising rules. The Commission follows through with an investigation. In FY 1977, 14 warning letters were issued to dealers or manufacturers regarding false, deceptive, or misleading advertisements. No licenses were suspended or revoked as the advertisements were brought into compliance.

In FY 1977, 15 complaints were received by the Commission in the Licensee v. Licensee category. All of these were complaints by dealers against manufacturers ranging from the cancellation of a franchise to the rate of reimbursement on warranty repair work. Hearings were held on three of the complaints; in all three, the Commission dismissed these. While three cases are

still pending, the remaining complaints were either settled prior to a hearing or were withdrawn.

Three hundred fifty-five consumer complaints (Individual v. Licensee), or 92 percent of all complaints, were received in fiscal year 1977. Generally, these complaints dealt with warranty repair problems. Of the total complaints, 349 were closed in that year while the remainder were carried over to fiscal year 1978. Thirty-three (9 percent) of the 349 complaints were informational or required no action. These were sent by consumers or other agencies or groups alerting the Commission of problems currently resolved, but which could later develop into a formal complaint. Eleven (3 percent) of the 349 complaints were referred to other agencies such as the Attorney General's Office. The following is a breakdown of the disposition of the remaining complaints:

EXHIBIT VI-2

Disposition of Consumer Complaints FY 1977

Satisfied	152	(44%)
Not Pursued (by Complainant)	74	(21%)
No Jurisdiction	52	(15%)
No Violation	27	(8%)

Of the total consumer complaints received, seven were scheduled for hearing. Hearings were actually held on five while the remaining two complaints were withdrawn when the parties involved agreed to a settlement. Of the five complaints in which hearings were held, three were dismissed by the Commission, while in the other two, a decision was made ordering restitution to the complainant. All cases involved warranty repair problems.

It generally takes the Commission staff from one to as many as 297 days to process a complaint from the day it is received by the Commission to the day the

file is closed. The length of time varies since some complaints are processed without delays while others, more complex or requiring a hearing, take longer to resolve. It takes the Commission staff an average of 47 days to process a complaint. It should be noted that a complaint file is kept open until verification is sent to the Commission that the complaint has been resolved; thus, a complaint may have been resolved much sooner, but the additional time factor in awaiting verification prolonged the closing date.

The executive director and the assistant director of the Commission, as part of their duties, investigate all complaints. The Commission has no inspectors as such. Through correspondence, telephone conversations, and personal inspection, complaints are investigated.

Another state agency receiving complaints on automobiles is the Attorney General's Office. In 1977 the Consumer Protection Division received 3,949 motor vehicle complaints. Of these, 87 dealt specifically with new cars. Other categories used by the Division are shown below:

EXHIBIT VI-3
Consumer Complaints on Motor Vehicles
Attorney General's Office
1977

New Motor Vehicles	87
Parts	108
Repairs	1,767
Odometers	57
Tires	114
Titles	91
Used Cars	660
Miscellaneous	<u>282</u>
Total	<u>3,949</u>

A review of the most recent Performance Report (1976) and budget documents (1978-1979 biennium) submitted by the Attorney General's Office to the Legislative Budget Board showed that out of a total of 15,086 complaints received (automobile or otherwise), 5,389 (or 36 percent) were settled. It took the staff of 46 about six weeks to process each complaint.

Summary

Consumer complaints to the Motor Vehicle Commission have steadily risen over the past three years. They account for over 90 percent of the total complaints received by the Commission. However, the Commission has not established formal written procedures to insure that consumer complaints are handled consistently and equitably over time.

Of the total consumer complaints received by the Commission, 44 percent were satisfied. It took the staff an average of 47 days to resolve a complaint. In the same fiscal year, five hearings were held on consumer complaints. Three of the five complaints were dismissed while in the other two the decisions were in the consumer's favor. Penalties to dealers or manufacturers were never more than the repair of a complainant's car at no cost to the complainant. In the three fiscal years under consideration, no licenses were suspended or revoked.

The Attorney General's Office also handles consumer complaints. It obtains relatively the same results on total complaints received (36 percent settled) as the Motor Vehicle Commission on new car complaints (44 percent). Processing time is approximately the same.

Criterion 7

The extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates, and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The review under this criterion began with a determination of the statutory requirements regarding public participation both in the agency's enabling law and general statutes. The agency's procedures were reviewed to determine compliance with these statutes. The agency files and self-evaluation report were reviewed to determine the nature and extent of public participation and any results which might be attributed to public participation.

Public Participation

The Motor Vehicle Code stipulates that two members of the Commission must be selected from the public at large. Additionally, a majority of the Commission including at least one of the public members constitutes a quorum to transact business. The stipulation in the Code that a reasonable notice of all meetings be given as prescribed by rules of the Commission is satisfied through compliance with requirements of the Administrative Procedure and Texas Register Act. This requires that a notice be sent to the Secretary of State prior to a meeting or rule change.

A review of the Commission's Rules of Practice and Procedure shows the following provisions apply to public participation:

067.01.01.106 (D) - Any public official or other person having an interest in a proceeding may, upon request to the Commission or hearing officer, be permitted to intervene and present any relevant and proper evidence, data, or argument bearing upon the issues involved in the particular proceeding.

067.01.02.202 - All rulemaking proceedings are open to the public.

067.01.02.203 - Written data, evidence, or arguments may be filed by any interested party in advance of, during, or after a hearing.

067.01.02.204 - Any interested party may present data, evidence, or arguments in oral form at hearings.

067.01.03.304 - Hearings in adjudicative proceedings are open to the public. These hearings are held in Austin unless the Commission designates another place "in the interest of the public."

Review of minutes revealed that there is negligible participation by the general public and licensees in open meetings held by the Commission unless specifically involved in a hearing.

The Commission's self-evaluation report, regarding publications intended to inform the public and consumer groups of policies, responsibilities, and activities, states that a letter was issued on February 9, 1976 regarding the availability of the Commission in assisting with consumer complaints on warranty repairs. This letter was sent to those persons and offices most likely to be contacted by the public concerning warranty complaints and included the Attorney General's Consumer Protection field offices, Better Business Bureaus, and Legal Aid Societies. The self-evaluation report further states that this information is also provided on a continuing basis to other persons or agencies as they become known to the Commission.

The Commission did not purchase media advertisements in fiscal years 1975, 1976, and 1977. It did not conduct conferences, seminars or training sessions in these years.

In writing rules and rule changes, the agency did not use technical or professional help on a formal or informal basis. The information provided by the Commission in its self-evaluation report on proposed rule changes was verified and the review indicated only one change was proposed in the three years under consideration. The rule was proposed by the Commission as a result of the

numerous complaints received regarding advertising of new motor vehicles. The report states that notice of the new rule was given to the Better Business Bureau of Metropolitan Houston in addition to the notice published in the Texas Register. Review of the Commission's tapes (minutes were not available) for July 23, 1976 - the date of the hearing for the proposed advertising rules - indicates that the non-industry representatives present were representatives of the Attorney General's Consumer Protection Division, Federal Trade Commission, and Better Business Bureau. The adopted rules regulate the advertising of new motor vehicles by licensees to prohibit false, misleading, and deceptive advertising.

Summary

The agency's enabling statute includes elements which encourage public participation in that two of the Commission members must be selected from the public at large. The Commission has adopted rules which do afford the public some degree of participation in its proceedings.

Criterion 8

The extent to which the agency has complied with applicable requirements of an agency of the United States or of this state regarding equality of employment opportunity and the rights and privacy of individuals.

The review under this criterion centered on an identification of agency Equal Employment Opportunity reporting requirements and policies regarding the rights and privacy of individuals. Federal and state statutes were reviewed; agency policies and procedures were documented; and appropriate agency files were inspected to determine the adequacy of records maintained to verify the data presented under this criterion. The Governor's Office of Personnel and Equal Employment Opportunity was consulted. The general procedures regarding personnel actions and protection of the rights and privacy of individuals were examined through interviews and review of files.

Employment Procedures. The Motor Vehicle Commission filed an Affirmative Action Plan with the Governor's Equal Employment Opportunity Office on February 11, 1974. The plan has not been updated since that time. However, according to representatives of the Governor's EEO Office this is not unusual of a small agency with a low rate of turnover in personnel.

The Commission's affirmative action plan covers the functions, organization, and statutory basis of the Commission as well as its policies, responsibilities, and goals regarding affirmative action. The objective of the plan is to publicize vacancies as widely as possible, and to give preference to applicants from minority groups when two or more persons, having "substantially equal qualifications", apply for employment. The plan appears to be adequate given the size and history of the Commission's employment patterns.

The Commission's staff consists of an executive director and four full-time support staff. The State Auditor's Employee Classification Office reports a turnover rate of 25 percent in full-time personnel for the fiscal year ending August 31, 1977. A breakout of agency personnel by classification is shown below:

Executive Director	Full-time	1	Male	White
Administrator of Technical Programs II	Full-time	1	Male	White
Accountant Secretary	Full-time	1	Female	White
Secretary	Full-time	2	Female	White

The Commission has employees in three categories: administrative, professional, and office/clerical. The administrative category, consists of two employees; and blacks, Hispanics, and females are not represented. In the professional and office/clerical categories, only white females are represented.

Privacy of Individuals. According to the self-evaluation report, the Commission has not developed a plan to ensure the rights and privacy of individuals. No charges of infringement of personal rights have been brought against it. Additionally, the Commission does not have a formal employee grievance procedure.

Summary. The procedures of the Commission in the area of affirmative action are generally adequate for a public agency of its size. The review revealed no evidence suggesting that the agency has infringed upon the personal rights of its employees or the privacy of other individuals.

Criterion 9

The extent to which the agency issues and enforces rules relating to potential conflict of interests of its employees.

The review under this criterion centered on an identification of documented agency practices and procedures regarding the filing of individual financial statements and affidavits with the Office of the Secretary of State. The provisions of the statute (Article 6252-9b, V.A.C.S.) were reviewed and agency interpretations of the nature and intent of the provisions of the Act were sought. Records maintained by the agency and the Secretary of State under the authority of the legislation concerned with conflict of interest were reviewed to determine the extent of agency compliance with the letter and intent of the Act and to verify the accuracy of the data presented under this criterion. In addition, inquiries were directed to selected areas where conflicts of interest might exist that could not be discerned through review of official documents.

Administrative Procedures. Subchapter B. Administrative Provisions, Section 2.03, Motor Vehicle Code states that four members of the Commission shall be dealers, no two of which are franchised to sell the motor vehicles manufactured or distributed by the same person or affiliate of the same person. The statute further provides that the two remaining members represent the general public. Any member of the Commission having a substantial interest in a business entity subject to regulation by a state agency is required by Section 5(a) of Article 6252-9b V.A.C.S. (Standards of Conduct for State Officers and Employees) to file an affidavit with the Secretary of State disclosing such information.

Review of the Secretary of State's files reveal that all of the members who are dealers have filed affidavits acknowledging ownership of dealerships in Texas.

One of the public representatives has filed an affidavit and the other has no affidavit on file. From the information available no apparent conflicts of interest were noted.

In compliance with Section 3, Article 6252-9b, V.A.C.S., the executive director of the agency has filed a financial statement. This financial statement is current and appears to satisfy legal requirements. Based on the information filed, there is no indication of any potential conflict of interest.

Although the agency has not adopted formal rules and regulations regarding the employment of persons associated with the regulated industry or other potential conflict of interests, procedures appear reasonable given the small staff size. The agency does provide a copy of Article 6252-9b, Standards of Conduct of State Officers and Employees, to each new Commission member. Copies of Sections 1 and 8 devoted to the declaration of purpose and standards of conduct are provided to new employees who are asked to sign written statements indicating knowledge and compliance with the statute. Employees also receive and sign a receipt for H.B. 753, 1951, providing for the accounting and responsibility for the use of state-owned property and Section 4 of the current General Appropriations Act relating to political aid and legislative influence.

Summary

No information was obtained during the investigation which would indicate that individual members of the Board or employees of the agency have maintained financial or other interests which are in conflict with the purposes and operations of the agency.

Criterion 10

The extent to which the agency complies with the Open Records Act and the Open Meetings Act.

Examination of elements under this criterion was separated into components dealing with responsibilities for making agency documents available to the public under open records requirements and responsibilities for public notification of proposed agency actions. Under the area of open records, statutes were reviewed in relation to written or unwritten policies used by the agency. Where written policies did not exist, interviews were conducted to determine actual compliance. Materials contained in the self-evaluation report were verified and open records decisions reviewed. Open meetings compliance was verified through review of agency written and unwritten policies to determine if they accurately reflected statutory requirements. Interviews with agency personnel were conducted in instances where written policies were lacking or information contained in minutes of meetings was incomplete or unclear. Records in the Office of the Secretary of State were reviewed on a selected basis to determine compliance with posting and informational requirements.

Open Records. The agency reports that it makes all information regarding operations available to the public as required by the Open Records Act, and has never denied a formal and legitimate request for information. The only records which the agency holds as confidential under the provisions of Article 6252-17a, are employee personnel records. Most of the remaining records on file in the agency pertain to licensee files, files documenting proceedings and consumer complaints and records of agency operations.

Open Meetings. The Motor Vehicle Commission is required to hold at least one annual meeting in September to elect a chairman and vice-chairman and to

hold regular meetings at intervals specified by a majority of members. Special meetings may be held at the request of any two Commission members.

Commission meetings are held approximately five to six times each year, and, with two exceptions, all meetings within the last three fiscal years have been held in Austin. Regular meetings are devoted primarily to consideration of hearing reports and Orders of Dismissal, as well as status reports on the Commission's financial condition and licensing activities. The agency reports that, with the exception of closed meetings held on March 11, 1975 and April 7, 1975 to consider personnel matters, all Commission meetings are open meetings. An inspection of minutes of Commission meetings revealed no information which indicates that activities of the Commission are in conflict with the requirements of the Open Meetings Act.

The agency reports that there is generally only minimal public interest in Commission meetings with attendance usually consisting of Commission members, staff and those parties who are specifically involved in Commission proceedings. The attendance of these individuals is reported in the minutes.

Formal procedures relating to advance public notification of scheduled Commission meetings includes notification of the Texas Register Division of the Secretary of State and the filing of a proposed agenda for the meeting with the Texas Legislative Service. In addition, all individuals concerned with a particular proceeding or other matter to be considered by the Commission are notified in advance. There is no media advertising by the agency and advance mail notification of licensees is not required. All agency decisions and opinions are typed, indexed, placed on file in the Commission's office and available to the general public.

The only rule change considered in the last three fiscal years was also submitted to the Texas Register both prior to consideration by the Commission and

after final action was taken. The objective of these rule changes, which became effective May 1, 1977, was to regulate the advertising of new motor vehicles and to prohibit false, deceptive, unfair or misleading advertising. All licensees are informed of rules changes before consideration by the Commission and after final decision has been made.

Summary

The records of the Motor Vehicle Commission are available to the public in accordance with Open Records provisions. Despite the fact that procedures for advance notification of public meetings appears to fulfill all pertinent statutory requirements, these requirements do not appear to have significantly increased the Commission's visibility among members of the general public.

Criterion 11

The impact in terms of federal intervention or loss of federal funds if the agency is abolished.

The licensing of occupations is a function which the federal government has left to the states to initiate. No federal standards were identified which would be affected if the Commission were abolished.

Federal funds are not involved in the administration of the Code as administration costs related to the licensing and regulatory functions of the Commission are financed through the collection of fees.

CONCLUSIONS

The Texas Motor Vehicle Commission was created in 1971 to insure a sound system of distributing and selling new motor vehicles, to provide for compliance with manufacturer's warranties, and to prevent frauds, unfair practices, and other abuses against the public. The impetus for passage of enabling legislation was the perceived need to balance, through statute, the rights of automobile dealers relative to the rights of automobile manufacturers as stipulated in franchise agreements. Included along with authority for regulating the dealer -- manufacturer relationship, were statutory provisions for assuring automobile buyers of adequate warranty repairs. The Commission was authorized to perform this broad policy-making role through the areas of licensing, enforcement, and administration.

The licensing function of the Commission involves the issuance of licenses to new motor vehicle dealers, manufacturers, distributors, and their representatives. The underlying goal of this function is to protect the existing new vehicle distribution system and the public interest by applying licensing requirements in a fair and non-restrictive manner. A review of the licensing function showed, however, that the Commission has developed no standards other than meeting specific statutory requirements to evaluate manufacturer, distributor, and representative license applications and informal standards, in addition to statutory requirements, for dealer licensure. As pointed out in Criterion 2, an applicant for a dealer's license must have already met the manufacturer's standards required for franchising. The manufacturer's standards include such areas as financial ability, vehicle market, management capability, and display and repair facilities. Nevertheless, a potential new dealer must also submit a considerable amount of information to the Commission as part of the licensing process. However, because the Commission has not specified standards for the evaluation of dealer license

applications independent of the manufacturer's, the Commission's requirements tend to be limited to assuring that manufacturer's requirements are fulfilled.

Another element of the licensing function is the protest process. In 1977, 30 percent of the eligible applications were protested. The applicant subject to protest must develop a case to show good cause for an additional dealership. The burden of proof is on the applicant, and the cost of the procedure can be high both in terms of dollars and time required to gain a Commission order approving the application. Of the protested applications received in 1977, the time required for approval ranged from approximately three to eleven months. The average length of time from receipt of an application by the Commission to issuance of a final order in the nine cases decided was approximately six months. Given the additional costs which applicants may have to bear to complete the procedures established by the Code and given the infrequency with which the conclusion of the protest procedure results in a denial of a new dealership, a question is raised as to whether this regulatory mechanism is truly effective.

The enforcement function of the Commission consists of two activities: enforcement of statutory prohibitions and the resolution of complaints. The purpose behind the prohibitions included in the statute is to protect the public and members of the industry from unfair practices and abuses by licensees. The objective behind the complaint process is to provide licensees and the public with a mechanism to insure that their complaints regarding alleged violations of the Code are resolved fairly and in a timely manner. Many licensees and consumers, however, appear reluctant to follow the complaint process to a hearing, when necessary, because of the time and expense involved. Both licensees and consumer complainants receive, at the conclusion of the Commission hearing procedures, only

fulfillment of statutory guarantees. The Code does not provide remedies such as the payment of damages or costs by those licensees found in violation of the Code.

A review of the complaint function revealed that the Commission resolved complaints equitably and in a timely manner. However, the number of complaints received by the Commission does not adequately reflect the size of the population of consumers with warranty repair problems. According to a recent FTC sponsored survey, approximately 30 percent of new motor vehicle purchasers surveyed experienced vehicle defects covered by the warranty, 25 percent of whom were dissatisfied with the service received. Applying these frequencies to the number of new vehicles sold in Texas during 1977 (1,024,980 new vehicle registrations) indicates that as many as 75,000 Texas buyers may have received unsatisfactory warranty service. Compared to the 355 complaints received by the Commission during 1977, it could be argued that a sizeable number of warranty complaints exist which do not find their way to the Commission.

In regard to its administrative function, the review indicates that the practice of retaining large amounts of earned but unrecognized revenues in the Commission's suspense account was at variance with generally accepted accounting principles. This practice directly affects the amounts transferred from the Motor Vehicle Commission Fund to the General Revenue Fund at the close of each biennium. In addition, although the Commission has been given the option of staggering license renewals, this has not been implemented.

If the legislature determines to continue any of the functions of the Motor Vehicle Commission, the following organizational changes could be considered:

THE LEGISLATURE COULD CONSIDER PLACING ENFORCEMENT RESPONSIBILITIES WITHIN THE ATTORNEY GENERAL'S OFFICE.

Enforcement of statutory provisions could be made the responsibility of the Attorney General's Office which performs similar functions related to other statutes. Currently, the Attorney General's Office is responsible for enforcement of the Deceptive Trade Practices -- Consumer Protection Act. As part of this responsibility, the Attorney General receives consumer complaints, many of them concerning motor vehicles (3,949 in 1977). Presently, the Attorney General resolves complaints in the same time frame as the Motor Vehicle Commission (six weeks) and obtains relatively the same results (36 percent complaints settled --A.G.; 44 percent --MVC). In addition, the Attorney General has regional offices around the state to aid in resolution of consumer complaints.

THE LEGISLATURE COULD CONSIDER PLACING THE LICENSING FUNCTION WITHIN AN AGENCY WITH AUTOMATED LICENSE PROCESSING, SUCH AS THE DEPARTMENT OF PUBLIC SAFETY.

The Commission's present manual licensing system could be significantly improved by placing this function within an agency capable of recognizing economies of scale. By utilizing an on-going system, the advantages of automation could be obtained, with costs limited to incremental expenses.

THE LEGISLATURE COULD CONSIDER PROVIDING THE LICENSING AGENCY WITH AN ADVISORY BOARD COMPOSED OF MEMBERS OF THE LICENSED GROUPS AND THE PUBLIC.

An advisory board could have authority ranging from strictly advisory to policy-making including appellate decision-making or licensing determination. Such a board could provide the perspective of the industry and the public concerning such questions as licensing standards, license fees, and hearings. Twelve states out of the 39 regulating the sale and distribution of motor vehicles utilize such advisory boards.

Should the present agency structure be maintained, the following actions could be taken to improve the efficiency and effectiveness or reduce the potential restrictiveness with which the functions of the Motor Vehicle Commission are performed. These actions are divided between those requiring legislative action and those which can be implemented through administrative action of the Commission.

THE LEGISLATURE COULD CONSIDER REMOVING THE COMMISSION'S AUTHORITY TO DENY DEALER'S LICENSES.

Although the protest procedure is frequently used by existing dealers, the Commission has rarely denied a license as a result of this process. However, regardless of outcome, there may be significant delays in determining protested applications. Also, since the burden of proof is on the applicant, there may be substantial expenses involved in showing good cause for a license. These potential costs, in a state with increasing sales and decreasing dealerships, may represent an unnecessary market restriction.

THE LEGISLATURE COULD CONSIDER PROVIDING THE MOTOR VEHICLE COMMISSION WITH SPECIFIC AUTHORITY TO ORDER PAYMENT OF COMPLAINANT DAMAGES AND ATTORNEY'S FEES BY LICENSEES FOUND IN VIOLATION OF THE LAW.

The Motor Vehicle Commission itself initiates few enforcement actions; most arise from complaints of alleged violations. These complaints initiate adjudicative hearings procedures with the Commission performing a judicial role. The small number of formal complaints may be associated with the uncertain benefits, but certain costs of adjudicative proceedings. Providing explicit authority to reimburse complainants' expenses strengthens the enforcement function without increasing the Commission's investigative role.

THE LEGISLATURE COULD CONSIDER REQUIRING THAT PURCHASERS OF NEW MOTOR VEHICLES BE ADVISED AT THE TIME OF PURCHASE OF THE AUTHORITY AND RESPONSIBILITY OF THE MOTOR VEHICLE COMMISSION REGARDING NEW VEHICLE WARRANTIES.

Although one of the major purposes of the Motor Vehicle Commission is to assure compliance with new vehicle warranties, most new vehicle buyers are not familiar with the Commission. If estimates of the FTC have validity in Texas, the potential number of unsatisfied consumers is in sharp contrast to the relatively low number of complaints filed with the Commission. Providing information at the time of purchase can, with little expense or inconvenience, provide a means for making the role of the Commission known to the new vehicle buyer.

THE LEGISLATURE COULD CONSIDER REQUIRING CLEARANCE TO THE MOTOR VEHICLE COMMISSION FUND FROM AGENCY SUSPENSE FUNDS OF ALL FEES NO LONGER PENDING AT THE END OF EACH FISCAL YEAR, AND THE ANNUAL REVERSION INTO GENERAL REVENUE OF ALL MONEYS IN THE MOTOR VEHICLE COMMISSION FUND EXCEPT AMOUNTS REQUIRED TO ADMINISTER THE CODE PENDING RECEIPT OF ADDITIONAL REVENUE.

The Code presently requires that all moneys received from license fees be deposited in the Motor Vehicle Commission Fund. The Code also requires at the end of each biennium the transfer of the unexpended balance remaining in the Motor Vehicle Commission Fund to the General Revenue Fund. However, by allowing large amounts to accumulate in the agency suspense fund, the Commission has avoided the reversion of the greatest part of its unexpended funds. This statutory change could clarify Legislative intent and require more efficient funds management.

THE MOTOR VEHICLE COMMISSION COULD CONSIDER IMPLEMENTATION OF A STAGGERED LICENSE RENEWAL SYSTEM.

Although the Commission has been authorized to stagger license renewals since 1973, it presently issues all renewals between August 31 and December 1. Demands created by the present practice have caused delay of other agency tasks and have required the assistance of temporary personnel. Implementation of a staggered renewal system would distribute workloads and revenues throughout the year for greater efficiency.

THE MOTOR VEHICLE COMMISSION COULD CONSIDER REQUIRING THAT LICENSED DEALERS PROVIDE REPORTS IDENTIFYING COMPLAINTS RECEIVED AND RECURRING WARRANTY REPAIRS.

The Commission presently has no way to identify new vehicle owners experiencing difficulties with warranty repairs other than as they file complaints to the agency. Implementation of this reporting procedure could identify those dealers experiencing the highest rates of recurring warranty repairs. In addition, it could identify those vehicle owners making complaints to dealers, allowing the Commission to initiate resolution procedures at an earlier stage.

THE MOTOR VEHICLE COMMISSION COULD CONSIDER IMPLEMENTING BY RULE ITS STATUTORY RESPONSIBILITY TO ESTABLISH QUALIFICATIONS FOR MANUFACTURERS AND DEALERS.

The Commission Code mandates that manufacturer and dealer qualifications be established. The development of rules specifying licensure requirements could clearly define these requirements, allow uniform application, and prevent potential misunderstanding caused by informal standards. In addition, the adoption of rules allows for public and licensee comment at public hearing and for the establishment of appeal procedures not available in the case of informal standards.