



Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.



TxDOT Board Meeting

8:00 a.m.

Thursday, June 11, 2020

**AGENDA
BOARD MEETING
TEXAS DEPARTMENT OF MOTOR VEHICLES
OPEN MEETING VIA
TELEPHONE CONFERENCE CALL*
PURSUANT TO GOVERNOR'S MARCH 16, 2020, TEMPORARY SUSPENSION OF
CERTAIN OPEN MEETING PROVISIONS**
THURSDAY, JUNE 11, 2020
8:00 A.M.**

**THIS MEETING WILL BE HELD REMOTELY VIA TELEPHONE CONFERENCE
CALL***

Instructions for accessing the meeting via WebEx:

<https://txdmv.webex.com/txdmv/onstage/g.php?MTID=ecb00ca73010db5f0baf895ea9b4244ab>

Phone number for accessing the meeting via phone:

United States Toll Free: 1-844-740-1264

Event number/Access code: 287 800 416

Event Password: Board061120 (26273061 from phones)

You are solely responsible for your system and the installation and use of WebEx software.

Link to June 11, 2020, TxDMV Board Meeting Documents:

<https://www.txdmv.gov/about-us/txdmv-board-meetings>

*The public can listen to the meeting via the WebEx link or the toll-free number listed above. If you have any technical questions about accessing the meeting, please send an email to Board.Tech.Help@txdmv.gov.

**Action by Governor Greg Abbott pursuant to Texas Government Code Section 418.016

<https://gov.texas.gov/news/post/governor-abbott-allows-virtual-and-telephonic-open-meetings-to-maintain-government-transparency>

All agenda items are subject to possible discussion, questions, consideration, and action by the Board of the Texas Department of Motor Vehicles (Board). Agenda item numbers are assigned for ease of reference only and do not necessarily reflect the order of their consideration by the Board. Presentations may be made by the identified staff or Board member or other staff as needed. The Board reserves the right to discuss any items in executive session where authorized by the Open Meetings Act.

1. Roll Call and Establishment of Quorum

2. Pledges of Allegiance - U.S. and Texas**3. Chair's Reports - Chairman Treviño**

- A. Resignation of Board Member - Joel Richardson
- B. Chair's Annual Report to Governor on State of Affairs 2019

4. Executive Director's Reports - Whitney Brewster

- A. Consumer Protection Advisory Committee Update
- B. COVID-19 Disaster Response
- C. Strategic Plan Update
- D. Security Plan Update

7 E. Awards, Recognition of Years of Service, and Announcements**CONTESTED CASE**

- 8 5. Denial of Application and Appeal to SOAH under Occupations Code, §2301.251(a), and §2301.651(a); Transportation Code, §503.034(a)(1); and 43 Texas Administrative Code §§215.88(c), 215.89(b)(8), and 215.141. MVD Docket Case No. 19-0004271.ENF, SOAH Docket No. 608-19-5876.ENF. [Texas Department of Motor Vehicles v. Harrell Berry d/b/a Bam's Sales & Service, Inc.](#) - Daniel Avitia**

RULES - PROPOSALS

- 6. Chapter 211, Criminal History Offense and Action on License - Daniel Avitia New, §§211.1 - 211.5**

Chapter 215, Motor Vehicle Distribution**Amendment, §215.89****Repeal, §215.88****Chapter 221, Salvage Vehicle Dealers****Amendments, §§221.15, 221.19, 221.111, and 221.112****Repeal, §221.113 and §221.114**

(Relating to:

- Sunset Advisory Commission's recommendation, criminal history evaluations consistent with Occupations Code, Chapter 53:
- SB 604, relating to changes to salvage dealer licenses;
- HB 1342, relating to a person's eligibility for an occupational license; and
- SB 1217, prohibiting consideration of certain arrests in determining license eligibility)

- 7. Chapter 215, Motor Vehicle Distribution - Jeremiah Kuntz**

Amendments, §§215.150 - 215.158

(Relating to HB 3760, issuance of buyer's tags for vehicles sold by governmental agencies)

- 8. Chapter 217, Vehicle Titles and Registration - Jeremiah Kuntz Amendments, §217.74**

(Relating to SB 604, requirement of each county tax assessor-collector to make webDEALER available to any licensed motor vehicle dealer requesting access)

RULES - ADOPTIONS

9. Chapter 217, Vehicle Titles and Registration - Jeremiah Kuntz
Amendments, §217.11

(Relating to rescission, cancellation or revocation by affidavit)
(Proposal Published April 17, 2020 - 45 Tex. Reg. 2519)

10. Chapter 217, Vehicle Titles and Registration - Jeremiah Kuntz
New, §§217.58-217.64

Amendments, §§217.22, 217.27, 217.32, 217.38, 217.41, and 217.55

(Relating to SB 604, new Transportation Code §§504.151 - 504.157, digital license plates)
(Proposal Published April 17, 2020 - 45 Tex. Reg. 2520)

BRIEFING AND ACTION ITEMS

29 **11. Specialty Plate Designs - Jeremiah Kuntz**

- A. Texas Honey Bee - New Design proposed under Transportation Code, §504.801
- B. PGA Golf - New Design proposed under Transportation Code, §504.801
- C. Texas Tech University - Redesign proposed by My Plates under Transportation Code, §504.851
- D. Texas State University - Redesign proposed by My Plates under Transportation Code, §504.851
- E. Southern Methodist University - Redesign proposed by My Plates under Transportation Code, §504.851
- F. Georgia Tech University - Redesign proposed by My Plates under Transportation Code, §504.851
- G. Lone Star Carbon Fiber - New Design proposed by My Plates under Transportation Code §504.851

12. COMMITTEE ITEMS

- 39 A. [Advisory Committee Appointments](#) - Whitney Brewster
- 41 B. [Consumer Protection Advisory Committee \(CPAC\) Recommendations Regarding Refunds by Motor Vehicle Dealers and Motor Carriers Transporting Household Goods Rules](#) - CPAC Officers and Enforcement Division

13. Finance and Audit Committee Update - Committee Chair Brett Graham
(BRIEFINGS ONLY)

- A. Accounts Receivable Initiative - Linda M. Flores
- B. Preliminary FY 2022 - 2023 Legislative Appropriations Request, Baseline and Exceptional Items - Linda M. Flores and Sergio Rey
- C. Financial Impacts of COVID-19 on TxDMV - Linda M. Flores and Brian Kline
- D. FY 2021 Internal Audit Risk Assessment - Sandra Menjivar-Suddeath

E. Internal Audit Division Status Update - Sandra Menjivar-Suddeath

- 46 **14. Negotiated Rulemaking and Alternative Dispute Resolution Policy** - Tracey Beaver
(Relating to SB 604, new Transportation Code §1003.008, which requires the board to develop and implement a policy to encourage the use of negotiated rulemaking and alternative dispute resolution procedures)

EXECUTIVE SESSION

- 15. The Board may enter into closed session under one or more of the following provisions of the Texas Open Meetings Act, Government Code, Chapter 551: Section 551.071** - Consultation with and advice from legal counsel regarding:
- pending or contemplated litigation, or a settlement offer;
 - a matter in which the duty of the attorney to the government body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Government Code, Chapter 551; or
 - any item on this agenda.

Section 551.074 - Personnel matters.

- Discussion relating to the appointment, employment, evaluation, reassignment, duties, discipline, and dismissal of personnel.
- Discussion relating to TxDMV dispute resolution process and recent EEOC complaints and internal Civil Rights Office complaints.
- Performance evaluation of Internal Auditor, including any delegations to a board subcommittee, and modifications to compensation

Section 551.076 - Deliberation Regarding Security Devices or Security Audits; Closed Meeting.

- the deployment, or specific occasions for implementation, of security personnel or devices; or
- a security audit.

Section 551.089 - Deliberation Regarding Security Devices or Security Audits Closed Meeting.

- security assessments or deployments relating to information resources technology;
- network security information as described by Section 2059.055(b); or
- the deployment, or specific occasions for implementation, of security personnel, critical infrastructure, or security devices.

16. Action Items from Executive Session

Performance evaluation of Internal Auditor, including any delegations to a board subcommittee, and modifications to compensation

17. Public Comment

18. Adjournment

The Board will allow an open comment period to receive public comment on any agenda item or other matter that is under the jurisdiction of the Board. No action will be taken on matters that are not part of the agenda for the meeting. For subjects that are not otherwise part of the agenda for the meeting, Board members may respond in accordance with Government Code, Section 551.042 and consider the feasibility of placing the matter on the agenda for a future meeting.

If you want to comment on any agenda item (including an open comment under Item #17), you must send an email to GCO_General@txdmv.gov with one of the following prior to the agenda item being taken up by the Board:

1. a completed registration form (available on the TxDMV webpage for the Board and other public meetings: <https://www.txdmv.gov/about-us/txdmv-board-meetings>); or
2. the following information:
 - a. the agenda item you wish to comment on;
 - b. your name and address, including your city, state, and zip code; and
 - c. who you are representing.

You must wait for the chairman to call on you before you verbally make your comment via the link or the toll-free number listed above. Each speaker will be limited to three minutes, and time allotted to one speaker may not be reassigned to another speaker.

Agenda items may be presented by the named presenters or other TxDMV staff.

Any individual with a disability who plans to attend this meeting and requires auxiliary aids or services should notify the department as far in advance as possible, but no less than two days in advance, so that appropriate arrangements can be made. Contact David Richards by telephone at (512) 465-1423.

I certify that I have reviewed this document and that it conforms to all applicable Texas Register filing requirements.

CERTIFYING OFFICIAL: Tracey Beaver, General Counsel, (512) 465-5665.



Board Meeting Date: 6/11/2020

BRIEFING

To: Texas Department of Motor Vehicles Board
From: Whitney Brewster, Executive Director
Agenda Item: 4.E
Subject: Executive Director's Report – Recognition of Years of Service

RECOMMENDATION

Board Chair and members offer congratulations to employees receiving recognition for an award, reaching a state service milestone, or retirement.

PURPOSE AND EXECUTIVE SUMMARY

The Executive Director announces the name of individuals who retired from the agency and recognizes employees who have reached a state service milestone of 20 years and every five-year increment thereafter. Recognition at the June 11, 2020, Board Meeting for retirements and state service awards include:

- Dawn McNabb in Finance & Administrative Services reached 20 years of state service.
- Diana Batts in Motor Carrier Division reached 20 years of state service
- Carlos Escobedo in CID reached 20 years of state service
- Patricia Farris in Motor Carrier Division reached 20 years of state service
- Belinda Martin in Vehicle Titles and Registration reached 25 years of state service.
- Richard Goldsmith in Motor Carrier Division reached 25 years of state service.
- Kevin Butts in Information Technology reached 25 years of state service
- Cynthia Fagan in Vehicle Title Registration reached 25 years of state service

FINANCIAL IMPACT

No financial impact.

BACKGROUND AND DISCUSSION

No additional background and discussion.



To: Texas Department of Motor Vehicles Board
From: Daniel Avitia, Motor Vehicle Division Director
Agenda Item: 5
Subject: Denial of Application and Appeal to SOAH under Occupations Code, §§ 2301.251(a), and 2301.651(a); Transportation Code, § 503.034(a)(1); and 43 Texas Administrative Code §§ 215.88(c), 215.89(b)(8), and 215.141. MVD Docket Case No. 19-0004271.ENF; SOAH Docket No. 608-19-5876.ENF. *Texas Department of Motor Vehicles v. Harrell Berry d/b/a Bam's Sales & Service, Inc.*

RECOMMENDATION

Staff recommends the Board adopt the Findings of Fact, Conclusions of Law, and proposed decision in the Administrative Law Judge's (ALJ) Proposal for Decision (PFD), and enter an order approving Harrell Berry d/b/a Bam's Sales & Service, Inc.'s application for a motor vehicle dealer's General Distinguishing Number (GDN).

PURPOSE AND EXECUTIVE SUMMARY

The State Office of Administrative Hearings (SOAH) issued a PFD for consideration by the Board of the Texas Department of Motor Vehicles (Board). The Board may now consider and approve a Final Order.

FINANCIAL IMPACT

None.

BACKGROUND AND DISCUSSION

Mr. Harrell Berry purchased Bam's Sales & Service, Inc. in January 2018. Mr. Berry filed and withdrew an application for a new motor vehicle dealer GDN in early 2018, and then filed a second application for a new license on September 3, 2018.

Bam's Service & Sales, Inc.'s four-year application history alerted Staff that Mr. Berry was likely a chameleon – someone secretly applying for a license on behalf of the former business owner who is ineligible to be licensed.

Under Texas Administrative Code § 215.89(b)(8), the department may deny a person's license application if a manager or affiliate of a corporation is ineligible for licensure.

The Motor Vehicle Division (MVD) Licensing Committee denied the license application after reviewing the circumstances including the information provided by Mr. Berry. Key factors for denying licensure include the following:

1. The business website and Facebook pages featured photos of the prior owner and the page text indicated the prior owner was still actively involved in the business,

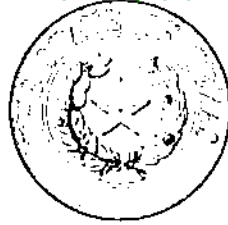
2. Mr. Berry's first application indicated that the prior owner was employed as a business manager, and he provided no proof in the second application that the prior owner's employment had been terminated, and
3. The business website stated falsely that the business was a licensed dealership and advertised nine motor vehicles for sale.

MVD referred the denied application to the Enforcement Division, and Mr. Berry was sent the Notice of Department Decision (NODD) recommending denial of the GDN application on February 15, 2019. The Enforcement Division referred the contested case matter to SOAH on or about July 1, 2019. The hearing on the merits was on July 29, 2019, and the record closed on September 27, 2019. The PFD was issued on November 12, 2019.

The ALJ found that Mr. Berry was taking sufficient actions to disassociate his business from the former business owner and that the department should issue a license. Neither the Enforcement Division or the respondent filed any exceptions.

The following documents are attached to this Executive Summary for consideration by the Board:

1. Proposal for Decision, November 12, 2019; and
2. Draft Final Order for Board Consideration.



State Office of Administrative Hearings

Kristofer Monson
Chief Administrative Law Judge

November 12, 2019

Daniel Avitia, Director
Motor Vehicle Division
Texas Department of Motor Vehicles
4000 Jackson Ave.
Austin, TX 78731

VIA INTERAGENCY MAIL

**RE: Docket No. 608-19-5876.ENF; Texas Department of Motor Vehicles v.
Harrell Berry d/b/a Bam's Sales & Service, Inc.**

Dear Mr. Avitia:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code § 155.507, a SOAH rule which may be found at www.soah.texas.gov.

Sincerely,

A handwritten signature in cursive script that reads "Joanne Summerhays".

Joanne Summerhays
Administrative Law Judge

JS/tt
Enclosure

cc: Damien Shores, Staff Attorney, Enforcement Division, Texas Department of Motor Vehicles, 4000 Jackson Ave., Austin, TX 78731 - **VIA INTERAGENCY MAIL**
Melinda Moreno, Docket Clerk, Texas Department of Motor Vehicle, 4000 Jackson Ave., Austin, TX 78731 - **VIA INTERAGENCY MAIL** (with 1 CD including Hearing on the Merits)
Bam's Sales & Service Inc., 4703 Griggs Rd., Suite C, Houston, TX 77021 - **VIA REGULAR MAIL**

**SOAH DOCKET NO. 608-19-5876.ENF
MVD DOCKET NO. 19-0004271.ENF**

TEXAS DEPARTMENT OF MOTOR	§	BEFORE THE STATE OFFICE
VEHICLES,	§	
Petitioner	§	
	§	
v.	§	OF
	§	
HARRELL BERRY D/B/A	§	
BAMS SALES & SERVICE INC.,	§	
Applicant	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Motor Vehicles (Department) seeks to deny the application of Applicant Harrell Berry d/b/a Bams Sales & Service Inc. (Bams)¹ for a General Distinguishing Number (GDN) to operate as an independent used motor vehicle dealer. Staff contends that Harrell Berry, the owner of Bams, is acting on behalf of a former license applicant, Harlem Lewis, who is ineligible for licensure due to his criminal history, and that Mr. Berry failed to disclose his affiliation with Mr. Lewis on his application for licensure. The Administrative Law Judge (ALJ) finds that Staff failed to prove its allegations by a preponderance of the evidence, and Mr. Berry's application should be approved.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no issues of notice or jurisdiction in this proceeding. Therefore, these matters are addressed in the Findings of Fact and Conclusions of Law sections of this PFD without further discussion.

The hearing was held July 29, 2019, before ALJ Joanne Summerhays in Austin, Texas. Staff was represented by Damien Shores, Enforcement Division attorney. Mr. Berry was

¹ Staff's petition, in the case style, names Applicant as "d/b/a Bams Service & Sales, Inc." without any mention of Harrell Berry. Staff's Notice of Department Decision, attached to and incorporated into the Notice of Hearing, indicates that Harrell Berry is "doing business as" Bams Sales & Service, Inc. (Bams). As discussed in the Proposal for Decision, the evidence indicates that the application for licensure was filed by Harrell Berry as the owner of Bams, a corporation. Furthermore, the Texas Occupations Code states that "dealer" is "a person" who holds a General Distinguishing Number (GDN), not a corporation. Tex. Occ. Code § 2301.002(7). Therefore, the ALJ considers Mr. Berry as Applicant in this case.

represented by Angela McKinnon, attorney. The hearing concluded that day, and the record was left open to allow the parties to file written closing arguments. The record closed on September 27, 2019.

II. DISCUSSION

Staff presented the testimony of Lucie Prieto, a background research analyst employed by the Department, and offered 16 exhibits, 15 of which were admitted, some after partially sustained objections with limited purpose. Mr. Berry testified as a witness on his own behalf and offered six exhibits, which were admitted.

A. Staff's Allegations

Staff alleges that Mr. Berry's application is subject to denial because Mr. Berry is unfit to hold a license based on evidence that Mr. Berry, acting as a "chameleon," secretly applied on behalf of Harlem Lewis, whom Staff alleges is ineligible for licensure due to his criminal history. Staff cites the following legal authorities to support its position: (1) Texas Occupations Code § 2301.651(a)(1), which states that an agency may deny an application if the applicant is deemed unfit under a statute or Department rule; (2) 43 Texas Administrative Code § 215.89(b)(8), which states that the Department may find an applicant unfit for licensure who:

was or is a person defined by [43 Texas Administrative Code] § 215.88(c) or identified in [43 Texas Administrative Code] § 215.88(d), or a manager or affiliate of a sole proprietorship, partnership, corporation, association, trust, estate, or other legal entity whose actions or omissions could be considered unfit, who is ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary action including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment;

and (3) 43 Texas Administrative Code § 215.88(c), which defines a "person" as, among other things, "a person acting in a representative capacity for the applicant or license holder, including an owner, president, vice-president, member of the board of directors, chief executive officer, chief financial officer, chief information officer, chief managing officer, treasurer, controller, director,

principal, manager of business affairs, or similar position of a business entity.”

Staff also alleges that Mr. Berry’s application was untrue because he stated that Mr. Lewis would not have any position with Bams; therefore, according to Staff, the denial should be upheld under Texas Transportation Code § 503.034(a)(1). Finally, Staff argues that Mr. Berry misrepresented on a prior, and subsequently withdrawn, application that no person affiliated with him or Bams had previously filed an application, and therefore violated Texas Occupations Code § 2301.651(a)(2).

B. Applicable Law

A “dealer” is a person who holds a GDN issued by the Department pursuant to Chapter 503 of the Texas Transportation Code.² The GDN is a dealer’s license.³ A dealer is also defined as a person who regularly and actively buys, sells, or exchanges vehicles at an established and permanent location, including an independent motor vehicle dealer.⁴ A person may not legally engage in the business of a dealer unless he holds a GDN.⁵

The Department is authorized to deny an application if the applicant, among other things, makes a material misrepresentation in an application filed with the Department.⁶ In addition,

The [D]epartment shall deny an application for the issuance or renewal of a dealer general distinguishing number or a wholesale motor vehicle auction general distinguishing number if the [D]epartment is satisfied from the application or from other information before it that: (1) information in the application is not true; or (2) the applicant is guilty of conduct that would result in the cancellation of the general distinguishing number under Section 503.038.⁷

² Tex. Occ. Code § 2301.002(7); Tex. Transp. Code § 503.021 *et seq.*

³ Tex. Occ. Code § 2301.002(17).

⁴ Tex. Transp. Code § 503.001(4).

⁵ Tex. Occ. Code § 2301.251(a); Tex. Transp. Code § 503.021.

⁶ Tex. Occ. Code § 2301.651(a)(2).

⁷ Tex. Transp. Code § 503.034(a).

The Department is also authorized to deny a license if the Department determines that the person is unfit to perform the duties and discharge the responsibilities of a license holder.⁸ In determining a person's fitness for licensure, the Department will consider if relevant: (1) the requirements of Texas Occupations Code chapter 53;⁹ (2) the provisions of Texas Occupations Code § 2301.651; (3) any specific statutory licensing requirements; (4) mitigating factors; and (5) other evidence of a person's fitness as allowed by law, including the standards identified in the Department's rule on fitness.¹⁰ The Department's rule on fitness includes the following as grounds for determining that a person is unfit to perform the duties of a license holder: (1) the conviction by any local, state, or federal authority of an offense listed in § 215.88 of the Texas Administrative Code, including robbery, theft, and assaultive offenses; as well as (2) a person (as defined in 43 Texas Administrative Code §215.88(c)) who was or is a manager or affiliate of a corporation or other legal entity whose license has been subject to disciplinary action, including denial.¹¹

A "person" is defined in 43 Texas Administrative Code § 215.88(c) as follows:

- (1) an applicant for a license or other authorization issued by the [D]epartment;
- (2) the holder of a license or other authorization issued by the [D]epartment;
- (3) a person's spouse with a community property interest in the entity licensed or to be licensed by the [D]epartment;
- (4) a controlling shareholder of a business entity licensed by the [D]epartment;
- (5) a person holding 50% or more ownership interest in a business entity licensed by the [D]epartment;
- (6) a person acting in a representative capacity for the applicant or license holder, including an owner, president, vice-president, member of the board of directors, chief executive officer, chief financial officer, chief information officer, chief managing officer, treasurer, controller, director, principal, manager of business affairs, or similar position of a business entity; or

⁸ 43 Tex. Admin. Code §§ 215.141(a)(1)-(4), (b)(17); .89(b).

⁹ Chapter 53 of the Texas Occupations Code relates to the fitness of a license applicant that has a criminal conviction.

¹⁰ 43 Tex. Admin. Code § 215.89(a)(1)-(5).

¹¹ 43 Tex. Admin. Code § 215.89(b)(7), (8).

(7) any person who becomes a person described in this subsection.

C. Evidence

1. Ms. Prieto

Ms. Prieto testified that she has been a background research analyst for the Department for four years. Her job requires her to research license applications that have been flagged for previous violations and criminal convictions. She stated there is a licensing committee that reviews her investigation report and makes the decision whether to approve an application.¹²

Ms. Prieto stated on or about September 3, 2018, Mr. Berry submitted an application on behalf of Bams for a license to sell used motor vehicles, also known as a GDN, which is the subject of this contested case.¹³ Mr. Berry's application states he is the sole owner of Bams, located at 4703 Griggs Rd., Houston, Texas 77021.¹⁴ In conducting her analysis of the application, she learned that this was the second application Mr. Berry filed for a GDN on behalf of Bams. Mr. Berry had previously submitted an application on March 27, 2018.¹⁵ In a letter to the Department dated June 5, 2018, Mr. Berry requested that his previous application for a GDN be withdrawn.¹⁶ Further, Ms. Prieto learned that two other applications had been filed for the same location by other individuals.¹⁷

Ms. Prieto stated that she had concerns about Bams's application because both the location and business name had been the subject of previous applications. Ms. Prieto stated that Mr. Berry submitted a real estate lease between Harlem Lewis and William Berry with his application. Ms. Prieto noted that before Mr. Berry's applications, Harlem Lewis had submitted an application for a GDN license on November 18, 2014, which purported to be on behalf of Bams Sales &

¹² Tr. at 11-14.

¹³ Staff Ex. 1; Tr. at 16.

¹⁴ Staff Ex. 1, Tr. at 25.

¹⁵ Staff Ex. 12; Tr. at 14.

¹⁶ Staff Ex. 14.

¹⁷ Tr. at 20-22.

Service, Inc., and listed the same physical address and telephone number for the corporation as Mr. Berry's application. Ms. Prieto stated that Mr. Lewis withdrew his application after he was informed that because of his criminal history, the Board would not approve his license application.¹⁸

Ms. Prieto explained that, following receipt of Mr. Berry's first application, Staff contacted Mr. Berry to request a statement explaining his failure to disclose that Mr. Lewis, who was a manager at Bams, had previously applied for a license at the same proposed location as Bams's current application. She also asked Mr. Berry to submit an affidavit regarding ownership of Bams.¹⁹ The notarized statement submitted by Mr. Berry stated that Harlem Lewis had no ownership interest in Bams.²⁰ On May 21, 2018, Mr. Berry submitted another response denying he had any knowledge of Mr. Lewis's 2014 application, and describing the role of Mr. Lewis in Bams as that of staff manager with no ownership in the business.²¹ Mr. Berry then submitted the June 15, 2018 letter requesting that his application be withdrawn.²²

In his subsequent September 16, 2018 application, Mr. Berry stated that "Harlem Lewis no longer has a position with the business Bams Sales & Service Inc."²³ He also submitted an amendment that had been filed with the Secretary of State records showing that Harrell Berry was substituted for Prentiss Ragland as the owner of Bams. Ms. Prieto noted that Mr. Ragland was also a prior applicant for a GDN license for Bams. Mr. Ragland actually obtained a GDN license, but subsequently asked that the license be "closed."²⁴ It was closed in February, 2018.

Ms. Prieto testified that she researched the website and the Facebook page for Bams. The website showed several autos for sale. In addition, there were pictures of Harlem Lewis over the

¹⁸ Tr. at 22, 32-36; Staff Ex. 7.

¹⁹ Staff Ex. 13.

²⁰ Staff Ex. 3, 4.

²¹ Staff Ex. 14.

²² Tr. at 24.

²³ Staff Ex. 4.

²⁴ Tr. at 25-26. Staff described "closing" a license as the same as a voluntary surrender. This description was not contested.

name “Bam”, which seemed to her to tie Mr. Lewis to Bams. She stated that Mr. Lewis was known as Bam.²⁵

Ms. Prieto stated that the licensing committee decided to deny Mr. Berry’s application on February 15, 2019, because, based on the website photos, the lease agreement, and Mr. Lewis’s prior application, the committee determined that Mr. Lewis was “affiliated” with Bams.²⁶ The affiliation with Mr. Lewis, who had a criminal conviction, made Mr. Berry unfit to hold a license, according to Ms. Prieto. She described Mr. Berry as a “chameleon,” which she defined as someone who applies for an application on behalf of someone else who has been previously denied. She stated she believed that Mr. Berry was applying for a license on behalf of Mr. Lewis because Mr. Lewis did not qualify for a license based on his criminal history. She based this opinion on the facts that Mr. Berry was using the same telephone number, business name, and business location that Mr. Lewis had used in his application, as well as the website.²⁷

Ms. Prieto also opined that Mr. Berry had filed a false application because he had misrepresented in the application that Mr. Lewis would have nothing to do with his business.²⁸ She admitted, however, that she had no evidence that Mr. Lewis was actually involved in any way with Bams after Mr. Berry stated in his current application that Mr. Lewis was no longer involved in Bams. Furthermore, she agreed that Mr. Berry had disclosed that Mr. Lewis was a manager of Bams in his first application, and that Mr. Berry stated Mr. Lewis had been dismissed from his position with Bams before Mr. Berry’s current application.²⁹

Ms. Prieto also acknowledged that she had no information that indicated that Mr. Berry had been affiliated with Bams prior to his application for a GDN. She agreed that the Secretary of State records showed that Mr. Berry was the 100% owner of Bams. She opined that Mr. Berry

²⁵ Staff Ex. 6; Tr. at 27-31.

²⁶ Tr. at 32.

²⁷ Tr. at 75-76.

²⁸ Tr. at 75-77.

²⁹ Tr. at 75-85.

was aware of the prior license applications by Mr. Lewis and Mr. Ragland, but she admitted that she had no information on which to base her opinion.³⁰

2. Mr. Berry

Mr. Berry testified that he purchased Bams from Mr. Lewis with the intention of using the brand name and expanding the business into auto sales. He stated that the business was established as an auto detailing and supplies business starting in 1989. It later included music production, which Mr. Berry had some experience with. He explained that Bams was well-known in the community and through social media, and he intended to use the business name, logo, and reputation as a marketing tool. For that reason, he wanted to use the same location and telephone number. One reason he purchased the business was that it included the client network, and he felt the network of established clients had value. He also felt like the location was advantageous because it was near the University of Houston.³¹

Mr. Berry stated he was not aware that the previous owner, Mr. Lewis, had engaged in any auto sales on the premises. He entered into a real estate lease agreement with Mr. Lewis dated January 1, 2018, for the rental of 4703 Griggs Rd. for a total lease payment of \$151,200 over the course of six years, with quarterly payments of \$6,300.³² Mr. Berry stated that, before filing the current application, Mr. Lewis had been terminated from any involvement with Bams and only served as the lessor of the property where the business currently operates. Mr. Berry also testified that he had no knowledge of the 2014 application submitted by Mr. Lewis prior to acquiring Bams when Mr. Berry filed the first application. He learned about Mr. Lewis's application from the Department, after he filed the first application in which he stated that Mr. Lewis was a manager of Bams. When he heard about the denial of Mr. Lewis's application, he withdrew his March 27, 2018 application; he fired Mr. Lewis; and Mr. Lewis no longer has anything to do with the business.³³

³⁰ Tr. at 77-85.

³¹ Tr. at 85-93, 99-102, 126-27.

³² Staff Ex. 2.

³³ Tr. at 102-07, 114-16, 119-20.

Mr. Berry testified that he did not know Mr. Ragland and had no personal knowledge of his prior application or license when Mr. Berry purchased the business in January 2018. On or about July 31, 2019, after learning that Mr. Ragland had filed an application, Respondent filed a Certificate of Amendment with the Texas Secretary of State removing Prentiss Ragland as director of Bams Sales & Service Inc.³⁴ Mr. Berry clarified that he was aware that Mr. Ragland was one of the owners of Bams at the time he purchased the business, but he did not have any dealings with Mr. Ragland during the sale.³⁵

Mr. Berry said that he purchased the Bams website with the business, and he is currently working on it to make it reflect the new ownership. He has also deleted any reference to car sales. He was currently not selling cars, only continuing the sales of merchandise, music production, and car detailing. He stated that Mr. Lewis would have no involvement with the car sales portion of the business if his application is approved.³⁶ Mr. Berry acknowledged that he purchased all aspects of the existing business of Bams.³⁷

D. Analysis

1. Fitness

Staff contends that the Department's denial of Mr. Berry's application should be upheld under 43 Texas Administrative Code § 215.89(b)(8) "because of [Mr. Berry's] affiliation with Mr. Lewis, a prior applicant who was found to be unfit due to his criminal history"³⁸ According to Staff, the evidence proves that Mr. Berry is actually acting on behalf of Mr. Lewis, as a "chameleon," to circumvent the Department's denial of Mr. Lewis's application. However, Staff's position is based on speculation and innuendo, rather than evidence. The ALJ finds that Staff has failed to prove its contention by a preponderance of the evidence.

³⁴ Staff Ex. 14; Tr. at 102-09.

³⁵ Tr. at 110-11, 114.

³⁶ Tr. at 108-09, 120-23.

³⁷ Tr. 113-14.

³⁸ Staff's Closing Argument Brief at 9.

The Department's rules state that an application for a GDN may be denied if the applicant is unfit or is or was a manager or affiliate of a corporation or other legal entity whose actions could be considered unfit, who is ineligible for licensure, or whose license is the subject of a disciplinary action.³⁹ Staff did not allege nor submit any evidence that Mr. Berry personally was unfit. Rather, Staff argues that Mr. Lewis was unfit because of his criminal history, and that because Mr. Berry was actually acting on behalf of (as a "chameleon" for) Mr. Lewis in filing the application, Mr. Berry therefore is unfit by association with Mr. Lewis. However, the evidence did not establish that Mr. Berry filed the application on behalf of Mr. Lewis or that Mr. Lewis is currently affiliated with Mr. Berry or Bams, other than as a landlord.

Ms. Prieto stated she believed Mr. Berry was affiliated with Mr. Lewis because Mr. Berry used the same location, the same telephone number, and the same website with pictures of Mr. Lewis since taking over Bams. However, Mr. Berry's testimony that he utilized the existing location, telephone number, logo, and website of Bams in order to maintain a connection with the existing customer base and utilize the existing goodwill of the business was believable and not contravened. Likewise, Mr. Berry's testimony that the webpages that mentioned Mr. Lewis were from the old website and Facebook pages which he had not yet revised was a reasonable explanation for why Mr. Lewis's photo was still on the website.⁴⁰ Mr. Berry's testimony that he was not affiliated with Mr. Lewis, except for purposes of utilizing the goodwill Mr. Lewis had created in the business and Mr. Lewis's reputation in the community to enhance his own business, was credible and not contradicted by any evidence submitted by Staff.

Ms. Prieto's admission that she knew of no evidence that proved that Mr. Lewis currently had any ownership interest in Bams or was currently employed by Bams established that her opinion that Mr. Berry was acting as a chameleon for Mr. Lewis was based on conjecture and not supported by evidence.⁴¹ Mr. Berry testified credibly that he had purchased the business from Mr. Lewis and was now the sole owner of the business, and that Mr. Lewis was not an owner,

³⁹ 43 Tex. Admin. Code § 215.89(b)(8).

⁴⁰ Tr. at 85-93, 99-102, 113-14, 126-27.

⁴¹ Tr. at 83, 85.

manager, or in any way involved in the day-to-day running of the business.⁴² The fact that Mr. Berry was leasing the location of Bams from Mr. Lewis does not establish that Mr. Berry intended to apply for a license on behalf of Mr. Lewis. To the contrary, it tends to demonstrate an arms-length business transaction.

In summary, the evidence did not prove that Mr. Berry was acting on behalf of Mr. Lewis when he submitted the application for a GDN. Therefore, Staff failed to prove that Mr. Berry's application should be denied because Mr. Lewis is unfit to hold a license.

2. Misrepresentation

Staff also argues that Mr. Berry failed to disclose in his March 27, 2018 application, which was withdrawn before the Department took any action, that Mr. Lewis had previously filed a GDN application. Staff contends Mr. Berry's failure to disclose Mr. Lewis's previous application made the answers in Mr. Berry's withdrawn application untrue, which merited denial of his current application. Under Texas Occupations Code § 2301.651(a)(2), the Department may deny an application if the applicant "makes a material representation in any application . . . filed under this chapter or [Department] rules." The evidence did not prove that Mr. Berry's failure to disclose that Mr. Lewis had made a previous application was a material misrepresentation.

On his first application, Mr. Berry answered "no" to the following question:

Has the applicant or any partner, any LLC member or manager, or any director, officer, owner, (except for stockholders of publicly-traded companies) or any relative of the applicant ever applied for a license at the same proposed location that is the subject of this application.⁴³

Staff contends that Mr. Berry's response was a material misrepresentation because Mr. Lewis and Mr. Ragland had previously filed applications on behalf of the same location. However, neither Mr. Lewis nor Mr. Ragland was, at the time of Mr. Berry's application, a partner,

⁴² Tr. at 88-90, 104-07.

⁴³ Staff Ex. 1.

an LLC member or manager, a director, an owner, or a relative “of the applicant” *i.e.*, Mr. Berry or Bams. The evidence indicated that Mr. Lewis was at most an employee of the corporation at the time the application was filed. Therefore, Mr. Berry’s response to the application question was not a misrepresentation because it was not false.

Even if Mr. Berry’s response could be considered false, it was not a material misrepresentation, because the application was withdrawn before it was acted upon. A material misrepresentation is an essential element of a fraud claim under common law. According to case law regarding fraud claims, a misrepresentation “may be material even if it was not the only factor inducing the plaintiffs to make the decision or enter into the transaction, but the plaintiff must have relied on the misrepresentation.”⁴⁴ Similarly, in this case, when Mr. Berry was informed that the Department considered the answer false because Mr. Lewis had filed an application, Mr. Berry withdrew the application before it was acted upon. Therefore, because the Department did not rely on the information in the application, it was not material.

Staff also contends that Mr. Berry submitted false information with his current application, and therefore the application could be denied under Texas Transportation Code § 503.034(a). Texas Transportation Code § 503.034(a)(1) states that the Department may deny an application “if the information in the application is not true.” It was undisputed that in the September 3, 2018 application, Mr. Berry disclosed that Mr. Lewis filed a previous application with the Department. However, despite this correction, Staff denied the application because it was untrue. Staff now contends that “[t]he information in Respondent’s [current] application that [the Department] is satisfied is not true is [Mr. Berry’s representation] that Mr. Lewis will not have any position with Bam’s Sales & Service, Inc.”⁴⁵ Staff references a typewritten, notarized statement by Mr. Berry dated September 16, 2018, which states “Harlem Lewis has no position with the business Bam Sales & Service, Inc.”⁴⁶

⁴⁴ *Barrow-Shaver Resources Co. v. Carrizo Oil & Gas, Inc.*, 2019 WL 2668317 (Tex.—June 18, 2019); *Brush v. Reata Oil & Gas Corp.*, 984 S.W.2d 720, 727-28 (Tex. App.—Waco 1998, pet. denied)

⁴⁵ Staff’s Closing Argument Brief at 10.

⁴⁶ Staff Ex. 4.

As discussed above, the evidence did not support Staff's contention that Mr. Berry was acting on behalf of Mr. Lewis in applying for the application. Furthermore, Ms. Prieto admitted that she had no evidence that Mr. Lewis was currently affiliated with or employed by Bams.⁴⁷ Staff's contention that Mr. Berry falsely represented that Mr. Lewis had no position with Bams is based solely on speculation and unsupported by the evidence. Therefore, Staff failed to prove its allegation that the information in Mr. Berry's application was not true, and the Department is not authorized to deny his application under Texas Transportation Code § 503.034(a).

III. FINDINGS OF FACT

1. In January 2018, Harrell Berry purchased Bams Sales & Service Inc. (Bams) from Harlem Lewis and entered into a real estate lease agreement with Mr. Lewis to rent the real estate where the business was located.
2. On or about March 27, 2018, Harrell Berry d/b/a Bams Sales & Service Inc. filed a General Distinguishing Number (GDN) application with the Texas Department of Motor Vehicles (Department) to operate as an independent motor vehicle dealer.
3. In the March 27, 2018 application, Mr. Berry answered "No" to the question, "Has the applicant or any partner, any LLC member or manager, or any director, officer, owner (except for stockholders or publicly-traded companies) or any relative of the applicant ever applied for a license at the same proposed location that is the subject of this application?"
4. The staff (Staff) of the Department informed Mr. Berry that the response was not correct because Mr. Lewis had filed a previous GDN application for Bams and it was denied because of Mr. Lewis's criminal history.
5. Mr. Berry responded to Staff that he was not aware that Mr. Lewis had filed an application, and that Mr. Lewis was not an owner, only an employee of Bams in the role of staff manager.
6. Mr. Berry then withdrew the March 27, 2018 application.
7. On September 3, 2018, Mr. Berry filed another application for a GDN.
8. In the September 3, 2018 application, Mr. Berry answered "yes" to the question "Has the applicant or any partner, any LLC member or manager, or any director, officer, owner (except for stockholders or publicly-traded companies) or any relative of the applicant ever applied for a license at the same proposed location that is the subject of this application?"

⁴⁷ Tr. at 83, 85.

Mr. Berry also stated in the application that he was not aware that Mr. Lewis had filed an application for a GDN previously.

9. With the September 3, 2018 application, Mr. Berry submitted a statement that Mr. Lewis was no longer employed at Bams and had no role at the company.
10. In purchasing the business, Mr. Berry intended to utilize the existing location, telephone number, logo, and website of Bams in order to maintain a connection with the existing customer base and utilize the business's existing goodwill.
11. Staff denied Mr. Berry's September 3, 2018 application on the grounds that (1) he was applying on behalf of Mr. Lewis, who was unfit for licensure due to his criminal history, and (2) Mr. Berry's September 3, 2018 application was not truthful because he failed to disclose that he was actually applying on behalf of Mr. Lewis.
12. The evidence did not establish that Mr. Lewis was employed by Bams or had any ownership interest in Bams when Mr. Berry filed the September 3, 2018 application.
13. The evidence was insufficient to prove that Mr. Berry was applying on behalf of Mr. Lewis or that Mr. Berry's application was untruthful.
14. Staff also denied Mr. Berry's application because he allegedly made a material misrepresentation in his March 27, 2018 application when he answered "No" to the question, "Has the applicant or any partner, any LLC member or manager, or any director, officer, owner (except for stockholders or publicly-traded companies) or any relative of the applicant ever applied for a license at the same proposed location that is the subject of this application?"
15. Mr. Berry's response on the March 27, 2018 application was not false.
16. Mr. Berry's response on the March 27, 2018 application was not material because the application was withdrawn before it was acted upon.
17. The evidence was insufficient to prove that Mr. Berry made a material misrepresentation on his March 27, 2018 application.
18. No allegation was made or evidence submitted to prove that Mr. Berry was personally unfit to hold a GDN license.
19. On July 3, 2019, Staff mailed a notice of hearing to Mr. Berry by certified mail and first class mail.

20. The Notice of Administrative Hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.
21. The hearing was held July 29, 2019, before Administrative Law Judge Joanne Summerhays at the offices of the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff was represented by Damien Shores, Enforcement Division attorney. Mr. Berry was represented by Angela McKinnon, attorney. The hearing concluded that day, and the record was left open to allow the parties to file written closing arguments. The record closed on September 27, 2019.

IV. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Texas Occupations Code ch. 2301; Tex. Transportation Code ch. 503.
2. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Mr. Berry received proper and timely notice of the hearing. Tex. Gov't Code §§ 2001.052-.053
4. Staff carries the burden of proving that Mr. Berry's license application should be denied. 1 Tex. Admin. Code § 155.427.
5. A GDN constitutes an independent motor vehicle dealer's license, and a person may not legally engage in the business of a dealer without a GDN. Tex. Occ. Code §§ 2301.002(17), .251(a); Tex. Transp. Code § 503.21.
6. The Department is authorized to deny an application for a GDN under certain circumstances. Tex. Occ. Code ch. 2301; Tex. Transp. Code ch. 503; Tex. Admin Code ch. 215.
7. Staff did not meet its burden of proving its allegation that Mr. Berry's application should be denied because Mr. Berry made a material misrepresentation in an application filed with the Department. Tex. Occ. Code § 2301.651(a)(2).
8. Staff did not meet its burden of proving its allegation that Mr. Berry's application should be denied because Mr. Berry provided information in his application that was not true. Tex. Transp. Code § 503.034(a)(1).

9. Staff did not meet its burden of proving its allegation that Mr. Berry's application should be denied because Mr. Berry is unfit to perform the duties and discharge the responsibilities of a license holder. 43 Tex. Admin. Code §§ 215.141(a)(1)-(4), (b)(17); .89(b).
10. Mr. Berry's application for a GDN should be granted.

SIGNED November 12, 2019.

A handwritten signature in black ink, appearing to read 'Joanne Summerhays', is written over a horizontal line.

**JOANNE SUMMERHAYS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**MOTOR VEHICLE DIVISION
TEXAS DEPARTMENT OF MOTOR VEHICLES**

**TEXAS DEPARTMENT OF MOTOR
VEHICLES v. HARRELL BERRY D/B/A
BAM’S SALES & SERVICE, INC.**

§ **MVD DOCKET NO. 19-0004271.ENF**
§ **SOAH DOCKET NO. 608-19-5876.ENF**
§
§

DRAFT FINAL ORDER

The referenced contested case matter is before the Board of the Texas Department of Motor Vehicles in the form of a Proposal for Decision (PFD) from the State Office of Administrative Hearings, and involves denial of a General Distinguishing Number application for Harrell Berry d/b/a Bam’s Sales & Service, Inc. (Respondent).

The Board adopts the Administrative Law Judge’s November 12, 2019, PFD.

ACCORDINGLY, IT IS ORDERED:

1. That the Findings of Fact 1 – 21 and Conclusions of Law 1 – 10 are hereby adopted;
2. That Respondent’s General Distinguishing Number application is hereby approved; and
3. That all remaining motions, exceptions, or objections, of any party, if any, are hereby denied.

Date: _____

Guillermo “Memo” Treviño, Chair
Board of Texas Department of Motor Vehicles

Rule Proposals and Rule Adoptions will be
posted as supplemental materials prior to the
June 11, 2020 TxDMV Board Meeting

To: Texas Department of Motor Vehicles Board
From: Jeremiah Kuntz, Vehicle Titles & Registration Division Director
Agenda Item: 11
Subject: Special Plate Designs

RECOMMENDATION

The Vehicle Titles and Registration Division (VTR) seeks board approval or denial of seven plate designs submitted for your consideration. Five plate designs are from the marketing vendor, My Plates, and the remaining two plate designs are from nonprofit organizations (non-vendor).

The Georgia Tech University, Texas Tech University, Texas State University and Southern Methodist University plate designs are redesigns of the existing My Plates (vendor) plates. The Georgia Tech University plate has been offered for sale since 2014 and 109 have been sold as of May 2020. The Texas Tech University plate has been offered for sale since 2014 and 1,265 have been sold as of May 2020. The Texas State University plate has been offered for sale since 2010 and 213 have been sold as of May 2020. The Southern Methodist University has been offered for sale since 2013 and 174 have been sold as of May 2020. The Lone Star Carbon Fiber plate is a new My Plates (vendor) plate design and has never been sold before.

The Texas Honey Bee and PGA Reach license plates are sponsored by nonprofit organizations, through the TxDMV. These are new plate designs that have never been sold before.

PURPOSE AND EXECUTIVE SUMMARY

Statutory authority for the board to approve vendor specialty license plates and invite the public's comment on proposed vendor plate designs are in Texas Transportation Code Section 504.851 (g) and (g-1) (1). Statutory authority for the board to approve non-profit organization specialty license plates and invite the public's comment on proposed plate designs are in Texas Transportation Code Section 504.801. The board's approval criteria are clarified in Administrative Codes §217.45 *Specialty License Plates, Symbols, Tabs, and Other Devices* and §217.52 *Marketing of Specialty License Plates through a Private Vendor*.

The vendor contract (Statement of Work paragraph #2, *Marketing Services*) specifies that following the board's contingent approval of a plate, the vendor must get at least 200 commitments within six months of the approval for a plate to be produced. (Equally, existing plates must maintain 200 registered to stay in the program.) My Plates' procedure is to first offer a plate to the public to register their interest. Following the board's contingent approval, My Plates then offers a plate online for prepaid orders. My Plates confirms when 200 prepaid orders are achieved. Since March 2014, the board has contingently approved 31 vendor plates. Of the 31, nine did not achieve the required 200 commitments and were not produced.

TxDMV's procedure is to invite comments on all proposed plates ahead of the board's review. The department's intent is to determine if there are any unforeseen public concerns about a plate design. The department publishes a 10-day "like/dislike/comment-by-email" survey, called an eView, on its website. Although the survey counts the public's "likes" and "dislikes," it is unscientific and not used as an indicator of a plate's popularity. The vendor's OU plate, for example,

received thousands of eView “dislikes” in 2010 (presumably because of college football rivalry) and has since sold over 933 plates.

The plate designs were presented to the public in a May 2020 eView. No negative comments were received. The count of the public’s “like/dislikes” are below with the designs.

Georgia Tech University (Redesign)

163 people liked this design and 1,249 did not

Current Design



Redesign



Texas Tech University (Redesign)

947 people liked this design and 545 did not

Current Design



Redesign



Texas State University (Redesign)

636 people liked this design and 602 did not

Current Design



Redesign



Southern Methodist University (Redesign)

208 people liked this design and 55 did not

Current Design



Redesign



Lone Star Carbon Fiber

2,070 people liked this design and 679 did not

New



Texas Honey Bee

7,728 people liked this design and 82 did not

New



PGA Reach

269 people liked this design and 795 did not

New





Georgia Tech University (Redesign)

Redesign



Current Design





Texas Tech University (Redesign)

Redesign



Current Design





Texas State University (Redesign)

Redesign



Current Design





Southern Methodist University (New)



Southern Methodist University (Current)





Lone Star Carbon Fiber (New)



Texas Honey Bee (New)





PGA Reach (New)



TEXAS SPECIALTY PLATE BUSINESS

Board Meeting eBook

June 11, 2020

Vehicle Titles and
Registration Division
Special Plates Unit
(5 FTEs) 5/20



Division Director
Jeremiah Kuntz



Texas Department
of Motor Vehicles

Honoring Our First Responders



Purple Heart Peace Officer
Currently Registered ~ 32



Emergency Medical Services
Currently Registered ~ 1,565



Protect and Serve
Currently Registered ~ 530



Professional Fire Fighter
Currently Registered ~ 1,059

*Thank You
First
Responders!*



Volunteer Firefighter
Currently Registered ~ 3,019



Texas Constable
Currently Registered ~ 168



Fire Protection Personnel
Currently Registered ~ 408



Star of Texas Award
Currently Registered ~ 23

SLP AVAILABLE.....494:
MILITARY AND DV.....190
RESTRICTED USE.....51
STATE SPECIALTY.....131
VENDOR SPECIALTY.....122

To Be
Released
June
2020



SPECIAL PLATES UNIT CUSTOMER SERVICE FY 2020

29,069
Personalized Plate
Applications Reviewed
(9% Declined)

6,652
Telephone
Calls

2
Walk-In Customers

3,477
Emails

1,304
Refunds

18
Public Information
Open Records

13,941
Correspondence
(Including Plate
Applications)

To: Texas Department of Motor Vehicles Board
From: Whitney Brewster, Executive Director
Agenda Item: 12.A
Subject: Advisory Committee Appointments

RECOMMENDATION

It is recommended that the Texas Department of Motor Vehicles Board (board) appoint the individuals from the list of potential members for the Consumer Protection Advisory Committee as presented by the executive director.

PURPOSE AND EXECUTIVE SUMMARY

Senate Bill (SB) 604 required that the TxDMV Board establish Advisory Committees by September 1, 2019. During the August 8, 2019 meeting, the TxDMV Board adopted rules establishing five new advisory committees: Consumer Protection, Customer Service, Motor Carrier Regulation, Motor Vehicle Industry and Vehicle Titles and Registration. The appointment of the individuals on the list will satisfy the requirements of Texas Transportation Code §643.155 for a rules committee consisting of representatives of motor carriers transporting household goods using small, medium and large equipment, and the public.

FINANCIAL IMPACT

No financial impact.

BACKGROUND AND DISCUSSION

The Sunset Advisory Commission recommended (Recommendation 1.7) that the board “establish advisory committees to provide expertise for rulemaking and other issues and adopt rules regarding standard committee structure and operating criteria.” Specifically, the board is directed to:

- establish, at a minimum, advisory committees related to motor vehicle industry regulation, motor carrier industry regulation, and vehicle titles and registration;
- adopt rules regarding the purpose, structure, and use of advisory committees, including a number of specified requirements (purpose and role of committees, size and quorum requirements, composition and representation of committees, etc.); and
- distinguish appropriate situations to use advisory committees versus working groups.

The rules establishing these Advisory Committees as well as their purpose, use and structure, were adopted by the TxDMV Board in the August 8, 2019 meeting. The adoption of the rules was published in the August 23, 2019 issue of the Texas Register. The TxDMV Board is required to “appoint members to an advisory committee by selecting them from a list of potential members provided by the executive director.” Further, the board is required, to the extent practical, to consider the balance of the advisory committee to ensure representation of: industries or occupations regulated or indirectly regulated by the board, consumers of services provided by the board, and different geographical regions of the state.

**Consumer Protection Advisory Committee
Names for Consideration by the TxDMV Board**

Applicant	Residency	Employer	Areas of Expertise
Dorothy Brooks	Austin, TX	Texas Trucking Association/Southwest Movers Association - Director of Operations	Consumer Issues; Motor Carrier; Other
Richard Cavender	San Antonio, TX	Audi Dominion - Dealer Principal	Consumer Issues; Vehicle Registration; Motor Vehicle Dealer; Motor Carrier; Motor Vehicle Licensing; Vehicle Titles
Tiffen Eshpeter	Round Rock, TX	Better Business Bureau Serving Heart of Texas - Chief Operating Officer	Consumer Issues
James French	San Antonio, TX	Scobey Moving and Storage LTD - Vice President	Consumer Issues; Motor Carrier
Traci McCullah	Tomball, TX	Westar Moving & Storage, Inc. - Vice President	Consumer Issues; Motor Carrier
William Smith	Houston, TX	Monument Chevrolet - Owner	Consumer Issues; Motor Vehicle Dealer; Motor Vehicle Licensing; Other

**Consumer Protection Advisory Committee
Recommendations on Refunds by Motor Vehicle Dealers
And Motor Carriers Transporting Household Goods**

The purpose of the Consumer Protection Advisory Committee (CPAC) is to provide advice and to make recommendations to the Board of the Texas Department of Motor Vehicles on topics related to Refunds by Motor Vehicle Dealers and Motor Carriers Transporting Household Goods, Temporary Tags, Title When Motor Vehicle Dealers Goes Out of Business, and Protecting DPPA Information. The committee provides advice and recommendations only as requested by the Texas Department of Motor Vehicles or our board. You have been given the charge by the department to provide recommendations regarding the following issue on Refunds by Motor Vehicle Dealers and Motor Carriers Transporting Household Goods.

Refund Authority

As part of the TxDMV's Sunset bill, TxDMV was given the following authority to order a refund:

Section 2301.807. Refund. If, after a proceeding under this chapter and board rules, the board determines that a person is violating or has violated this chapter or a rule adopted or order issued under this chapter, the board may order the person to pay a refund to the buyer or lessee of the motor vehicle that is the subject of the proceeding.

Section 643.257. Refund by Motor Carriers Transporting Household Goods. The department may order a motor carrier that violates this chapter or a rule or order adopted under this chapter to pay a refund to a consumer who paid the motor carrier to transport household goods.

Questions for Consideration

1. How should "refund" be defined?
 - a. Should the reimbursement of expenses be considered a refund?
 - b. Should TxDMV have the ability to order both full and partial refunds?
2. Under what circumstances should TxDMV order a licensee or registrant to provide a refund?
3. Should TxDMV's authority to order a refund depend on how much time has passed since the time of purchase?
 - a. How much time needs to pass for TxDMV to consider a complaint too stale to still order a refund? 1, 2 years? 3 years? 5 years?

4. Should a refund be ordered in these scenarios?

- a. **Dealer.** Consumer has to purchase 30-day permit(s) because dealer failed to transfer title before buyer tag expired (60 days);
- b. **Dealer.** Consumer has to make additional payments on trade in vehicle to their lender because dealer was late in making agreed upon payoff;
- c. **Dealer.** Consumer has to pay for safety inspection that should have been completed by the dealer;
- d. **Dealer.** Consumer has out-of-pocket expenses because dealer failed to honor the written "WE OWE" portion of the contract;

Examples:

1. Dealer promised 2 sets of fobs/keys for purchased vehicle and fails to provide the second set.

2. Dealer refuses to honor limited warranty provided with purchase of vehicle.

- e. **Dealer.** Consumer has to obtain a bonded title because dealer failed to provide title or obtain a bonded title for the consumer;
- f. **Dealer.** Consumer is overcharged for TT&L, Documentary Fee, or other fictitious fees;
- g. **Dealer.** Consumer purchases a third-party extended warranty offered by the dealer and the dealer does not submit the paperwork or funds. Consumer needs repairs and discovers they have no warranty.
- h. **Household Goods.** Consumer is charged for costs not listed on their tariff after the household goods mover takes possession of the consumer's property; mover refused to unload goods until charges were paid

Consumer Protection Advisory Committee Recommendations

Good morning, Mr. Chairman, board members and Ms. Brewster. My Name is Laird Doran. I serve as the Presiding Officer for the CPAC. With me today are: First Vice-Chair, Melissa Colvin, and Second Vice- Chair, Michael Rigby.

The CPAC would like to take a moment that thank you for giving us an Opportunity to provide our group advice and recommendations.

Our committee has met on three occasions beginning on April 23, 2020, and we would like to present our recommendations regarding Refunds by a Motor Vehicle Dealer and Motor Carriers Transporting Household Goods. We are charged by this Board with reviewing and making recommendations to this board on three additional areas: Temporary Tags, Title When a Dealer Goes Out of Business, and finally, Protecting DPPA Information. The CPAC will provide this Board with its recommendations on these additional three areas at a future TxDMV Board meeting.

- The CPAC was first asked to determine how a “refund” should be defined?

After considerable discussion, the CPAC recommends to this Board that a “Refund” should be defined as “any monies paid, or contracted to be paid, to a dealer including overpayments, fees paid for services not rendered, and any other payments made for products not delivered.”

- The second question posed to the CPAC was “under what circumstances should TxDMV order a licensee or registrant to provide a refund”?

The CPAC recommends to the Board that the department be allowed to “order a Refund as part of the initial Notice of Department Decision as well as have the ability to order a refund as part of a settlement negotiation.

- The third question presented to the CPAC is “should the department’s authority to order a refund depend on how much time has passed since the time of purchase, and if so, how much time needs to pass in order for a Complaint to be considered untimely to still order a refund?

The CPAC recommends that the department’s authority to order a Refund should be limited to a four (4) year limitation period.

- Next, the CPAC was presented with several different scenarios and asked under each scenario whether CPAC recommends that a refund be ordered.
 - a. When a consumer has to purchase 30-day permit(s) because the dealer failed to transfer title before the buyer tag expired;

- The CPAC recommends that the department have the authority to order a Refund where a consumer has to purchase thirty (30) day permits because the dealer failed to transfer title before the buyer tag expired.
- b. When a consumer has to make additional payments on a trade-in vehicle to their lender because the dealer was late in making the agreed upon loan payoff;
- The CPAC recommends that the department have the authority to order a Refund where a consumer has to make additional payments on a trade-in vehicle to their original lender because the dealer was late in making, or fails to make, an agreed upon payoff of the loan securing the trade-in vehicle;
- c. When a consumer has to pay for a safety inspection that should have been completed by the dealer;
- The CPAC recommends that the department have the Authority to order a Refund where a consumer has to pay For a safety inspection that should have been completed By the dealer.
- d. When a consumer has out-of-pocket expenses because dealer failed to honor the written "WE OWE" portion of the contract;
- The CPAC recommends that the department have the authority to order a Refund where a consumer incurs an out-of-pocket expense because a dealer failed to honor the written "WE OWE" portion of the contract.
- e. When a consumer has to obtain a bonded title because a dealer failed to provide title or obtain a bonded title for the consumer;
- The CPAC recommends that the department have the authority to order a Refund where the consumer incurs an out-of-pocket expense because a dealer failed to provide title or obtain a bonded title for the consumer.
- f. When a consumer is overcharged for TT&L, Documentary fee, or other fictitious fees;
- The CPAC recommends that the department have the authority to order a Refund where a consumer was overcharged for TT&L, documentary fees, or other fictitious fees.
- g. When a consumer purchases a third-party extended warranty offered by the dealer and the dealer does not submit the paperwork or funds. The consumer then needs repairs and discovers they do not have a warranty.

--The CPAC recommends that the department have the authority to order a Refund of the cost of repairs that would have been covered by the third-party extended warranty where a consumer purchased a third-party extended warranty offered by a dealer and the dealer failed to submit the paperwork or funds for that extended warranty.

h. When a consumer is charged for costs not listed on their tariff after the household goods mover takes possession of the consumer's property and the mover refuses to unload the consumer's property until the charges not listed on the tariff are paid.

--The CPAC recommends that the department have the authority to order a Refund where a consumer is charged for costs not listed under a household goods mover's tariff after the household goods mover takes possession of the consumer's property, and the mover refuses to unload the customer's property until those charges are paid.

The CPAC further recommends that the department refer unregistered household goods carriers to law enforcement.

This concludes CPAC's recommendations for Refunds by a Motor Vehicle dealer and motor carriers transporting household goods. We appreciate the opportunity to present these recommendations to you today.

To: Texas Department of Motor Vehicles Board
From: Tracey Beaver, General Counsel
Agenda Item: 14
Subject: Approval of Negotiated Rulemaking and Alternative Dispute Resolution Policy

RECOMMENDATION

Approval of the department's negotiated rulemaking and alternative dispute resolution policy.

PURPOSE AND EXECUTIVE SUMMARY

Implementing Senate Bill 604, and new Transportation Code §1003.008, which require the board to develop and implement a policy to encourage the use of negotiated rulemaking and alternative dispute resolution procedures.

FINANCIAL IMPACT

None

BACKGROUND AND DISCUSSION

Transportation Code §1003.008 requires the board to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Government Code, Chapter 2008 for the adoption of department rules; and appropriate alternative dispute resolution procedures under Government Code, Chapter 2009 to assist in the resolution of internal and external disputes under the department's jurisdiction. The policies presented set forth standards for department employment of these tools encouraging their use when appropriate.

Negotiated Rulemaking is a consensus-based process in which an agency develops a proposed rule by using a neutral facilitator and a balanced negotiating committee composed of representatives of all interests that the rule will affect, including those interests represented by the rulemaking agency itself. Because negotiated rulemaking requires committee consensus and adds additional steps to the rulemaking process, the department should consider it for noncontroversial rules without shorten deadlines. Rules where various stakeholders can add expertise and input while compromising on positions are especially well suited for negotiated rulemaking.

Alternative Dispute Resolution is a wide variety of somewhat informal processes intended to achieve conflict resolution by agreement of the parties to the conflict. The goal is to develop an agreed resolution that meets the most important needs of each participant. The TxDMV encourages the fair and expeditious resolution of all disputes. As directed in Transportation Code §1003.008, the procedures relating to alternative dispute resolution conform, to the extent possible, to the model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.



Texas Department *of* Motor Vehicles

Texas Department of Motor Vehicles Negotiated Rulemaking and Alternative Dispute Resolution Policies

Negotiated Rulemaking Policy

Reference

- [Texas Government Code, Chapter 2008](#)

Purpose of Policy

To encourage the use of negotiated rulemaking for TxDMV rules when appropriate.

Definition

Negotiated Rulemaking is a consensus-based process in which an agency develops a proposed rule by using a neutral facilitator and a balanced negotiating committee composed of representatives of all interests that the rule will affect, including those interests represented by the rulemaking agency itself.

Discussion

Because negotiated rulemaking requires committee consensus and adds additional steps to the rulemaking process, the department should consider it for noncontroversial rules without shorten deadlines. Rules where various stakeholders can add expertise and input while compromising on positions are especially well suited for negotiated rulemaking.

Negotiated Rulemaking

The department may engage in negotiated rulemaking by following the procedures outlined in Government Code, Chapter 2008.

- If the department determines that a rule project might benefit from negotiated rulemaking it must:
- Appoint a convener to assist in determining whether the negotiated rulemaking should proceed. The convener will identify potential stakeholders and issues that might arise during the rule project and then make a written

recommendation based on considerations listed in Government Code §2008.052(d).

- The Chairman of the Board, Executive Director, and General Counsel decide whether to proceed with negotiated rulemaking based on the written recommendation of the convenor.
- Give notice in the *Texas Register* and other appropriate media of its intent, which includes a request for comments and a description of how to apply for membership in the committee.
- Appoint the members of the committee and an impartial third party called a facilitator. The facilitator presides over the committee meetings and helps with negotiations.
- Receive the report of the negotiated rulemaking committee containing the text of the proposed rule if they came to a consensus or the issues that remain unresolved if they did not come to a consensus. This report is public information and available on request to any member of the public.
- Proceed with the rulemaking process as required under the APA.

Alternative Dispute Resolution Policy

Reference

- [Texas Government Code, Chapter 2009](#)
- [Texas Civil Practice and Remedies Code, Chapter 154](#)
- [The State Office of Administrative Hearings' Alternative Dispute Resolution Guidelines](#)

Purpose of Policy

The board promotes internal and external alternative dispute when available and appropriate for the particular dispute. The TxDMV encourages the fair and expeditious resolution of all disputes. Any resolution reached as a result of an alternative dispute resolution procedure is intended to be through the voluntary agreement of the parties.

Definition

Alternative Dispute Resolution is a wide variety of somewhat informal processes intended to achieve conflict resolution by agreement of the parties to the conflict. The

goal is to develop an agreed resolution that meets the most important needs of each participant.

Examples

Alternative dispute resolution may include but is not limited to: mediation, facilitation, negotiated rulemaking, collaborative problem-solving, consensus building, and non-binding arbitration.

Alternative Dispute Resolution

When engaging in alternative dispute resolution TxDMV must:

- Follow the requirements when engaging in all forms of alternative dispute resolution outlined in Government Code, Chapter 2009.
- View alternative dispute resolution as a supplement to other dispute resolution procedures available and must not use it to deny a person a right granted under state or federal law or under a local charter, ordinance, or other similar provision, including a right to an administrative or judicial hearing.
- Ensure that oral and written communications related to the process are confidential and may not be disclosed unless all parties consent to the disclosure.
- Ensure that any resolution that purports to bind the Board be approved by the Board at a meeting subject to the Texas Open Meetings Act, Chapter 551, Government Code.

Board Policy Documents

Governance Process (10/13/11)

Strategic Planning (10/13/11)

Board Vision (4/7/16)

Agency Boundaries (9/13/12)

KPIs (9/12/14)

Texas Department of Motor Vehicles TxDMV Board Governance Policy

1. PURPOSE

The directives presented in this policy address board governance of the Texas Department of Motor Vehicles (TxDMV).

2. SCOPE

The directives presented in this policy apply to the TxDMV Board and TxDMV agency personnel who interact with the Board. The TxDMV Board Governance Policy shall be one that is comprehensive and pioneering in its scope.

3. POLICY

3.1. TxDMV Board Governing Style

The Board shall govern according to the following general principles: (a) a vision for the agency, (b) diversity in points of view, (c) strategic leadership, providing day-to-day detail as necessary to achieve the agency vision, (d) clear distinction of Board and Executive Director roles, (e) collective decision making, (f) react proactively rather than reactively and with a strategic approach. Accordingly:

3.1.1. The Board shall provide strategic leadership to TxDMV. In order to do this, the Board shall:

3.1.1.1. Be proactive and visionary in its thinking.

3.1.1.2. Encourage thoughtful deliberation, incorporating a diversity of viewpoints.

3.1.1.3. Work together as colleagues, encouraging mutual support and good humor.

3.1.1.4. Have the courage to lead and make difficult decisions.

3.1.1.5. Listen to the customers and stakeholders needs and objectives.

3.1.1.6. Anticipate the future, keeping informed of issues and trends that may affect the mission and organizational health of the TxDMV.

3.1.1.7. Make decisions based on an understanding that is developed by appropriate and complete stakeholder participation in the process of identifying the needs of the motoring public, motor vehicle industries,

and best practices in accordance with the mission and vision of the agency.

- 3.1.1.8. Commit to excellence in governance, including periodic monitoring, assessing and improving its own performance.
- 3.1.2. The Board shall create the linkage between the Board and the operations of the agency, via the Executive Director when policy or a directive is in order.
- 3.1.3. The Board shall cultivate a sense of group responsibility, accepting responsibility for excellence in governance. The Board shall be the initiator of policy, not merely respond to staff initiatives. The Board shall not use the expertise of individual members to substitute for the judgment of the board, although the expertise of individual members may be used to enhance the understanding of the Board as a body.
- 3.1.4. The Board shall govern the agency through the careful establishment of policies reflecting the board's values and perspectives, always focusing on the goals to be achieved and not the day-to-day administrative functions.
- 3.1.5. Continual Board development shall include orientation of new Board members in the board's governance process and periodic board discussion of how to improve its governance process.
- 3.1.6. The Board members shall fulfill group obligations, encouraging member involvement.
- 3.1.7. The Board shall evaluate its processes and performances periodically and make improvements as necessary to achieve premier governance standards.
- 3.1.8. Members shall respect confidentiality as is appropriate to issues of a sensitive nature.

3.2. TxDMV Board Primary Functions/Characteristics

TxDMV Board Governance can be seen as evolving over time. The system must be flexible and evolutionary. The functions and characteristics of the TxDMV governance system are:

- 3.2.1. Outreach
 - 3.2.1.1. Monitoring emerging trends, needs, expectations, and problems from the motoring public and the motor vehicle industries.
 - 3.2.1.2. Soliciting input from a broad base of stakeholders.

3.2.2. Stewardship

3.2.2.1. Challenging the framework and vision of the agency.

3.2.2.2. Maintaining a forward looking perspective.

3.2.2.3. Ensuring the evolution, capacity and robustness of the agency so it remains flexible and nimble.

3.2.3. Oversight of Operational Structure and Operations

3.2.3.1. Accountability functions.

3.2.3.2. Fiduciary responsibility.

3.2.3.3. Checks and balances on operations from a policy perspective.

3.2.3.4. Protecting the integrity of the agency.

3.2.4. Ambassadorial and Legitimizing

3.2.4.1. Promotion of the organization to the external stakeholders, including the Texas Legislature, based on the vision of the agency.

3.2.4.2. Ensuring the interests of a broad network of stakeholders are represented.

3.2.4.3. Board members lend their positional, professional and personal credibility to the organization through their position on the board.

3.2.5. Self-reflection and Assessment

3.2.5.1. Regular reviews of the functions and effectiveness of the Board itself.

3.2.5.2. Assessing the level of trust within the Board and the effectiveness of the group processes.

3.3. Board Governance Investment

Because poor governance costs more than learning to govern well, the Board shall invest in its governance capacity. Accordingly:

3.3.1. Board skills, methods, and supports shall be sufficient to ensure governing with excellence.

- 3.3.1.1. Training and retraining shall be used liberally to orient new members, as well as maintain and increase existing member skills and understanding.
- 3.3.1.2. Outside monitoring assistance shall be arranged so that the board can exercise confident control over agency performance. This includes, but is not limited to, financial audits.
- 3.3.1.3. Outreach mechanisms shall be used as needed to ensure the Board's ability to listen to stakeholder viewpoints and values.
- 3.3.1.4. Other activities as needed to ensure the Board's ability to fulfill its ethical and legal obligations and to represent and link to the motoring public and the various motor vehicle industries.
- 3.3.2. The Board shall establish its cost of governance and it will be integrated into strategic planning and the agency's annual budgeting process.

3.4. Practice Discipline and Assess Performance

The Board shall ensure the integrity of the board's process by practicing discipline in Board behavior and continuously working to improve its performance. Accordingly:

- 3.4.1. The assigned result is that the Board operates consistently with its own rules and those legitimately imposed on it from outside the organization.
 - 3.4.1.1. Meeting discussion content shall consist solely of issues that clearly belong to the Board to decide or to monitor according to policy, rule and law. Meeting discussion shall be focused on performance targets, performance boundaries, action on items of Board authority such as conduct of administrative hearings, proposal, discussion and approval of administrative rule-making and discussion and approval of all strategic planning and fiscal matters of the agency.
 - 3.4.1.2. Board discussion during meetings shall be limited to topics posted on the agenda.
 - 3.4.1.3. Adequate time shall be given for deliberation which shall be respectful, brief, and to the point.
- 3.4.2. The Board shall strengthen its governing capacity by periodically assessing its own performance with respect to its governance model. Possible areas of assessment include, but are not limited to, the following:
 - 3.4.2.1. Are we clear and in agreement about mission and purpose?

- 3.4.2.2. Are values shared?
- 3.4.2.3. Do we have a strong orientation for our new members?
- 3.4.2.4. What goals have we set and how well are we accomplishing them?
- 3.4.2.5. What can we do as a board to improve our performance in these areas?
- 3.4.2.6. Are we providing clear and relevant direction to the Executive Director, stakeholders and partners of the TxDMV?
- 3.4.3. The Board Chair shall periodically promote regular evaluation and feedback to the whole Board on the level of its effectiveness.

Texas Department of Motor Vehicles Strategic Planning Policy

1. PURPOSE

The directives presented in this policy address the annual Strategic Planning process at the Texas Department of Motor Vehicles (TxDMV).

2. SCOPE

The directives presented in this policy apply to the TxDMV Board and TxDMV agency personnel who interact with the Board. TxDMV Strategic Planning Policy attempts to develop, document and expand its policy that is comprehensive in its scope in regards to the strategic planning process of the Board and the Department beyond that of the state strategic planning process.

3. POLICY

3.1. TxDMV Board Strategic Planning

This policy describes the context for strategic planning at TxDMV and the way in which the strategic plan shall be developed and communicated.

- 3.1.1. The Board is responsible for the strategic direction of the organization, which includes the vision, mission, values, strategic goals, and strategic objectives.
- 3.1.2. TxDMV shall use a 5-year strategic planning cycle, which shall be reviewed and updated annually, or as needed.
- 3.1.3. The 5-year strategic plan shall be informed by but not confined by requirements and directions of state and other funding bodies.
- 3.1.4. In developing strategic directions, the Board shall seek input from stakeholders, the industries served, and the public.
- 3.1.5. The Board shall:
 - 3.1.5.1. Ensure that it reviews the identification of and communication with its stakeholders at least annually.
 - 3.1.5.2. Discuss with agency staff, representatives of the industries served, and the public before determining or substantially changing strategic directions.

- 3.1.5.3. Ensure it receives continuous input about strategic directions and agency performance through periodic reporting processes.
- 3.1.6. The Board is responsible for a 5-year strategic plan that shall identify the key priorities and objectives of the organization, including but not limited to:
 - 3.1.6.1. The creation of meaningful vision, mission, and values statements.
 - 3.1.6.2. The establishment of a Customer Value Proposition that clearly articulates essential customer expectations.
 - 3.1.6.3. A Strengths, Weaknesses, Opportunities and Threats (SWOT) Analysis, to be updated annually.
 - 3.1.6.4. An assessment of external factors or trends (i.e., customer needs, political factors, economic factors, industry trends, technology factors, uncertainties, etc.)
 - 3.1.6.5. Development of the specific goals and objectives the Department must achieve and a timeline for action.
 - 3.1.6.6. Identification of the key performance indicators to measure success and the initiatives that shall drive results.
 - 3.1.6.7. Engage staff at all levels of the organization, through the executive director, in the development of the strategic plan through surveys, interviews, focus groups, and regular communication.
 - 3.1.6.8. Ensure the strategic planning process produces the data necessary for LBB/GOBPP state required compliance while expanding and enhancing the strategic plan to support the needs of the TxDMV. The overall strategic plan shall be used as a tool for strategic management.
- 3.1.7. The Board delegates to the Executive Director the responsibility for **implementing** the agency's strategic direction through the development of agency wide and divisional operational plans.

Texas Department of Motor Vehicles TxDMV Goals and Objectives

1. PURPOSE

The information presented in this policy addresses the goals and key objectives of the Board of the Texas Department of Motor Vehicles (TxDMV) as they relate to the mission, vision, and values of the TxDMV.

2. SCOPE

The scope of this policy is to define the desired state the TxDMV Board is working to achieve. This policy is designed to be inspirational in outlining the desired state of the agency that supports the TxDMV Board vision and meeting agency goals.

3. TxDMV MISSION

To serve, protect and advance the citizens and industries in the state with quality motor vehicle related services.

4. TxDMV VISION

The Texas Department of Motor Vehicles sets the standard as the premier provider of customer service in the nation.

5. TxDMV VALUES

To earn the trust and faith of all citizens of Texas with transparency, efficiency, excellence, accountability, and putting stakeholders first.

- 5.1. **Transparency** – Being open and inclusive in all we do.
- 5.2. **Efficiency** – Being good stewards of state resources by providing products and services in the most cost-effective manner possible.
- 5.3. **Excellence** – Working diligently to achieve the highest standards.
- 5.4. **Accountability** – Accepting responsibility for all we do, collectively and as individuals.
- 5.5. **Stakeholders** – Putting customers and stakeholders first, always.

6. TxDMV GOALS

6.1. GOAL 1 – Performance Driven

The TxDMV shall be a performance driven agency in its operations whether it is in customer service, licensing, permitting, enforcement or rule-making. At all times the TxDMV shall mirror in its performance the expectations of its customers and stakeholder by effective, efficient, customer-focused, on-time, fair, predictable and thorough service or decisions.

6.1.1. Key Objective 1

The TxDMV shall be an agency that is retail-oriented in its approach. To accomplish this orientation TxDMV shall concentrate the focus of the agency on:

- 6.1.1.1. Delivering its products and services to all of its customers and stakeholders in a manner that recognizes that their needs come first. These needs must be positively and proactively met. TxDMV works for and with its customers and stakeholders, not the other way around.
- 6.1.1.2. Operating the agency's licensing and registration functions in a manner akin to how a private, for-profit business. As a private, for-profit business, TxDMV would have to listen to its customers and stakeholders and implement best practices to meet their needs or its services would no longer be profitable or necessary. Act and react in a manner that understands how to perform without a government safety net and going out of business.
- 6.1.1.3. Simplify the production and distribution processes and ease of doing business with the TxDMV. Adapting and maintaining a business value of continuous improvement is central to TxDMV operations and processes.
- 6.1.1.4. All operations of the TxDMV shall stand on their own merits operationally and financially. If a current process does not make sense then TxDMV shall work within legislative and legal constraints to redesign or discard it. If a current process does not make or save money for the state and/or its customers or stakeholders then TxDMV shall work within legislative and legal constraints to redesign or discard it. TxDMV shall operate as efficiently and effective as possible in terms of financial and personnel needs. Divisions should focus on cost savings without sacrificing performance. Division directors are accountable for meeting these needs and applicable measures. All division directors are collectively responsible for the performance of TxDMV as a whole.
- 6.1.1.5. Focus on revenue generation for transportation needs as well as the needs of its customers.
- 6.1.1.6. Decisions regarding the TxDMV divisions should be based on the overriding business need of each division to meet or provide a specific service demand, with the understanding and coordination of overarching agency-wide needs.

- 6.1.1.7. Developing and regularly updating a long-range Statewide Plan describing total system needs, establishing overarching statewide goals, and ensuring progress toward those goals.
- 6.1.1.8. The TxDMV shall establish a transparent, well-defined, and understandable system of project management within the TxDMV that integrates project milestones, forecasts, and priorities.
- 6.1.1.9. The TxDMV shall develop detailed work programs driven by milestones for major projects and other statewide goals for all TxDMV divisions.
- 6.1.1.10. The TxDMV, with input from stakeholders and policymakers, shall measure and report on progress in meeting goals and milestones for major projects and other statewide goals.

6.2. GOAL 2 – Optimized Services and Innovation

The TxDMV shall be an innovative, forward thinking agency that looks for ways to promote the economic well-being and development of the industries it serves as well as the State of Texas within the legislative boundaries that have been established for the agency.

6.2.1. Key Objective 1

The TxDMV shall achieve operational, cultural, structural and financial independence from other state agencies.

- 6.2.1.1. Build the TxDMV identity. This means that TxDMV shall make customers aware of what services we offer and how they can take advantage of those services.
- 6.2.1.2. Build the TxDMV brand. This means that TxDMV shall reach out to the stakeholders, industries we serve and the public, being proactive in addressing and anticipating their needs.
- 6.2.1.3. Determine immediate, future, and long term facility and capital needs. TxDMV needs its own stand-alone facility and IT system as soon as possible. In connection with these needs, TxDMV shall identify efficient and effective ways to pay for them without unduly burdening either the state, its customers or stakeholders.
- 6.2.1.4. All regulations, enforcement actions and decision at TxDMV shall be made in a timely, fair and predictable manner.

6.2.2. Key Objective 2

Provide continuous education training on business trends in the industry with a particular emphasis on activities in Texas.

6.2.3. Key Objective 3

Provide continuous outreach services to all customers and stakeholders to access their respective needs and wants. This includes helping frame legislative or regulatory issues for consideration by other bodies including the legislature.

6.2.4. Key Objective 4

Examine all fees to determine their individual worth and reasonableness of amount. No fee shall be charged that cannot be defended financially and operationally.

6.3. GOAL 3 – Customer-centric

The TxDMV shall be a customer-centric agency that delivers today's services and decisions in a positive, solution-seeking manner while ensuring continuous, consistent and meaningful public and stakeholder involvement in shaping the TxDMV of tomorrow.

6.3.1. Key Objective 1

The TxDMV shall seek to serve its customer base through a creative and retail oriented approach to support the needs of its industries and customers.

6.3.2. Key Objective 2

The TxDMV shall develop and implement a public involvement policy that guides and encourages meaningful public involvement efforts agency-wide.

6.3.3. Key Objective 3

The TxDMV shall develop standard procedures for documenting, tracking, and analyzing customer complaint data. Successful problem resolution metrics should be monitored to support continuous improvement activities that shall permanently improve customer facing processes.

6.3.4. Key Objective 4

The TxDMV shall provide a formal process for staff with similar responsibilities to share best practices information.

6.3.5. Key Objective 5

The TxDMV shall provide central coordination of the Department's outreach campaigns.

6.3.6. Key Objective 6

The TxDMV shall develop and expand user friendly, convenient, and efficient website applications.

6.3.7. Key Objective 7

TxDMV shall timely meet all legislative requests and mandates.

Agency Operational Boundaries as Defined by Department Policies of the TxDMV Board (Board)

The Board is responsible for the policy direction of the agency. The Board's official connection to the day-to-day operation of the Texas Department of Motor Vehicles (TxDMV) and the conduct of its business is through the Executive Director of the TxDMV (ED) who is appointed by the Board and serves at its pleasure. The authority and accountability for the day-to-day operations of the agency and all members of the staff, except those members who report directly to the Board, is the sole responsibility of the ED.

In accordance with its policy-making authority the Board has established the following policy boundaries for the agency. The intent of the boundaries is not to limit the ability of the ED and agency staff to manage the day-to-day operations of the agency. To the contrary, the intent of the boundaries is to more clearly define the roles and responsibilities of the Board and the ED so as to liberate the staff from any uncertainty as to limitations on their authority to act in the best interest of the agency. The ED and staff should have certainty that they can operate on a daily basis as they see fit without having to worry about prior Board consultation or subsequent Board reversal of their acts.

The ED and all agency employees shall act at all times in an exemplary manner consistent with the responsibilities and expectations vested in their positions. The ED and all agency employees shall act in a manner consistent with Board policies as well as with those practices, activities, decisions, and organizational circumstances that are legal, prudent, and ethical. It is the responsibility of the ED to ensure that all agency employees adhere to these boundaries.

Accordingly, the TxDMV boundaries are as follows:

1. The day-to-day operations of the agency should be conducted in a manner consistent with the vision, mission, values, strategic framework, and performance metrics as established by the Board. These elements must not be disregarded or jeopardized in any way.
2. A team-oriented approach must be followed on all enterprise-wide decisions to ensure openness and transparency both internally and externally.
3. The agency must guard against allowing any financial conditions and decision which risk adverse fiscal consequences, compromise Board financial priorities, or fail to

show an acceptable level of foresight as related to the needs and benefits of agency initiatives.

4. The agency must provide timely, accurate, and honest information that will afford the Board, public, stakeholders, executive branch and the legislature the best ability to evaluate all sides of an issue or opportunity before forming an opinion or taking action on it. Any information provided that is intentionally untimely, inaccurate, misleading or one-sided will not be tolerated.
5. The agency must take all reasonable care to avoid or identify in a timely manner all conflicts of interest or even the appearance of impropriety in awarding purchases, negotiating contracts or in hiring employees.
6. The agency must maintain adequate administrative policies and procedures that are understandable and aid in staff recruitment, development and retention.
7. The agency must maintain an organizational structure that develops and promotes the program areas from an enterprise-wide perspective. No organizational silos or sub-agencies will be allowed. We are the TxDMV.
8. The agency must empower its entire staff to deliver a positive customer experience to every TxDMV customer, stakeholder or vendor to reduce their effort and make it easier for them to do business with the TxDMV.
9. The agency must at all times look to flattening its organizational structure to reduce cost as technology advances allow.
10. Agency staff shall anticipate and resolve all issues timely.
11. The agency must maximize the deployment and utilization of all of its assets – people, processes and capital equipment – in order to fully succeed.
12. The agency must not waste the goodwill and respect of our customers, stakeholders, executive branch and legislature. All communication shall be proper, honest, and transparent with timely follow-up when appropriate.
13. The agency should focus its work efforts to create value, make sure that processes, programs, or projects are properly designed, budgeted and vetted as appropriate with outside stakeholders to ensure our assumptions are correct so positive value continues to be created by the actions of the TxDMV.
14. The ED through his or her staff is responsible for the ongoing monitoring of all program and fiscal authorities and providing information to the Board to keep it apprised of all program progress and fiscal activities. This self-assessment must result in a product that adequately describes the accomplishment of all program

goals, objectives and outcomes as well as proposals to correct any identified problems.

15. In advance of all policy decisions that the Board is expected to make, the ED will provide pertinent information and ensure board members understand issues/matters related to the pending policy decision. Additionally, the ED or designee will develop a process for planning activities to be performed leading up to that particular policy decision and the timeframe for conducting these planning activities. It is imperative that the planning process describes not only when Board consideration will be expected but also when prior Board consultation and involvement in each planning activity will occur.
16. In seeking clarification on informational items Board members may directly approach the ED or his or her designee to obtain information to supplement, upgrade or enhance their knowledge and improve the Board's decision-making. Any Board member requests that require substantive work should come to the Board or Committee Chairs for direction.
17. The agency must seek stakeholder input as appropriate on matters that might affect them prior to public presentation of same to the Board.
18. The agency must measure results, track progress, and report out timely and consistently.
19. The ED and staff shall have the courage to admit a mistake or failure.
20. The ED and staff shall celebrate successes!

The Board expects the ED to work with agency staff to develop their written interpretation of each of the boundaries. The ED will then present this written interpretation to the Board prior to discussion between the Board and ED on the interpretation. The Board reserves the right to accept, reject or modify any interpretation. The intent is that the Board and the ED will come to a mutually agreeable interpretation of agency boundaries that will then form the basis of additional written thought on the part of the ED and staff as to how these boundaries will influence the actions of the agency.

GOAL	STRATEGY	#	MEASURE	Baseline	Target	Actual	OWNER
Performance Driven	Effective and efficient services	1	Average processing time for new franchise license applications	45 days	35 days		MVD
		2	Average processing time for franchise renewals	11 days	5 days		MVD
		3	Average processing time of franchise license amendments	20 days	8 days		MVD
		4	Average processing time for new Dealer's General Distinguishing Number (GDN) license applications	35 days	17 days		MVD
		5	Average processing time for GDN renewals	14 days	7 days		MVD
		6	Average processing time for GDN license amendments	19 days	7 days		MVD
		7	Average turnaround time for single-trip routed permits	33.88 mins	32 mins		MCD
		8	Average turnaround time for intrastate authority application processing	1.47 days	1.4 days		MCD
		9	Average turnaround time for apportioned registration renewal applications processing	2 days	2 days		MCD
		10	Average turnaround time to issue salvage or non-repairable vehicle titles	5 days	4 days		VTR
		11	Average time to complete motor vehicle complaints with no contested case proceeding	131 days	120 days		ENF
		12	Average time to complete motor vehicle complaints with contested case proceeding	434 days	400 days		ENF
		13	Average time to complete salvage complaints with no contested case proceeding	131 days	120 days		ENF
		14	Average time to complete salvage complaints with contested case proceeding	434 days	400 days		ENF
		15	Average time to complete motor carrier complaints with no contested case proceeding	297 days	145 days		ENF
		16	Average time to complete motor carrier complaints with contested case proceeding	133 days	120 days		ENF
		17	Average time to complete household goods complaints with no contested case proceeding	432 days	145 days		ENF
		18	Average time to complete household goods complaints with contested case proceeding	371 days	180 days		ENF
		19	Average time to complete Oversize/Overweight (OS/OW) complaints with no contested case proceeding	40 days	35 days		ENF
		20	Average time to complete OS/OW complaints with contested case proceeding	265 days	250 days		ENF
		21	Percent of lemon law cases resolved prior to referral for hearing	76%	60%		ENF
		22	Average time to complete lemon law cases where no hearing is held	147 days	65 days		ENF
		23	Average time to complete lemon law cases where hearing is held	222 days	150 days		ENF
		24	Percent of total renewals and net cost of registration renewal: A. Online B. Mail C. In Person	A. 15% B. 5% C. 80%	A. 16% B. 5% C. 79%		VTR
		25	Total dealer title applications: A. Through Webdealer B. Tax Office	Baseline in development	A. 5% B. 95%		VTR

GOAL	STRATEGY	#	MEASURE	Baseline	Target	Actual	OWNER
Optimized Services and Innovation		26	Percent of total lien titles issued: A. Electronic Lien Title B. Standard Lien Title	A. 16% B. 84%	A. 20% B. 80%		VTR
		27	Percent of total OS/OW permits: A. Online (self-issued) B. Online (MCD-issued) C. Phone D. Mail E. Fax	A. 57.47% B. 23.03% C. 11.33% D. 1.76% E. 6.4%	A. 58% or greater B. 25% or greater C. 10% or less D. 1.7% or less E. 5.3% or less		MCD
		28	Average time to complete lemon law and warranty performance cases after referral	Baseline in development	25 days		OAH
		29	Average time to issue a decision after closing the record of hearing	Baseline in development	30 days		OAH
	Implement appropriate best practices	30	Percent of audit recommendations implemented	Baseline in development	90% annual goal for these recommendations which Internal Audit included in a follow-up audit		IAD
	Continuous business process improvement and realignment	31	Percent of projects approved by the agency's governance team that finish within originally estimated time (annual)	57%	100%		EPMO
		32	Percent of projects approved by the agency's governance team that finish within originally estimated budget (annual)	71%	100%		EPMO/ FAS
		33	Percent of monitoring reports submitted to Texas Quality Assurance Team (TXQAT) by or before the due date	79%	100%		EPMO
		34	Percent of project manager compliance with EPMD project management standards based upon internal quality assurance reviews	Baseline in development	100%		EPMD
	Executive ownership and accountability for results	35	Percent of employees due a performance evaluation during the month that were completed on time by division.	Baseline in development	100%		HR
		36	Percent of goals accomplished as stated in the directors performance evaluation	Baseline in development	Measure annually at the end of the fiscal year		EXEC
	Organizational culture of continuous improvement and creativity	37	Employees who rate job satisfaction as above average as scored by the Survey of Employee Engagement (SEE)	3.47 (SEE 2012)	3.65	3.60 (SEE 2013)	HR
		38	Increase in the overall SEE score	337 (SEE 2012)	360	351 (SEE 2013)	HR
Focus on the internal customer	Focus on the internal customer	39	Percent of favorable responses from customer satisfaction surveys	Baseline in development	90%		EPMD
		40	Annual agency voluntary turnover rate	6.5% (FY 2013)	5.0%		HR
	Increase transparency with external customers	41	Number of education programs conducted and number of stakeholders/customers attending education programs	4.48/80.61	4/80		MCD
		42	Number of education programs conducted and number of stakeholders/customers attending education programs	36/335	42/390		VTR
		43	Number of eLearning training modules available online through the Learning Management System and number of modules completed by stakeholders/customers	eLearning Modules Available - 28 Completed - 735	Available - 31 Completed - 814		VTR

GOAL	STRATEGY	#	MEASURE	Baseline	Target	Actual	OWNER
Customer Center	Excellent Service Delivery	44	Number of Shows and Exhibits attended to educate stakeholders/customers about TxDMV services and programs	6	7		MVD
		45	Number of education programs conducted and number of stakeholders/customers attending education programs	3/250	3/250		ENF
		46	Number of education programs conducted and number of stakeholders/customers attending education programs	3/150	4/300		ABTPA
		47	Percent of customers and stakeholders who express above average satisfaction with communications to and from TxDMV	Baseline in development	80%		All Divisions
		48	Average hold time	9 min	9 min		CRD
		49	Abandoned call rate	22%	20%		CRD
		50	Average hold time	Baseline in development	1 min		ITS
		51	Abandoned call rate	Baseline in development	5%		ITS
		52	Average hold time	Credentialing - 1.6 minutes Permits - 2.08 minutes CFS - 54.38 seconds	Credentialing - 1.5 minutes Permits - 2 minutes CFS - 50 seconds		MCD
		53	Abandoned call rate	Credentialing - 7% Permits - 6.42% CFS - 5.63%	Credentialing - 6% Permits - 5% CFS - 5%		MCD
Key:		Critical	Off Target		On target		Not yet started
Vision: The Texas Department of Motor Vehicles sets the standard as the premier provider of customer service in the nation.							
Mission: To serve, protect, and advance the citizens and industries in the state with quality motor vehicle related services.							
Philosophy: The Texas Department of Motor Vehicles is customer-focused and performance driven. We are dedicated to providing services in an efficient, effective and progressive manner as good stewards of state resources. With feedback from our customers, stakeholders and employees, we work to continuously improve our operations, increase customer satisfaction and provide a consumer friendly atmosphere.							
Values: We at the Texas Department of Motor Vehicles are committed to: TEXAS-Transparency, Efficiency, EXcellence, Accountability, and Stakeholders.							