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PROPOSAL OF REVISIONS TO

SUBCHAPTER C. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS

43 TAC §215.124

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes a new section to 43 Texas Administrative Code (TAC) Subchapter C, Franchised Dealers, Manufacturers, Distributors, And Converters, §215.124, concerning mobile warranty and recall repair services which may be offered by a franchised dealer. This new section describes the circumstances under which a franchised dealer may offer mobile warranty and recall repair services consistent with the provisions of Occupations Code, Chapter 2301.

EXPLANATION.

Proposed new §215.124(a) would permit a franchised dealer to offer mobile warranty and recall repair services under a manufacturer's or distributor's warranty if these services are managed from a licensed location. A licensed location may be either a licensed sales and service location or a licensed service-only facility as described in §215.103 of this title (relating to Service-only Facility). Proposed new §215.124(a) is consistent with Occupations Code, §2301.002(16)(B), which defines a franchised dealer as a person who holds a franchised dealer's license under Occupations Code, Chapter 2301 and a GDN under Transportation Code, Chapter 503, and is "engaged in the business of buying, selling, or exchanging new motor vehicles and servicing or repairing motor vehicles under a manufacturer's warranty at an established and permanent place of business under a franchise in effect with a manufacturer or distributor."

1 Proposed new §215.124(b) would define the circumstances in which the department considers
2 mobile warranty and recall repair services to be managed from a licensed location by a franchised dealer.
3 This subsection enumerates the three circumstances, which are: 1) if a franchised dealer authorizes a
4 mobile warranty or recall repair from the dealer’s licensed location, 2) if a franchised dealer dispatches
5 personnel, parts, or tools from the dealer’s licensed location to perform a warranty or recall repair at the
6 location of a motor vehicle under warranty, or 3) if a franchised dealer maintains warranty or recall repair
7 records at the dealer’s licensed location. Proposed new §215.124(b) would define when the department
8 considers mobile warranty or recall repair services to be managed from a licensed location by a franchised
9 dealer and provides a franchised dealer flexibility to determine how the mobile warranty or recall services
10 may be delivered.

11 Proposed new §215.124(c) would allow a franchised dealer to subcontract mobile warranty or
12 recall repair services with a manufacturer’s or distributor’s prior written approval, which may not be
13 unreasonably withheld, and requires the franchised dealer to pay a subcontractor directly for a warranty
14 or recall repair. Proposed new §215.124(c) implements a franchised dealer’s responsibility for performing
15 warranty obligations under Occupations Code, §2301.353 and is consistent with the requirements for
16 subcontracting by franchised dealers in §215.103 of this title, relating to Service-only Facility.

17 Proposed new §215.124(d) would state that a person with whom a franchised dealer subcontracts
18 the performance of mobile warranty or recall repair services is not eligible to obtain a service-only facility
19 license and may not advertise the performance of warranty or recall repairs to the public. Proposed new
20 §215.124(d) would implement the licensing requirements of Occupations Code, Chapter 2301, regarding
21 the holding of a franchised dealer license and is consistent with the requirements for subcontracting by
22 franchised dealers in §215.103 of this title, relating to Service-only Facility.

1 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer,
2 has determined that for each year of the first five years the new section will be in effect there will be no
3 fiscal impact to state or local governments as a result of the enforcement or administration of the
4 proposal. Monique Johnston, Director of the Motor Vehicle Division (MVD), has determined that there
5 will be no measurable effect on local employment or the local economy as a result of the proposal.

6 **PUBLIC BENEFIT AND COST NOTE.** Ms. Johnston has also determined that, for each year of the first five
7 years the new section is in effect, there are several public benefits anticipated because, in addition to
8 performing warranty and recall repair services at a dealership, a franchised dealer may offer mobile
9 warranty or recall repair services to a broad range of individual, business, and government agency
10 customers without the necessity of a customer being required to drive or tow a vehicle to a dealership.

11 Anticipated Costs To Comply With The Proposal. Ms. Johnston anticipates that there will be no
12 costs to comply with this rule as the decision whether to offer mobile warranty or recall services is one
13 that each licensed franchised dealer may make.

14 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by the
15 Government Code, §2006.002, the department has determined that the proposed new section will not
16 have an adverse economic effect on small businesses or micro-businesses because a small or micro-
17 business is not required to offer mobile warranty or recall repair services. The new section may have a
18 positive impact on rural communities because in January 2024, multiple franchised dealers from small
19 communities expressed support for the opportunity to offer mobile warranty repair services in response
20 to proposed amendments to a related rule, §215.103, Service-only Facility. The proposed new section
21 does not require small businesses, micro-businesses, or rural communities to pay a fee or incur any costs
22 to comply with this new rule as the offering of mobile warranty or recall repair services is optional.

1 Therefore, the department is not required to prepare a regulatory flexibility analysis under Government
2 Code, §2006.002.

3 **TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests
4 are affected by this proposal and that this proposal does not restrict or limit an owner's right to property
5 that would otherwise exist in the absence of government action and, therefore, does not constitute a
6 taking or require a takings impact assessment under the Government Code, §2007.043.

7 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the
8 first five years the proposed new section is in effect, no government program would be created or
9 eliminated. Implementation of the proposed new section would not require the creation of new
10 employee positions or elimination of existing employee positions. Implementation would not require an
11 increase or decrease in future legislative appropriations to the department or an increase or decrease of
12 fees paid to the department. The proposed new section does create a new regulation and does not
13 expand, limit, or repeal an existing regulation. Lastly, the proposed new section does not affect the
14 number of individuals subject to the rule's applicability and will not affect this state's economy.

15 **REQUEST FOR PUBLIC COMMENT.**

16 If you want to comment on the proposal, submit your written comments by 5:00 p.m. Central
17 Time CDT on August 12, 2024. A request for a public hearing must be sent separately from your written
18 comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office
19 of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If
20 a hearing is held, the department will consider written comments and public testimony presented at the
21 hearing.

22 **STATUTORY AUTHORITY.** The department proposes new §215.124 under Occupations Code, §2301.151,
23 which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the

1 authority to take any action that is necessary or convenient to exercise that authority; Occupations Code,
2 §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the
3 distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to
4 prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the
5 distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301
6 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to
7 adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern
8 practice and procedure before the board; Transportation Code, §503.002, which authorizes the board to
9 adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §1002.001,
10 which authorizes the board to adopt rules that are necessary and appropriate to implement the powers
11 and the duties of the department, and Government Code, §2001.004 which requires state agencies to
12 adopt rules of practice stating the nature and requirements of all available formal and informal
13 procedures.

14 **CROSS REFERENCE TO STATUTE.** These adopted revisions implement Government Code, Chapter 2001;
15 Occupations Code, Chapter 2301; and Transportation Code, Chapters 503, 1001, and 1002.

16
17 Text.

18 §215.124. Mobile Warranty and Recall Repair Services.

19 (a) A franchised dealer may offer mobile warranty or recall repair services under a
20 manufacturer’s or distributor’s warranty if these services are managed from a licensed location, which
21 may be either a licensed sales and service location or a licensed service-only facility as described in
22 §215.103 of this title (relating to Service-only Facility).

1 (b) The department considers mobile warranty or recall repair services to be managed from a
2 licensed location if a franchised dealer at a licensed location:

3 (1) authorizes a mobile warranty or recall repair;

4 (2) dispatches personnel, parts, or tools to perform a warranty or recall repair at the
5 location of a motor vehicle under warranty; or

6 (3) maintains warranty or recall repair records.

7 (c) Upon the manufacturer's or distributor's prior written approval, which cannot be
8 unreasonably withheld, a franchised dealer of the manufacturer or distributor may contract with
9 another person as a subcontractor to perform mobile warranty or recall repair services that the dealer is
10 authorized to perform under a franchise agreement with a manufacturer or distributor. Payment shall be
11 made by the franchised dealer to the subcontractor and not by the manufacturer or distributor to the
12 subcontractor.

13 (d) A person with whom a franchised dealer contracts to perform mobile warranty or recall
14 repair services is not eligible to obtain a service-only facility license and may not advertise the
15 performance of warranty repair or recall services to the public.

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