



# Statutes Pertaining to Application for Dealer, Distributor or Manufacturer License (PWD 310)

## Texas Administrative Code

**TITLE 31** NATURAL RESOURCES AND CONSERVATION  
**PART 2** TEXAS PARKS AND WILDLIFE DEPARTMENT  
**CHAPTER 53** FINANCE  
**SUBCHAPTER G** MARINE DEALERS, DISTRIBUTORS, AND MANUFACTURERS  
**RULE §53.110** **Definitions**

The following words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Applicant--A person or entity who has applied for a new or renewal license. This includes each member of a partnership or association, each officer of a corporation, the owner of a majority of a corporation's corporate stock, and any agent or employee acting on behalf of any of the aforementioned persons or entities.
- (2) Consignment--The sale or offer for sale by a person other than the owner under terms of a verbal or written authorization from the owner.
- (3) Final conviction--A final judgment of guilt, the entering of a plea of guilty or *nolo contendere*, or the granting of deferred adjudication or pretrial diversion in accordance with Occupations Code, §53.021(d).
- (4) Licensee--A person or entity who has received a license under this subchapter. This includes each member of a partnership or association, each officer of a corporation, the owner of a majority of a corporation's corporate stock, and any agent or employee acting on behalf of any of the aforementioned persons or entities.

**Source Note:** The provisions of this §53.110 adopted to be effective April 10, 2017, 42 TexReg 1898

## Texas Administrative Code

**TITLE 31** NATURAL RESOURCES AND CONSERVATION  
**PART 2** TEXAS PARKS AND WILDLIFE DEPARTMENT  
**CHAPTER 53** FINANCE  
**SUBCHAPTER G** MARINE DEALERS, DISTRIBUTORS, AND MANUFACTURERS  
**RULE §53.111** **Applicability**

Any person or entity, including a person or entity purporting to be a broker or brokerage house, who acts as an intermediary or assists in the sale, sale on consignment, display for sale, purchase, trade, or transfer of a vessel, motorboat, or outboard motor in exchange for a fee, commission, or other consideration is considered to be engaged in the business of buying, selling, selling on consignment, displaying for sale, or exchanging a vessel for the purposes of this subchapter. Any person or entity, including a person or entity purporting to be a broker or brokerage house, engaged in any activity described above is subject to the provisions of this subchapter.

**Source Note:** The provisions of this §53.111 adopted to be effective April 10, 2017, 42 TexReg 1898

## Texas Administrative Code

**TITLE 31** NATURAL RESOURCES AND CONSERVATION  
**PART 2** TEXAS PARKS AND WILDLIFE DEPARTMENT  
**CHAPTER 53** FINANCE  
**SUBCHAPTER G** MARINE DEALERS, DISTRIBUTORS, AND MANUFACTURERS  
**RULE §53.112** **Application and Issuance**

- (a) An applicant for a dealer license shall submit a properly completed, department-approved application form, accompanied by the following:
  - (1) the fee prescribed by law;
  - (2) photographs clearly showing:
    - (A) the permanent sign at the location designated in the application as the applicant's permanent place of business, clearly indicating the name of the business;
    - (B) the front of the business with public access; and
    - (C) space sufficient for office, service area (not applicable to floating inventory or listings), and display of vessels, motorboats, or outboard motors (not applicable to floating inventory or listings);
  - (3) a copy of the Tax Permit issued by the Comptroller under Chapter 151, Tax Code;

- (4) verification of all assumed name(s), if applicable, in the form of assumed name certificate(s) on file with the Secretary of State or county clerk;
  - (5) a photocopy of the current driver's license or Department of Public Safety identification of the owner, president or managing partner of the business; and
  - (6) a complete list of dealer agreements; and
  - (7) if the applicant is to maintain floating inventory or listings at a location other than that designated as the applicant's permanent place of business, a record of all marinas where floating inventory or listings are expected to be displayed. If the applicant contemplates using less than five marinas, then the application shall include an explanatory statement. The record must identify, at a minimum, the name, physical address, and telephone for each marina.
- (b) An applicant for a distributor or manufacturer license shall submit a properly completed, department-approved application form accompanied by the following:
- (1) the fee prescribed by law for each license requested;
  - (2) verification of all assumed name(s), if applicable, in the form of assumed name certificate(s) on file with the Secretary of State or county clerk;
  - (3) a complete list of manufacturers represented by a distributorship; and
  - (4) a complete list of distributors, dealers, and representatives for a manufacturer.
- (c) The department will not issue a license under this subchapter if the applicant has not signed and submitted a department-provided license agreement stating that the applicant agrees to comply with all applicable state laws, including Occupations Code, Chapter 2352, concerning Franchise Agreements, when required.

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**Source Note:** The provisions of this §53.112 adopted to be effective April 10, 2017, 42 TexReg 1898

## Texas Administrative Code

<p><b>TITLE 31</b>  <b>PART 2</b>  <b>CHAPTER 53</b>  <b>SUBCHAPTER G</b>  <b>RULE §53.113</b></p>	<p>NATURAL RESOURCES AND CONSERVATION          TEXAS PARKS AND WILDLIFE DEPARTMENT          FINANCE          MARINE DEALERS, DISTRIBUTORS, AND MANUFACTURERS  <b>Refusal to Issue or Renew License;</b>  <b>Review of Agency Decision to Refuse or Renew License</b></p>
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- (a) The department may refuse to issue or renew a license under this subchapter if:
- (1) an applicant is liable to the state under Parks and Wildlife Code §12.301;
  - (2) an applicant has a final conviction or has been assessed an administrative penalty for a violation of:
    - (A) Parks and Wildlife Code, Chapter 31, Subchapter A, B, B-1, C, D, or E;
    - (B) a provision of the Parks and Wildlife Code not described by subparagraph (A) of this paragraph that is punishable as a Parks and Wildlife Code:
      - (i) Class A or B misdemeanor;
      - (ii) state jail felony; or
      - (iii) felony;
      - (iv) Chapters 51, 53, or 55 of this title; or
      - (v) any federal or state law relating to the sale, distribution, financing, registration, or taxing of a vessel, motorboat, or outboard motor; or
  - (3) the department has evidence that the applicant is acting on behalf of or as a surrogate for another person or entity who has a final conviction or has been assessed an administrative penalty for any violation listed in this subsection.
- (b) In determining whether to issue or renew a license under this section, the department may consider:
- (1) the number of final convictions or administrative penalties;
  - (2) the seriousness of the conduct on which the final conviction or administrative penalty is based;
  - (3) the existence, number, and seriousness of offenses or violations other than offenses or violations that resulted in a final conviction or administrative penalty described by paragraph (1) of this subsection;
  - (4) the length of time between the most recent final conviction or administrative penalty and the license application;
  - (5) whether the final conviction, administrative penalty, or other offense or violation was the result of negligence or intentional conduct;
  - (6) whether the final conviction or administrative penalty resulted from conduct committed or omitted by the applicant, an agent of the applicant, or both; and
  - (7) other mitigating factors.
- (c) The department shall provide to the applicant a written statement of the reasons for a decision to deny the issuance or renewal of a license.
- (d) An applicant may request a review of a decision of the department with respect to license issuance or denial. The request for review must be made within 30 days of being notified by the department that the application for a license or license renewal has been denied. The review request must be in writing and addressed to: Manager of Boat Titling, Registration, and Marine Licensing, Texas Parks and Wildlife Department, 4200 Smith School Rd., Austin, TX 78744. If no review request is received within 30 days of the date of the letter notifying the licensee of the department's intent to refuse issuance or renewal of the license, the decision to deny the issuance or renewal of a license is final.
- (1) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.
  - (2) The department shall conduct the review within 30 days of receipt of the request required by subsection (d) of this section, unless another date is established in writing by mutual agreement between the department and the requestor.
  - (3) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with knowledge in boating regulations, appointed or approved by the executive director or his or her designee.
  - (4) The decision of the review panel is final.

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**Source Note:** The provisions of this §53.113 adopted to be effective April 10, 2017, 42 TexReg 1898

## Texas Administrative Code

<b>TITLE 31</b>	NATURAL RESOURCES AND CONSERVATION
<b>PART 2</b>	TEXAS PARKS AND WILDLIFE DEPARTMENT
<b>CHAPTER 53</b>	FINANCE
<b>SUBCHAPTER G</b>	MARINE DEALERS, DISTRIBUTORS, AND MANUFACTURERS
<b>RULE §53.114</b>	<b>Suspension or Revocation</b>

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The department may suspend or revoke a license under this subchapter as provided by Parks and Wildlife Code, Chapter 12, Subchapter F, if:

- (1) a licensee has been finally convicted or been assessed an administrative penalty for a violation or condition listed in §53.113(a) of this title (relating to Refusal to Issue or Renew License; Review of Agency Decision to Refuse or Renew License);
- (2) the licensee was previously the holder of a license issued under this subchapter that was revoked for cause and never reissued by the department, or that was suspended for cause and the terms of the suspension have not been fulfilled;
- (3) the licensee was previously a partner, stockholder, director, or officer controlling or managing a partnership, corporation, or store location whose license issued under this subsection was revoked for cause and never reissued, or was suspended for cause and the terms of the suspension have not been fulfilled;
- (4) the business does not intend to be open to all members of the public nor during normal business hours;
- (5) the licensee or an employee of the licensee has obtained, or attempted to obtain, any money, commission, fee, barter, exchange or other compensation by fraud, deception or misrepresentation.

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**Source Note:** The provisions of this §53.114 adopted to be effective April 10, 2017, 42 TexReg 1898

## Texas Administrative Code

<b>TITLE 31</b>	NATURAL RESOURCES AND CONSERVATION
<b>PART 2</b>	TEXAS PARKS AND WILDLIFE DEPARTMENT
<b>CHAPTER 53</b>	FINANCE
<b>SUBCHAPTER G</b>	MARINE DEALERS, DISTRIBUTORS, AND MANUFACTURERS
<b>RULE §53.115</b>	<b>Recordkeeping, Display of License, and Notification Requirements</b>

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- (a) A licensee shall notify the department in writing within 10 days if there is any change of:
- (1) ownership;
  - (2) business name;
  - (3) physical location;
  - (4) dealer agreement;
  - (5) distributors, dealers, or representatives; or
  - (6) address or phone information.
- (b) The licenses issued under this subchapter to dealers must be publicly displayed at all times in the place of business for which the license is issued.
- (c) A licensee must keep a complete record available for inspection in the place of business relating to all vessels, motorboats, and outboard motors purchased, sold, or displayed for sale for a minimum of 24 months. Content of records must include the:
- (1) date of purchase;
  - (2) date of sale;
  - (3) hull identification number and/or motor identification number;
  - (4) name and address of person selling to the dealer;
  - (5) name and address of person purchasing from the dealer;
  - (6) name and address of selling dealer or individual if vessel and/or outboard motor is offered for sale by consignment;
  - (7) a copy of the vessel/outboard motor title/registration receipt;
  - (8) copies of any and all documents, forms, and agreements applicable to a particular sale, consignment, listing, transfer of ownership, titling, titling and registration, or documentation through the U.S. Coast Guard, including, but not limited to title applications, work-up sheets, Manufacturer's Certificates of Origin, titles or photocopies of the front and back of titles, factory invoices, sales contracts, retail installment agreements, buyer's orders, bills of sale, waivers, or other agreements between the seller and purchaser; and
  - (9) copies of written consignment agreements or power of attorney for vessels, motorboats, or outboard motors.

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**Source Note:** The provisions of this §53.115 adopted to be effective April 10, 2017, 42 TexReg 1898

## Texas Administrative Code

<b>TITLE 31</b>	NATURAL RESOURCES AND CONSERVATION
<b>PART 2</b>	TEXAS PARKS AND WILDLIFE DEPARTMENT
<b>CHAPTER 55</b>	LAW ENFORCEMENT

**SUBCHAPTER E  
RULE §55.130**

**SHOW, TEST, AND DEMONSTRATION OF VESSELS  
Show, Test, or Demonstration of Vessel**

- (a) A licensed dealer, distributor, or manufacturer (hereinafter "licensee") may use the licensee's number to show, demonstrate, or test a vessel on the water of this state without acquiring a certificate of number and registration decals. The licensee's number shall be attached, affixed, or inscribed on both sides of the vessel in an easily visible location. The use of removable signs which can be temporarily but firmly attached to the vessel is permissible.
- (b) A licensee may not use the licensee's number for the use of a vessel on the water of this state for recreational purposes or for participation in contests or events, except as permitted in this subchapter.
- (c) On a limited and temporary basis, a licensee, or person or persons authorized by the licensee, may use a vessel for recreational purposes or participation in contests or events only if:
  - (1) the licensee's number is either temporarily or permanently attached, affixed, or inscribed on both sides of the vessel in an easily visible location;
  - (2) a department-issued validation decal is either temporarily or permanently prominently displayed on both sides of the vessel in an easily visible location;
  - (3) a department-issued validation card is aboard the vessel; and
  - (4) the temporary use does not occur on more than six consecutive days, and does not occur on more than twelve days in any calendar month.
- (d) A validation card must immediately be made available for inspection upon the request of any peace officer, marine safety officer, or department employee acting within the scope of their official duties.
- (e) A dealer, distributor, or manufacturer license shall include one validation card and two validation decals, which shall be issued at the time the license is issued. Additional validation cards may be purchased separately upon payment of the fee specified in §53.16 of this title (relating to Vessel, Motor, and Marine Licensing Fees). Each additional validation card includes two validation decals. Validation decals may not be purchased separately.
- (f) A licensee shall maintain at their place of business a current daily log accounting for each use of each validation card issued to the licensee. The log shall be retained for a period of two years and must immediately be made available for inspection during normal business hours at the request of any peace officer, marine safety officer, or department employee acting within the scope of their official duties. The log shall indicate, for each use of a validation card:
  - (1) the date and location of the use;
  - (2) the hull identification number of the vessel;
  - (3) the specific business purpose of the recreational use—, contest, or event;
  - (4) the name, address, and driver's license number or state-issued identification card number of the person or persons authorized by the licensee to operate the vessel; and
  - (5) the name of licensee's agent authorizing use of the validation card.
- (g) A validation card is not valid if the corresponding license is not valid. A validation card and corresponding validation decals expire on the last day of the last month that a dealer, distributor, or manufacturer license is valid.
- (h) Nothing in this subchapter authorizes the use of a licensee's number or a validation card and validation decals for purposes not related to the legitimate business activities of the licensee. "Legitimate business activities" means the sale, transfer, exchange, service, or transportation of a vessel or outboard motor.

**Source Note:** The provisions of this §55.130 adopted to be effective October 9, 2007, 32 TexReg 7075

## Texas Administrative Code

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<b>PART 2</b>	<b>TEXAS PARKS AND WILDLIFE DEPARTMENT</b>
<b>CHAPTER 53</b>	<b>FINANCE</b>
<b>SUBCHAPTER A</b>	<b>FEES</b>
<b>DIVISION 1</b>	<b>LICENSE, PERMIT, AND BOAT AND MOTOR FEES</b>
<b>RULE §53.16</b>	<b>Vessel, Motor, and Marine Licensing Fees</b>

- (d) Marine dealer/distributor/manufacturer fees:
  - (1) marine dealer, distributor or manufacturer license (includes licensee validation card (with decal) for recreational purposes or participation in contests or events)--\$500;
  - (2) marine dealer, distributor or manufacturer ownership transfer of license--\$500;
  - (3) marine dealer, distributor or manufacturer location transfer--\$11;
  - (4) marine dealer, distributor or manufacturer information update/license correction--\$4;
  - (5) additional marine dealer, manufacturer, or distributor's licensee validation card (with decal) for recreational purposes or participation in contests or events--\$126; and
  - (6) replacement card marine dealer, manufacturer, or distributor's licensee validation card (with decal)--\$11.

**Source Note:** The provisions of this §53.16 adopted to be effective July 7, 2004, 29 TexReg 6309; amended to be effective August 1, 2007, 32 TexReg 2664; amended to be effective January 1, 2008, 32 TexReg 10011; amended to be effective August 15, 2009, 34 TexReg 5381; amended to be effective January 17, 2010, 35 TexReg 246

# Texas Administrative Code

<b>TITLE 31</b>	<b>NATURAL RESOURCES AND CONSERVATION</b>
<b>PART 2</b>	<b>TEXAS PARKS AND WILDLIFE DEPARTMENT</b>
<b>CHAPTER 53</b>	<b>FINANCE</b>
<b>SUBCHAPTER E</b>	<b>FEES</b>
<b>RULE §53.91</b>	<b>Documented Vessels</b>

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- (a) New vessels that have applied for documentation may acquire a certificate of number and validation decal at any TPWD boat registration office. At the time of application, applicants must present:
- (1) a properly completed registration application on a form supplied by the department;
  - (2) a copy of:
    - (A) the current documentation from the U. S. Coast Guard National Vessel Documentation Center (USCGNVDC) or their website in the applicant's name; or
    - (B) the application for initial documentation with the USCGNVDC in the applicant's name;
  - (3) payment of any tax required under Tax Code, Chapter 160, or verification of payment; and
  - (4) payment of the appropriate registration fee as required by Parks and Wildlife Code, §31.026, and §53.16 of this title (relating to Vessel, Motor, and Marine Licensing Fees).
- (b) Used or previously documented vessels may acquire a certificate of number and validation decal at any TPWD boat registration office. At the time of application, applicants must present:
- (1) a properly completed registration application on a form supplied by the department;
  - (2) a copy of:
    - (A) the current documentation from the U. S. Coast Guard National Vessel Documentation Center (USCGNVDC) or their website in the previous owner's name, or the applicant's name; or
    - (B) the lapsed documentation from the USCGNVDC or their website in the previous owner's name and the application for current documentation with the USCGNVDC in the applicant's name;
  - (3) payment of any tax required under Tax Code, Chapter 160, or verification of payment; and
  - (4) payment of the appropriate registration fee as required by Parks and Wildlife Code, §31.026, and §53.16 of this title (relating to Vessel, Motor, and Marine Licensing Fees).
- (c) Renewal of certificate of number and validation decal for a documented vessel may be acquired at any TPWD boat registration office. At the time of application, applicants must present:
- (1) a properly completed registration application or renewal notice on a form supplied by the department, or a hand written request;
  - (2) a copy of the current documentation from the U.S. Coast Guard National Vessel Documentation Center (USCGNVDC) or their website in the current owner's name;
  - (3) for vessels greater than 65 feet in length for the first registration renewal, verification of payment under Tax Code, Chapter 151, or verification from the TPWD boat system; and
  - (4) payment of the appropriate registration fee as required by §53.16 of this title (relating to Vessel, Motor, and Marine Licensing Fees).
- (d) A vessel used as a tender for direct transportation between a mother ship and the shore is not required to display a validation decal, provided:
- (1) the vessel is equipped with propulsion machinery of less than 10 horsepower;
  - (2) is owned by the owner of a vessel for which a valid certificate of number has been issued and displays the registration number of that vessel followed by the suffix "1" (i.e. TX-1234-AB-1) in the manner specified by Parks and Wildlife Code, §31.031; and
  - (3) is used for no purpose other than direct transportation between a mother ship and the shore.

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**Source Note:** The provisions of this §53.91 adopted to be effective February 19, 2006, 31 TexReg 851

## Occupations Code

### CHAPTER 2352. BOAT MANUFACTURERS, DISTRIBUTORS, AND DEALERS

#### SUBCHAPTER A. GENERAL PROVISIONS

##### Sec. 2352.001. DEFINITIONS. In this chapter:

- (1) "Agreement" means a written agreement between a manufacturer or distributor and a dealer for the purchase and sale of new boats or new boat motors.
- (2) "Boat" means:
  - (A) a motorboat; or
  - (B) any other vessel that is more than 14 feet in length and is designed to be propelled by a sail.
- (2-a) "Boat motor" means a mechanical form of propulsion for a vessel, including an inboard or outboard motor.
- (3) "Dealer" means a person engaged in the business of buying, selling, selling on consignment, displaying for sale, or exchanging at least five vessels, motorboats, or boat motors during a calendar year.
- (4) "Distributor" means a person who:
  - (A) offers for sale, sells, or distributes new boats or new boat motors to dealers; or
  - (B) controls a person described by Paragraph (A).

- (5) "Manufacturer" means a person engaged in the business of manufacturing new and unused vessels or boat motors for the purpose of sale or trade.
- (5-a) "Marketing standards" means mutually agreed standards in a manufacturer's marketing or promotional activities.
- (6) "Motorboat" has the meaning assigned by Section 31.003, Parks and Wildlife Code.
- (7) "New" has the meaning assigned by Section 31.003, Parks and Wildlife Code.
- (8) "Outboard motor" has the meaning assigned by Section 31.003, Parks and Wildlife Code.
- (8-a) "Performance standards" means reasonable standards that are mutually developed and agreed to by a manufacturer and a dealer relating to:
  - (A) achievement of market share by a dealer for manufacturer products sold in a territory;
  - (B) achievement of a level of performance in a manufacturer's certified dealer program, if any; and
  - (C) participation in a plan that addresses improvement, if needed, in dealer performance.
- (8-b) "Territory" means:
  - (A) for the sale of a manufacturer's boats, a defined geographical area within which a dealer is appointed by the manufacturer as the sole authorized dealer; or
  - (B) for the sale of all other manufacturer products, a market area within which a dealer is appointed by the manufacturer as an authorized dealer.
- (9) "Vessel" has the meaning assigned by Section 31.003, Parks and Wildlife Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003. Amended by Acts 2011, 82nd Leg., ch. 1148, Sec. 1, eff. Sept. 1, 2011.

## **SUBCHAPTER B. DEALER AGREEMENTS**

### **Sec. 2352.051. AGREEMENT REQUIRED.**

A manufacturer or distributor contracting with a dealer may not sell or offer for sale, and a dealer may not purchase or offer to purchase, a new boat or a new boat motor unless the manufacturer or distributor and the dealer enter into an agreement that complies with this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003. Amended by Acts 2011, 82nd Leg., ch. 1148, Sec.2, eff. Sept. 1, 2011.

### **Sec. 2352.052. TERMS OF AGREEMENT.**

(a) An agreement under this chapter must include:

- (1) the dealer's territory and dealership locations;
- (2) the length of the agreement, which must be not less than three years;
- (3) performance standards or marketing standards, if any;
- (4) working capital, inventory, facility, equipment, or tool standards, including mutually agreed minimum product stocking requirements, if any;
- (5) provisions for termination or non-renewal of the agreement and the designation of a successor dealer in the event of the dealer's death or disability;
- (6) the obligations of the manufacturer, distributor, and dealer in the preparation and delivery of and warranty service on new boats and new boat motors;
- (7) the obligations of the manufacturer, distributor, and dealer on termination of the agreement, including inventory of new boats and new boat motors, parts inventory, equipment, furnishings, special tools, and required signs;
- (8) mutually agreed standards for maintenance of:
  - (A) a dedicated or self-funded line of credit, if any; and
  - (B) a trade-in line of credit or self-funded trade-in line of credit, if any; and
- (9) dispute resolution procedures.

(b) At the end of the first year of an agreement, a dealer and manufacturer shall evaluate the dealer's progress in meeting the agreement's performance standards, marketing standards, and line of credit standards, to determine whether to enter into a new three-year agreement.

(c) If the dealer and manufacturer enter into a new agreement, the initial agreement is void. If the dealer and manufacturer do not enter into a new agreement, the dealer and manufacturer are bound by the terms and conditions of the initial agreement.

(d) Notwithstanding the terms of a dealer agreement, a dealer agreement and any transaction subject to this chapter must comply with the requirements of this chapter.

(e) Notwithstanding Subsection (a)(2), an initial agreement between a dealer and a manufacturer may have a term of less than three years. An extension or renewal of the initial agreement or a subsequent agreement under this chapter between the same dealer and manufacturer must be for a term of not less than three years.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003. Amended by Acts 2011, 82nd Leg., ch. 1148, Sec. 3, eff. Sept. 1, 2011.

### **Sec. 2352.0521. PERFORMANCE STANDARDS.**

(a) A manufacturer shall make reasonable efforts to provide a dealer with information regarding the dealer's compliance with performance standards.

(b) Performance standards must be evaluated on an annual basis and, if a dealer and manufacturer agree, may be adjusted to promote the sale of the manufacturer's products.

(c) If revised performance standards are not agreeable, the initial performance standards remain in place until the expiration of the agreement.

Added by Acts 2011, 82nd Leg., ch. 1148, Sec. 4, eff. Sept. 1, 2011.

### **Sec. 2352.0522. DEALER TERRITORY.**

- (a) During the term of an agreement, a manufacturer may not appoint another authorized dealer for the sale of the manufacturer's boats in a dealer's territory.
- (b) Except for purposes of advertising without an advertised price or with a manufacturer's suggested retail price, a dealer may not advertise or promote the sale of the manufacturer's boats outside the dealer's territory, including through the Internet.
- (c) A dealer may not use a broker in another dealer's territory to sell a manufacturer's boat.
- (d) This chapter does not prohibit a dealer from selling a boat to a customer residing outside of the dealer's territory who independently visits the dealership and seeks to purchase a boat from the dealer.

Added by Acts 2011, 82nd Leg., ch. 1148, Sec. 4, eff. Sept. 1, 2011.

### **Sec. 2352.0523. DEFAULT.**

- (a) A default under an agreement under this chapter by a manufacturer, distributor, or dealer is:
  - (1) a material failure to meet minimum product stocking requirements as specified by the agreement;
  - (2) a material failure to make timely payment of any material obligation as specified by the agreement;
  - (3) a material failure to substantially comply with a federal, state, or local law, rule, regulation, ordinance, or order applicable to the agreement; or
  - (4) an act of material fraud relating to the performance of a right or obligation under the agreement.
- (b) A default by a dealer under an agreement under this chapter is:
  - (1) a material failure to meet applicable performance standards as specified by the agreement for a defined one model year marketing cycle;
  - (2) a material failure to meet applicable marketing standards as specified by the agreement;
  - (3) a material failure to meet applicable standards for a dedicated or self-funded line of credit or a trade-in or self-funded trade-in line of credit as specified by the agreement; or
  - (4) the marketing of the manufacturer's boats by the dealer outside of the dealer's territory in violation of this chapter.

Added by Acts 2011, 82nd Leg., ch. 1148, Sec. 4, eff. Sept. 1, 2011.

### **Sec. 2352.0524. CURE OF DEFAULT.**

- (a) Except as provided by Section 2352.053(d)(3), (8), or (9), a manufacturer or distributor must give a dealer written notice of a default under Section 2352.0523 and allow the dealer to cure the default within a cure period as provided by Subsection (b).
- (b) A dealer must cure a default not later than the:
  - (1) 30th day after the date of receipt of notice of a default under Section 2352.0523(a)(2) or (b)(4);
  - (2) 60th day after the date of receipt of notice of a default under Section 2352.0523(b)(2) or (3);
  - (3) 90th day after the date of receipt of notice of a default under Section 2352.0523(a)(1); or
  - (4) 180th day after the date of receipt of notice of a default under Section 2352.0523(b)(1).

Added by Acts 2011, 82nd Leg., ch. 1148, Sec. 4, eff. Sept. 1, 2011.

### **Sec. 2352.053. TERMINATION OR NONRENEWAL OF AGREEMENT; NOTICE.**

- (a) Except as provided by Subsection (d), a manufacturer or distributor may not terminate an agreement unless the dealer defaults under Section 2352.0523 and:
  - (1) the manufacturer or distributor gives the dealer written notice of the default and possible termination in clear and concise terms;
  - (2) the notice states the default;
  - (3) the dealer has been given the applicable cure period to make a good faith effort to cure the default stated in the notice; and
  - (4) the dealer fails to cure the default.
- (b) Good cause is not required for the nonrenewal of an agreement.
- (c) The fact that a dealer holds an agreement involving another line, make, or brand of new boat or new boat motor does not constitute a default or grounds for termination of an agreement.
- (d) A manufacturer or distributor may terminate an agreement on written notice, without a cure period, if the dealer:
  - (1) financially defaults to the manufacturer, the distributor, or a financing source;
  - (2) becomes subject to an order for relief, as that term is used in Title 11, United States Code;
  - (3) engages in an act of material fraud relating to the performance of a right or obligation under the agreement;
    - (A) conducting the dealer's business; or
    - (B) performing the agreement;
  - (4) is a corporation that ceases to exist;
  - (5) becomes insolvent or takes or fails to take any action that constitutes an admission of inability to pay debts as the debts mature;
  - (6) makes a general assignment for the benefit of creditors to an agent authorized to liquidate any substantial amount of assets;
  - (7) applies to a court for the appointment of a receiver for any assets or properties;
  - (8) fails to substantially comply with federal, state, or local law, rule, regulation, ordinance, or order applicable to the agreement; or
  - (9) receives three valid notices of a default under Section 2352.0523 for the same default, whether cured or not, within a 12-month period.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003. Amended by Acts 2011, 82nd Leg., ch. 1148, Sec. 5, eff. Sept. 1, 2011.

## **SUBCHAPTER C. REGULATION OF MANUFACTURERS, DISTRIBUTORS, AND DEALERS**

### **Sec. 2352.101. DELIVERY REQUIREMENTS.**

- (a) A manufacturer or distributor who publicly advertises a new boat, new boat motor, or part as available for immediate delivery shall deliver the boat, boat motor, or part in reasonable quantities and within a reasonable time after receipt of an order from a dealer who has an agreement with the manufacturer or distributor applicable to the advertised boat, boat motor, or part.
- (b) Subsection (a) does not apply if circumstances beyond the control of the manufacturer or distributor prevent the delivery.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003. Amended by Acts 2011, 82nd Leg., ch. 1148, Sec. 6, eff. Sept. 1, 2011.

### **Sec. 2352.102. SALE, TRANSFER, OR PASSAGE OF TITLE.**

A manufacturer or distributor may not unreasonably withhold approval of a sale, transfer, or passage of title of a dealer, agreement, management of the dealer, or designation of a successor dealer if:

- (1) the dealer complies with any provisions in the agreement for the sale, transfer, or passage of title;
- (2) the transferee meets the criteria:
  - (A) stated in the agreement; or
  - (B) generally applied by the manufacturer or distributor in similar situations; and

(3) the transferee agrees to be bound by the terms and conditions of the manufacturer's or distributor's standard agreement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

### **Sec. 2352.103. FINANCING.**

- (a) A manufacturer or distributor may not require a dealer to finance through a particular financing source a new boat or new boat motor sold by the dealer.
- (b) A manufacturer or distributor may not require a dealer to act as the manufacturer's or distributor's agent in securing:
  - (1) a promissory note and security agreement in connection with the sale or purchase of a new boat or new boat motor; or
  - (2) an insurance policy on the operation of a new boat or new boat motor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003. Amended by Acts 2011, 82nd Leg., ch. 1148, Sec. 7, eff. Sept. 1, 2011.

### **Sec. 2352.104. SALE OF PARTS AND ACCESSORIES AND SERVICE AFTER TERMINATION OR NONRENEWAL OF AGREEMENT.**

- (a) After a manufacturer or distributor terminates or does not renew an agreement, the former dealer may continue to purchase parts and accessories to service the products covered by the agreement until the first anniversary of the date of termination or nonrenewal. The manufacturer or distributor shall sell parts and accessories under this subsection at the same price offered to a current dealer.
- (b) Until the first anniversary of the date of termination or nonrenewal of an agreement, a dealer shall continue to perform warranty work for the manufacturer's products, unless otherwise specified by the manufacturer in the termination notice.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003. Amended by Acts 2011, 82nd Leg., ch. 1148, Sec. 8, eff. Sept. 1, 2011.

### **Sec. 2352.105. COMPENSATION FOR WARRANTY SERVICE.**

- (a) A manufacturer or distributor shall fairly compensate a dealer for the work and services the dealer performs and for expenses the dealer incurs to comply with a manufacturer's or distributor's warranty.
- (b) Except as provided by Subsection (c), a manufacturer or distributor may not pay a dealer a labor rate for warranty work that is less than the rate the dealer charges retail customers for nonwarranty work of the same kind by similar technicians.
- (c) A manufacturer or distributor who has a warranty program that reimburses a dealer at 100 percent of the dealer's retail labor rate if the dealer complies with reasonable and objective criteria shall pay the dealer the labor rate provided by the terms of the program or a rate equal to 80 percent of the dealer's retail labor rate, whichever rate is higher.
- (d) A manufacturer or distributor shall approve or disapprove a dealer's written claim for warranty work not later than the second business day after the date of receipt of the claim. If the claim is approved, the manufacturer or distributor shall pay the claim not later than the 30<sup>th</sup> day after the date of receipt of the dealer's written invoice or written proof of completion of the warranty work. If the claim is disapproved, the manufacturer or distributor shall notify the dealer of the grounds for disapproval.
- (e) A manufacturer or distributor may not audit a claim filed for warranty work after the first anniversary of the date the claim is submitted.
- (f) A manufacturer must act as the single source of contact for the dealer for the manufacturer's component part product warranties, other than engine-related product warranties.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003. Amended by Acts 2011, 82nd Leg., ch. 1148, Sec. 9, eff. Sept. 1, 2011.

### **Sec. 2352.1051. DELIVERY OF PARTS.**

On signing an agreement, a manufacturer shall provide the dealer with a written statement of the approximate amount of time the manufacturer takes to deliver a part to the dealer.

Added by Acts 2011, 82nd Leg., ch. 1148, Sec. 10, eff. Sept. 1, 2011.

### **Sec. 2352.106. REFUNDS, REBATES, AND DISCOUNTS.**

A dealer may not pay or assume a part of a refund, rebate, discount, or other financial adjustment made by the manufacturer or distributor to a customer or a dealer unless the dealer voluntarily agrees to make the payment or assumption.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

### **Sec. 2352.107. REPURCHASE BY MANUFACTURER OR DISTRIBUTOR.**

- (a) A manufacturer or distributor who terminates an agreement shall repurchase on demand from the dealer any of the following items, purchased by the dealer from the manufacturer or distributor, that are free and clear of a lien or encumbrance:
  - (1) a new, unsold, and complete boat, with accessories and packaged trailers sold with the boat, and any boat motor that:
    - (A) is in the dealer's inventory; and
    - (B) was purchased during the two years preceding the date of the termination; and
  - (2) any new, current, unsold, undamaged, and unused parts or accessories for boats or boat motors in the original resalable merchandising package.
- (b) A demand for repurchase must be made in writing not later than the 90th day after the date the manufacturer or distributor terminates the agreement. The dealer must provide the manufacturer or distributor with a complete list of the items to be repurchased. The manufacturer or distributor shall complete the repurchase not later than the 30<sup>th</sup> day after the date the dealer demands the repurchase.
- (c) The manufacturer or distributor shall:
  - (1) repurchase an item described by Subsection (a)(1) at the dealer's invoiced cost, less any allowance paid to the dealer;
  - (2) repurchase an item described by Subsection (a)(2) at the dealer's invoiced cost; and
  - (3) pay the cost incurred by the dealer to transport an item described by Subsection (a) to the manufacturer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003. Amended by Acts 2011, 82nd Leg., ch. 1148, Sec. 11, eff. Sept. 1, 2011.



## SUBCHAPTER D. ENFORCEMENT PROVISIONS

### Sec. 2352.201. CIVIL LIABILITY.

A person who violates this chapter or an agreement regulated by this chapter is liable to an injured party for:

- (1) the actual damages caused by the violation; and
- (2) reasonable legal fees and court costs if litigation is commenced in connection with the violation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

### Sec. 2352.202. VENUE FOR DISPUTE.

Venue for a dispute under an agreement is in the county of the dealer's principal place of business as stated in the agreement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

### Sec. 2352.203. ARBITRATION.

A dealer may not be required to submit to arbitration on an issue between the dealer and the manufacturer or distributor at a location that is out of state or an unreasonable distance from the dealer's principal place of business.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

### Sec. 2352.204. CIVIL PENALTY.

- (a) A manufacturer or distributor who violates this chapter is liable to this state for a civil penalty. The amount of the penalty may not exceed \$500 for each violation.
- (b) Each sale of a new boat or boat motor by a manufacturer or distributor in violation of Section 2352.051 is a separate violation.
- (c) The attorney general may sue to collect a civil penalty under this section. The attorney general may recover, on behalf of the state, the reasonable expenses incurred in obtaining the penalty, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses.

Added by Acts 2011, 82nd Leg., ch. 1148, Sec. 12, eff. Sept. 1, 2011.

# Texas Water Safety Act

## SUBCHAPTER A. GENERAL PROVISIONS

### Sec. 31.003. DEFINITIONS. In this chapter:

- (1) "Boat" means a vessel not more than 65 feet in length, measured from the tip of the bow in a straight line to the stern.
- (2) "Vessel" means any watercraft, other than a seaplane on water, used or capable of being used for transportation on water.
- (3) "Motorboat" means any vessel propelled or designed to be propelled by machinery, whether or not the machinery is permanently or temporarily affixed or is the principal source of propulsion.
- (4) "Owner" means the person who rightfully claims lawful possession of a vessel by virtue of the legal title or an equitable interest.
- (5) "Water of this state" means any public water within the territorial limits of this state.
- (6) "Operate" means to navigate or otherwise use a motorboat or a vessel.
- (7) "Dealer" means a person engaged in the business of buying, selling, selling on consignment, displaying for sale, or exchanging at least five vessels, motorboats, or outboard motors during a calendar year.
- (8) "Vessel livery" means a business establishment engaged in renting or hiring out vessels for profit.
- (9) Repealed by Acts 1997, 75th Leg., ch. 1363, Sec. 12, eff. Sept. 1, 1997.
- (10) "Reasonable time" means 15 days.
- (11) "Manufacturer" means a person engaged in the business of manufacturing new and unused vessels and outboard motors for the purpose of sale or trade.
- (12) "New" means every vessel or outboard motor after its manufacture and before its sale or other transfer to a person not a manufacturer or dealer.
- (13) "Outboard motor" means any self-contained internal combustion propulsion system, excluding fuel supply, which is used to propel a vessel and which is detachable as a unit from the vessel.
- (14) "Personal watercraft" means a type of motorboat that is specifically designed to be operated by a person or persons sitting, standing, or kneeling on the vessel rather than in the conventional manner of sitting or standing inside the vessel.
- (15) "Authorized agent" means a dealer who is authorized by the department under Section 31.006 of this code to collect taxes and fees and issue certificates of number.
- (16) "Distributor" means a person who offers for sale, sells, or processes for distribution new boats or outboard motors to dealers in this state.
- (17) "Abandoned vessel or outboard motor" means a vessel or outboard motor that has remained on private property without the consent of the owner or person in charge of the property for more than seven consecutive days.
- (18) "Coast Guard" means the United States Coast Guard.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1252, ch. 484, Sec. 1(a), (b), eff. Sept. 1, 1977; Acts 1989, 71st Leg., ch. 571, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 718, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 450, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 739, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 165, Sec. 26.01, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1256, Sec. 21, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1363, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 200, Sec. 8(a), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 1, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 108, Sec. 1, eff. Sept. 1, 2005.

### Sec. 31.006. APPOINTMENT OF AUTHORIZED AGENT.

- (a) The department may authorize a dealer who holds a dealer's or manufacturer's number to act as the agent of the department under Subchapter B of this chapter and under Chapter 160, Tax Code, for the issuance of certificates of number and the collection of fees and taxes for boats sold by that dealer.
- (b) An authorized agent must follow the rules of the commission and the rules of the comptroller.
- (c) An authorized agent shall send the applications required by Sections 31.024 and 31.047 of this code, the fees required by Sections 31.026 and 31.048 of this code, and the tax paid under Chapter 160, Tax Code, to the department not later than 20 days after the date a certificate of number is issued and a fee or tax collected.
- (d) An authorized agent shall execute a surety bond in an amount set by the department to insure against loss to the department of fees and taxes. The bond shall be in favor of the department.
- (e) The department may cancel the authorization of an agent on 30 days' written notice of the agent's violation of this chapter, a department rule adopted under this chapter, Chapter 160, Tax Code, or a rule adopted by the comptroller under that chapter.
- (f) The commission may adopt rules for the creation of a program for the continuing identification and classification of participants in the vessel and outboard motor industries doing business in this state. The commission may set fees to administer this subsection. The department shall use information from the program to appoint agents under this section or for any other purpose required by the commission's rules or this chapter.

Added by Acts 1993, 73rd Leg., ch. 718, Sec. 2, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 968, Sec. 35, eff. Sept. 1, 2001.

## **SUBCHAPTER B. IDENTIFICATION OF VESSELS; REQUIRED NUMBERING**

### **Sec. 31.021. REQUIRED NUMBERING.**

- (a) Each vessel on the water of this state shall be numbered in accordance with the provisions of this chapter unless specifically exempted. The numbering system shall be in accord with the Federal Boating Act of 1958 and subsequent federal legislation.
- (b) No person may operate or give permission for the operation of any vessel or may dock, moor, or store a vessel owned by the person on the water of this state unless:
  - (1) the vessel is numbered as required by this chapter;
  - (2) the certificate of number awarded to the vessel is in full force and effect; and
  - (3) the identifying number set forth in the certificate is properly displayed on the vessel as required by this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 450, Sec. 3, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1256, Sec. 23, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1363, Sec. 3, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 200, Sec. 8(c), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 3, eff. Sept. 1, 2003.

### **Sec. 31.022. EXEMPTIONS FROM REQUIRED NUMBERING.**

- (a) A vessel is not required to be numbered under the provisions of this chapter if it is:
  - (1) operated within this state for a period not exceeding 90 consecutive days and is covered by a number in full force and effect which has been awarded under federal law or a federally approved numbering system of another state;
  - (2) from a country other than the United States temporarily using the water of this state;
  - (3) owned by the United States, a state, or a subdivision of a state; or
  - (4) a ship's lifeboat.
- (b) The department may exempt from numbering a class of vessels if it finds that the numbering of the vessels of that class will not materially aid in their identification. The department may also exempt a vessel if it finds that it belongs to a class of vessels that would be exempt from numbering under a numbering system of an agency of the federal government if it were subject to federal law.
- (c) All canoes, kayaks, punts, rowboats, rubber rafts, or other vessels under 14 feet in length when paddled, poled, oared, or windblown are exempt from the numbering provisions of this chapter.
- (d) A vessel in use at a water ski tournament, competition, or exhibition sanctioned in writing by the governing board of the governmental entity that has jurisdiction over the body of water on which the tournament, competition, or exhibition occurs is exempt from the numbering provisions of this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1989, 71st Leg., ch. 543, Sec. 1, eff. June 14, 1989; Acts 1993, 73rd Leg., ch. 450, Sec. 4, eff. Sept. 1, 1993.

### **Sec. 31.024. APPLICATION FOR NUMBER.**

- (a) The owner of each vessel requiring numbering by this state shall file an application for a number with the department, an authorized agent, or a county tax assessor-collector.
- (b) The application shall be signed by the owner of the vessel and shall be accompanied by the fee prescribed in Section 31.026 of this code. If the application is received by a county tax assessor-collector, the application and the portion of the fee not retained by the tax assessor-collector as a collection fee shall be sent to the department. If the application is received by an authorized agent, the application and the fee shall be sent to the department as required by Section 31.006 of this code.
- (c) On receipt of the application in approved form, the department shall enter it on the records of its office and issue to the applicant a certificate of number stating the number awarded to the vessel and the name and address of the owner.
- (d) The application form, the form of the certificate of number, and the manner of renewal shall be prescribed by the department.
- (e) The department, an authorized agent, or a county tax assessor-collector may not issue a certificate of number unless the tax due on the vessel under Chapter 160, Tax Code, is paid.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1352, ch. 607, Sec. 1, eff. Aug. 27, 1979; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.04, eff. Oct. 1, 1991; Acts 1993, 73rd Leg., ch. 450, Sec. 6, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 718, Sec. 3, eff. Sept. 1, 1993.

### **Sec. 31.025. RENEWAL OF CERTIFICATES OF NUMBER.**

- (a) An application for the renewal of each certificate of number shall be prepared by the department and mailed to the owner of the vessel during the period of the last 90 days before the expiration date of the certificate. The same number shall be issued on renewal.
- (b) The application for renewal may be returned to the department, to any county tax assessor-collector, or if permitted by the department, to an agent of the department.
- (c) Applications not received during the 90-day period shall be treated in the same manner as original applications.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1353, ch. 607, Sec. 2, eff. Aug. 27, 1979.

#### **Sec. 31.026. FEES.**

- (a) Each application for an original or renewal certificate of number for a vessel shall be accompanied by a two-year fee determined by the following classification schedule or determined in the same classifications by the commission, whichever amount is more:

<b>Class</b>	<b>Description of Vessel</b>	<b>Fee</b>
Class A	less than 16 feet in length	\$32
Class 1	16 feet or over and less than 26 feet in length	\$53
Class 2	26 feet or over and less than 40 feet in length	\$110
Class 3	40 feet or more in length	\$150

- (b) The fee for a vessel less than 16 feet in length owned by a vessel livery and used for rental purposes is \$6 for each original and renewal application for a certificate of number or an amount set by the commission, whichever amount is more.

- (c) Owners of newly purchased vessels or other vessels not previously operated in this state shall pay the full registration fee.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1326, ch. 277, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 1, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 450, Sec. 7, eff. Sept. 1, 1993.

#### **Sec. 31.030. DUPLICATE CERTIFICATES AND DECALS.**

- (a) If a certificate of number becomes lost, mutilated, or illegible, the owner of the vessel for which the certificate was issued may obtain a duplicate on application to the department and the payment of a fee of \$2 or an amount set by the commission, whichever amount is more.

- (b) If a registration decal becomes lost, mutilated, or illegible, the owner of the vessel for which the decal was issued may obtain a replacement decal on application to the department and the payment of a fee of \$2 or an amount set by the commission, whichever amount is more.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1275, ch. 497, Sec. 1, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 1327, ch. 277, Sec. 2, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 2, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 450, Sec. 7, eff. Sept. 1, 1993.

#### **Sec. 31.031. NUMBERING PATTERN.**

- (a) The numbering pattern used consists of the prefix "TX" followed by a combination of exactly four numerals and further followed by a suffix of two letters. The group of numerals appearing between the letters shall be separated from the letters by hyphens or equivalent spaces.

- (b) All basic numbers of each series shall begin with 1000. TX-1000-AA through TX-9999-AA will be allotted to dealers and manufacturers. TX-1000-AB through TX-9999-ZZ will be allotted to all other vessel owners and livery operators.

- (c) The letters "G", "I", "O", and "Q" shall be omitted from all letter sequences.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 450, Sec. 8, eff. Sept. 1, 1993.

#### **Sec. 31.034. ISSUANCE OF NUMBERS BY DEPARTMENT OR AUTHORIZED AGENT.**

- (a) The department may award a certificate of number.

- (b) A certificate of number issued and delivered by an authorized agent in conformity with this chapter and the rules of the commission adopted under this chapter is valid as if awarded by the department directly.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.05, eff. Oct. 1, 1991; Acts 1993, 73rd Leg., ch. 718, Sec. 4, eff. Sept. 1, 1993.

#### **Sec. 31.040. VESSEL LIVERIES.**

- (a) Before the vessel is rented or let for hire, the owner or operator of a vessel livery shall obtain a certificate of number for a vessel being used as a motorboat prior to being rented.

- (b) The application for the certificate of number under Section 31.024 or for a certificate of title under Section 31.046 must state that the applicant is a vessel livery within the meaning of this chapter.

- (c) The owner of a vessel livery shall keep a record of the name and address of the persons hiring any vessel operated as a motorboat, the vessel's certificate of number, the time and date of departure, and the expected time of return. The record shall be kept for six months.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 450, Sec. 11, eff. Sept. 1, 1993.

#### **Sec. 31.041. DEALER'S, DISTRIBUTOR'S, AND MANUFACTURER'S LICENSE.**

- (a) A person may not engage in business in this state as a dealer, distributor, or manufacturer unless the person holds a license issued under this section and enters into a license agreement with the department. A dealer must have a license for each place of business owned and operated by the person.

- (b) The commission shall establish the form and manner for display of a license issued under this section.

- (c) The department shall issue a dealer, distributor, or manufacturer number to each dealer, distributor, or manufacturer licensed under this section in the manner provided by Section 31.031(b).

- (d) A dealer, distributor, or manufacturer of vessels in this state may use the dealer's, distributor's, or manufacturer's number for vessels the dealer, distributor, or manufacturer wishes to show, demonstrate, or test on the water of this state instead of securing a certificate of number for each vessel. The number shall be attached to any vessel that the dealer, distributor, or manufacturer sends temporarily on the water. For purposes of this subsection, "show, demonstrate, or test" does not include the use of a vessel for recreational purposes or for participation in a contest or event. The commission, however, may establish rules concerning the issuance and price of validation cards permitting the limited and temporary use of vessels for recreational purposes or participation in contests or events. Any fees collected by the department under this subsection shall be deposited in the game, fish, and water safety account established under Section 11.032.

- (e) The application for a license under this section must state that the applicant is a dealer, distributor, or manufacturer within the meaning of this chapter, and the facts stated on the application must be sworn before an officer authorized to administer oaths. An application submitted by a dealer must be accompanied by photographs of the business sufficient to show any sign the business is required to display and the extent of the space the business is required to maintain. The application must also be accompanied by a copy of the tax permit of the dealer, distributor, or manufacturer issued by the comptroller under Chapter 151, Tax Code, if the dealer, distributor, or manufacturer has a tax permit. The two-year fee for a dealer's, distributor's, or manufacturer's number is \$500. A license may not be issued until the provisions of this section have been satisfied.
- (f) A dealer, distributor, or manufacturer holding a dealer's, distributor's, or manufacturer's license may issue a reasonable temporary facsimile of the number issued under Subsection (c), which may be used by any authorized person. A person purchasing a vessel may use the dealer's number for a period not to exceed 15 days prior to filing an application for a certificate of number. The form of the facsimile and the manner of display of the number shall be prescribed by the department.
- (g) A dealer, distributor, or manufacturer holding a dealer's, distributor's, or manufacturer's license may transfer a certificate of number or a certificate of title to a vessel or outboard motor without securing a certificate of number or certificate of title in the dealer's, distributor's, or manufacturer's name if the vessel or outboard motor is sold in the normal course of the dealer's, distributor's, or manufacturer's business.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1328, ch. 277, Sec. 4, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 4, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 450, Sec. 12, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 587, Sec. 36, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 13.01, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 200, Sec. 8(f), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 6, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 108, Sec. 2, eff. Sept. 1, 2005.

#### **Sec. 31.0411. TERM OF LICENSE; TRANSFER.**

- (a) Except as provided by Subsection (b), a license issued under Section 31.041:
  - (1) is valid for two years from the date of issuance; and
  - (2) may not be transferred to another person.
- (b) A license issued under Section 31.041 in the name of a business remains valid for the business location specified on the license if a change of ownership or business name occurs.
- (c) A license issued under Section 31.041 may be transferred to a new address if:
  - (1) a business moves to another location; and
  - (2) a change of ownership has not occurred.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 8(g), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 7, eff. Sept. 1, 2003.

#### **Sec. 31.0412. LICENSING RULES.**

The commission may adopt rules regarding licenses issued under Section 31.041, including rules:

- (1) regarding license transfer procedures;
- (2) prescribing application and license agreement forms;
- (3) regarding application and renewal procedures;
- (4) prescribing reporting and recordkeeping requirements for license holders;
- (5) setting fees to be charged for:
  - (A) a transferred license; or
  - (B) a replacement license;
- (6) prescribing license requirements; and
- (7) establishing license revocation and suspension procedures.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 8(g), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 7, eff. Sept. 1, 2003. Amended by Acts 2005, 79th Leg., ch. 108, Sec. 3, eff. Sept. 1, 2005.

#### **Sec. 31.0413. EXEMPTION FROM DEALER LICENSING REQUIREMENTS.**

The dealer licensing provisions of this subchapter do not apply to the sale of a canoe, kayak, punt, rowboat, rubber raft, paddleboat, or other vessel that is less than 12 feet in length and has a horsepower rating of five horsepower or less or to the sale of an outboard motor with a manufacturer's rating of five horsepower or less.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 8(g), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 7, eff. Sept. 1, 2003.

#### **Sec. 31.042. CANCELLATION OF CERTIFICATES OF NUMBER; GROUNDS.**

- (a) A certificate of number may be cancelled and the identification number voided by the department even though the action occurs before the expiration date on the certificate and even though the certificate is not surrendered to the department.
- (b) Causes for cancellation of certificates and voiding of numbers include:
  - (1) surrender of the certificate for cancellation;
  - (2) issuance of a new number for the same vessel;
  - (3) false or fraudulent certification in an application for number;
  - (4) failure to pay the prescribed fee; and
  - (5) dismantling, destruction, or other change in the form or character of the vessel or outboard motor so that it is no longer correctly described in the certificate or it no longer meets the definition of a vessel or outboard motor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1253, ch. 484, Sec. 1(d), eff. Sept. 1, 1977; Acts 1993, 73rd Leg., ch. 450, Sec. 13, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 200, Sec. 8(h), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 8, eff. Sept. 1, 2003.

#### **Sec. 31.043. MANUFACTURER'S IDENTIFICATION NUMBER.**

- (a) All vessels manufactured in Texas for sale and all vessels sold, numbered, or titled in Texas shall carry a manufacturer's hull identification number clearly imprinted on the structure of the vessel or displayed on a plate permanently attached to the vessel. Except as required to comply with Section 31.024 or 31.047, this subsection does not apply to a vessel that is not required by the United States Coast Guard to have a hull identification number.
- (b) The owner of a vessel that does not have a manufacturer's hull identification number may file an application for a hull identification number with the department on forms approved by it. The application must include a sworn statement describing the vessel, proving

legal ownership, and, if known, stating the reason for the lack of hull identification number. The application must be signed by the owner of the vessel and must be accompanied by a fee of \$25 and a certificate from a game warden commissioned by the department stating that the vessel has been inspected by the officer and appears to be as applied for. On receipt of the application in approved form, the department shall enter the information on the records of its office and shall issue to the applicant a hull identification number.

- (c) No person may intentionally or knowingly destroy, remove, alter, cover, or deface an outboard motor serial number, the manufacturer's hull identification number or plate bearing the hull identification number, or the hull identification number or serial number issued by the department. No person may possess a vessel with a hull identification number or an outboard motor with a serial number that has been altered, defaced, mutilated, or removed.
- (d) A person who has a vessel with an altered, defaced, mutilated, or removed hull identification number or an outboard motor with an altered, defaced, mutilated, or removed serial number shall file a sworn statement with the department describing the vessel or outboard motor, proving legal ownership, and, if known, stating the reason for the destruction, removal, or defacement of the number. The statement must be accompanied by a fee of \$25 and a certificate from a game warden commissioned by the department that the vessel or outboard motor has been inspected by the officer and appears to be as applied for. On receipt of the statement in approved form, the department shall enter the information on records of its office and shall issue to the applicant a hull identification number or outboard motor serial number.
- (e) This section does not apply to vessels with a valid marine document issued by the United States Coast Guard's National Vessel Documentation Center or a federal agency that is a successor to the National Vessel Documentation Center.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1328, ch. 277, Sec. 5, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 5, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 450, Sec. 14, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1363, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1099, Sec. 1, eff. Sept. 1, 1999.

#### **Sec. 31.044. INSPECTIONS.**

A dealer, distributor, or manufacturer may not refuse to allow the department or a peace officer to inspect a vessel, outboard motor, or records relating to the possession, origination, ownership, or transfer of a vessel or outboard motor at a dealership or distributor's or manufacturer's place of business during normal business hours.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 8(i), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 9, eff. Sept. 1, 2003.

### **SUBCHAPTER B-1. CERTIFICATES OF TITLE FOR VESSELS AND OUTBOARD MOTORS**

#### **Sec. 31.045. OWNERSHIP OF VESSELS AND OUTBOARD MOTORS; CERTIFICATES OF TITLE.**

- (a) The ownership of a vessel or of an outboard motor is evidenced by a certificate of title issued by the department, unless the vessel or the outboard motor is new.
- (b) The ownership of a new vessel or a new outboard motor is evidenced by a manufacturer's or an importer's certificate executed on a form prescribed by the department.
- (c) Separate certificates are required for vessels and for outboard motors.
- (d) The ownership of a vessel exempted from numbering under Section 31.022(c) of this code is not required to be evidenced by a certificate of title issued by the department.

Added by Acts 1977, 65th Leg., p. 1253, ch. 484, Sec. 1(e), eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 450, Sec. 16, eff. Sept. 1, 1993.

#### **Sec. 31.046. APPLICATION FOR CERTIFICATE OF TITLE.**

- (a) Except as provided in Subsections (b) and (c) of this section, the purchaser of a vessel or an outboard motor shall apply to the department or to a county tax assessor-collector for a certificate of title not later than 20 days after the date of the sale of the vessel or outboard motor.
- (b) A manufacturer or a dealer who sells a vessel or an outboard motor to a person other than a manufacturer or a dealer shall apply to the department or to a county tax assessor-collector for a certificate of title for the vessel or outboard motor in the name of the purchaser not later than 20 days after the date of the sale.
- (c) A dealer who acquires a vessel or an outboard motor, other than a new vessel or outboard motor, is not required to apply for a certificate of title in the name of the dealer, but on resale of the vessel or outboard motor shall apply for the subsequent purchaser under Subsection (b) of this section and shall submit to the department or to a county tax assessor-collector the endorsed certificate of title acquired by the dealer.
- (d) The department or county tax assessor-collector may not issue a certificate of title unless the tax due on the vessel or outboard motor under Chapter 160, Tax Code, is paid.

Added by Acts 1977, 65th Leg., p. 1253, ch. 484, Sec. 1(e), eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1353, ch. 607, Sec. 4, eff. Aug. 27, 1979; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.06, eff. Oct. 1, 1991; Acts 1993, 73rd Leg., ch. 450, Sec. 16, eff. Sept. 1, 1993.

#### **Sec. 31.047. APPLICATION; FORM AND CONTENT; FEE.**

- (a) A person may apply for a certificate of title on a form prescribed by the department.
- (b) The form must contain:
  - (1) the owner's name, address, and owner identifier as prescribed by 33 C.F.R. Section 174.17;
  - (2) a description of the vessel or outboard motor, including, as appropriate, the manufacturer, make, model, year, length, construction material, manufacturer's or builder's number, hull identification number (HIN), motor number, outdrive number, primary operation purpose, vessel type, propulsion type, engine drive type, fuel, and horsepower;
  - (3) name and address of purchaser;
  - (4) date of purchase;
  - (5) name and address of any security interest owner;
  - (6) the appropriate affidavit as required by Section 160.042, Tax Code; and
  - (7) other information required by the department to show the ownership of the vessel or outboard motor, a security interest in the vessel or outboard motor, or a further description of items listed in the subdivision.

- (c) The application must be accompanied by other evidence reasonably required by the department to establish that the applicant or other person is entitled to a certificate of title or a noted security interest. The evidence may include:
- (1) a certificate of title issued by another state or jurisdiction;
  - (2) a manufacturer's or importer's certificate;
  - (3) a bill of sale, assignment, or contract;
  - (4) a promissory note;
  - (5) a security agreement;
  - (6) an invoice;
  - (7) a bill of lading;
  - (8) an affidavit;
  - (9) a probate or heirship proceeding or information;
  - (10) a judgment of a court of competent jurisdiction;
  - (11) evidence of an involuntary transfer as defined in Subdivision (5) of Subsection (a) of Section 31.053, as amended, which may be in affidavit form attaching copies of any pertinent underlying documents; or
  - (12) other documents.
- (d) An application for a certificate of title must be accompanied by the fee required by Section 31.048 of this code.
- (e) The department shall be authorized to issue certificates of title on an accelerated basis upon the payment of a fee in addition to the fees provided in Section 31.048 of this code as determined periodically by the department based on regulations the department shall establish.
- (f) An application for a certificate of title on a homemade vessel, the origin of which is based on the affidavit of the person building the vessel, proof of materials incorporated into the vessel, and the like, must be accompanied by a certificate from a game warden commissioned by the department that the vessel has been inspected by such officer and appears to be as applied for. The applicant shall pay a fee of \$25 to the department for this inspection.
- (g) If administration of an estate is not required by law, an affidavit submitted under Subsection (c) must include:
- (1) a showing that the administration is not required;
  - (2) identification of all heirs; and
  - (3) a statement by the heirs of the name in which to issue the certificate.

Added by Acts 1977, 65th Leg., p. 1253, ch. 484, Sec. 1(e), eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 4060, ch. 636, Sec. 1, eff. Aug. 29, 1983; Acts 1987, 70th Leg., ch. 1013, Sec. 1, eff. June 19, 1987; Acts 1989, 71st Leg., ch. 498, Sec. 1, eff. Sept. 1, 1989; Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(22), eff. Sept. 6, 1990; Acts 1993, 73rd Leg., ch. 450, Sec. 17, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1099, Sec. 2, eff. Sept. 1, 1999; Acts 2005, 79th Leg., ch. 529, Sec. 1, eff. June 17, 2005.

#### **Sec. 31.048. FEE.**

- (a) The fee for the issuance of a certificate of title or for the notation of a security interest, lien, or other encumbrance is \$5 or an amount set by the commission, whichever amount is more, and is treated as fees collected under Section 31.026 of this code.
- (b) If the fee is collected by a county tax assessor-collector, the tax assessor-collector shall retain 10 percent of the fee collected and send the remainder to the department. The amount retained by the tax assessor-collector shall be deposited to the credit of the officers salary fund of the county to be used for the sole purpose of paying the salaries of persons issuing vessel and outboard motor certificates of title.

Added by Acts 1977, 65th Leg., p. 1253, ch. 484, Sec. 1(e), eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1259, ch. 484, Sec. 9, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1353, ch. 607, Sec. 5, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 1328, ch. 277, Sec. 6, eff. Sept. 1, 1983.; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 6, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 450, Sec. 18, eff. Sept. 1, 1993.

#### **Sec. 31.050. FORM OF MANUFACTURER'S AND IMPORTER'S CERTIFICATE.**

- (a) A manufacturer's certificate or an importer's certificate must include:
- (1) a description of the vessel or outboard motor as required by Subdivision (2) of Subsection (b) of Section 31.047 of this code;
  - (2) the name and place of construction or other origin;
  - (3) the signature of the manufacturer or an equivalent of the signature of the manufacturer; and
  - (4) the endorsement of the original and each subsequent transferee, including the applicant for the original certificate of title.
- (b) A lien, security interest, or other encumbrance may not be shown on a manufacturer's or importer's certificate.
- (c) A security interest in a vessel or outboard motor held as inventory by a person who is in the business of selling or leasing goods of that kind may be perfected only by complying with Chapter 9, Business & Commerce Code.

Added by Acts 1977, 65th Leg., p. 1253, ch. 484, Sec. 1(e), eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 668, ch. 152, Sec. 1, eff. Aug. 29, 1983; Acts 1993, 73rd Leg., ch. 450, Sec. 20, eff. Sept. 1, 1993.

#### **Sec. 31.053. TRANSFERS OF VESSELS AND OUTBOARD MOTORS.**

- (a) No person may sell, assign, transfer, or otherwise dispose of an interest in a vessel or an outboard motor without:
- (1) if the transferee is not a manufacturer or a dealer and the vessel or outboard motor is new, delivering to the department a manufacturer's or importer's certificate showing the endorsement of the manufacturer and all intervening owners;
  - (2) if the transferee is a manufacturer or a dealer and the vessel or outboard motor is new, delivering to the transferee a manufacturer's or importer's certificate showing the endorsement of the manufacturer and all intervening owners;
  - (3) if the vessel or outboard motor is not covered by a certificate of title or a manufacturer's or importer's certificate and if the transferor is a manufacturer or dealer, delivering to the department sufficient evidence of title or other information to permit the issuance of a certificate of title for the vessel or outboard motor in the name of the transferee;
  - (4) if the vessel or outboard motor is not covered by a certificate of title or a manufacturer's or importer's certificate and if the transferor is not a manufacturer or dealer, delivering to the transferee sufficient evidence of title or other information to permit the transferee to apply for and receive a certificate of title for the vessel or outboard motor in the name of the transferee; or
  - (5) delivering to the transferee a certificate of title for the vessel or outboard motor in the name of the transferor and properly endorsed to show the transfer or evidence of an involuntary transfer.
- (b) For the purposes of Subsection (a)(5) of this section an involuntary transfer shall mean the transfer of ownership pursuant to a contractual or statutory lien which confers the power or right to the transfer. The evidence shall reflect the proper exercise of the right conferred pursuant to the lien.

- (c) The transferor shall provide the documents or evidence required by Subsection (a) of this section to the department or the transferee, as appropriate, in sufficient time to allow the transferee to register and obtain a certificate of title for the vessel or outboard motor not later than 20 days after the date of the sale.
  - (d) Notwithstanding the provisions of Subsection (a) of this section, a buyer of a new vessel or a new outboard motor in the ordinary course of business as provided in Section 9.320(a), Business & Commerce Code, takes the interest free of security interests as provided in that section. A buyer of a vessel or outboard motor that is not new shall be governed by Subsection (a) of this section.
  - (e) The transferee shall provide the department with sufficient evidence of ownership for transfer of a vessel or outboard motor if the transferee:
    - (1) failed to obtain the title from the transferor or the title was lost, stolen, or mutilated before the transfer was made; and
    - (2) has made reasonable efforts to contact the transferor to obtain the required documentation.
  - (f) A person who is not licensed as a dealer, distributor, or manufacturer under this chapter must obtain a certificate of number or certificate of title to a vessel or outboard motor in the person's name before transferring the certificate of number or certificate of title.
- Added by Acts 1977, 65th Leg., p. 1253, ch. 484, Sec. 1(e), eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 4063, ch. 636, Sec. 4, eff. Aug. 29, 1983; Acts 1989, 71st Leg., ch. 283, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 450, Sec. 22, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 414, Sec. 2.33, eff. July 1, 2001; Acts 2003, 78th Leg., ch. 200, Sec. 8(l), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 12, eff. Sept. 1, 2003.

## FINANCE CODE

### TITLE 4. REGULATION OF INTEREST, LOANS, AND FINANCED TRANSACTIONS

#### SUBTITLE B. LOANS AND FINANCED TRANSACTIONS

##### CHAPTER 345. RETAIL INSTALLMENT SALES

##### SUBCHAPTER F. SPECIAL FEES AND FINANCE RATES

#### **Sec. 345.251. DOCUMENTARY FEE FOR CERTAIN VEHICLES.**

- (a) A retail seller may charge a documentary fee for services rendered to, for, or on behalf of a retail buyer in handling and processing documents relating to the sale of a motorcycle, motor-driven cycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle.
  - (b) If a documentary fee is charged under this section the fee:
    - (1) must be charged to cash buyers and credit buyers;
    - (2) may not exceed a reasonable amount agreed to by the retail seller and retail buyer for the documentary services, subject to a reasonable maximum amount set by rule by the finance commission; and
    - (3) must be disclosed on the buyer's order or retail installment contract as a separate itemized charge.
  - (c) A preliminary work sheet on which a sale price is computed and that is shown to the retail buyer, an order from the buyer, or a retail installment contract must include in reasonable proximity to the place on the document where the documentary fee is disclosed:
    - (1) the amount of the fee; and
    - (2) the following notice in type that is bold-faced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material:  

**"A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING DOCUMENTS RELATING TO THE SALE. A DOCUMENTARY FEE MAY NOT EXCEED A REASONABLE AMOUNT AGREED TO BY THE PARTIES THAT IS NOT MORE THAN THE MAXIMUM AMOUNT ALLOWED BY THE STATE. THIS NOTICE IS REQUIRED BY LAW."**
  - (d) If the language primarily used in an oral sales presentation is not the same as the language in which the retail installment contract is written, the retail seller shall furnish to the retail buyer a written statement containing the notice set out in Subsection (c) in the language primarily used in the oral sales presentation.
  - (e) The finance commission may adopt rules necessary to implement and enforce this section.
- Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by: Acts 2013, 83rd Leg., R.S., Ch. 43 (S.B. 1248), Sec. 1, eff. September 1, 2013.

## Texas Administrative Code

<b>TITLE 7</b>	<b>BANKING AND SECURITIES</b>
<b>PART 5</b>	<b>OFFICE OF CONSUMER CREDIT COMMISSIONER</b>
<b>CHAPTER 86</b>	<b>RETAIL CREDITORS</b>
<b>SUBCHAPTER B</b>	<b>RETAIL INSTALLMENT CONTRACT</b>
<b>RULE §86.201</b>	<b>Documentary Fee</b>

(a) Definitions.

- (1) All-terrain vehicle--Has the meaning provided by Texas Transportation Code, §502.001(1).
  - (2) Boat--A vessel, as described by Texas Parks and Wildlife Code, §31.003(2).
  - (3) Boat motor--An outboard motor, as described by Texas Parks and Wildlife Code, §31.003(13).
  - (4) Covered land vehicle--A motorcycle, motor-driven cycle, moped, all-terrain vehicle, boat trailer, or towable recreational vehicle.
  - (5) Covered watercraft--A boat or boat motor.
  - (6) Moped--Has the meaning provided by Texas Transportation Code, §541.201(8).
  - (7) Motorcycle--Has the meaning provided by Texas Transportation Code, §541.201(9).
  - (8) Motor-driven cycle--Has the meaning provided by Texas Transportation Code, §541.201(10).
  - (9) Retail installment contract--Has the meaning provided by Texas Finance Code, §345.001(6) and refers to one or more instruments entered into that evidence a secured or unsecured retail installment transaction for the sale of goods under Texas Finance Code, Chapter 345.
  - (10) Towable recreational vehicle--Has the meaning provided by Texas Finance Code, §348.001(10-a).
- (b) Contract for covered land vehicles only. For a retail installment contract for the purchase of one or more covered land vehicles, the reasonable maximum amount of the documentary fee is \$125.
- (c) Contract for covered watercraft only. For a retail installment contract for the purchase of one or more covered watercraft, the reasonable maximum amount of the documentary fee is \$125.
- (d) Contract for both covered land vehicles and covered watercraft. For a retail installment contract for the purchase of one or more covered land vehicles and one or more covered watercraft, the reasonable maximum amount of the documentary fee is \$175.

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**Source Note:** The provisions of this §86.201 adopted to be effective September 5, 2013, 38 TexReg 5706

## Tax Code

### SUBTITLE D. APPRAISAL AND ASSESSMENT

#### CHAPTER 23. APPRAISAL METHODS AND PROCEDURES

#### **Sec. 23.124. DEALER'S VESSEL AND OUTBOARD MOTOR INVENTORY; VALUE.**

(a) In this section:

- (1) "Chief appraiser" means the chief appraiser for the appraisal district in which a dealer's vessel and outboard motor inventory is located.
- (2) "Collector" means the county tax assessor-collector in the county in which a dealer's vessel and outboard motor inventory is located.
- (3) "Dealer" means a person who holds a dealer's and manufacturer's number issued by the Parks and Wildlife Department under the authority of Section 31.041, Parks and Wildlife Code, or is authorized by law or interstate reciprocity agreement to purchase vessels or outboard motors in Texas without paying the sales tax. The term does not include a person who is principally engaged in manufacturing vessels or outboard motors or an entity that is owned or controlled by such a person.
- (4) "Dealer's vessel and outboard motor inventory" means all vessels and outboard motors held for sale by a dealer.
- (5) "Dealer-financed sale" means the sale of a vessel or outboard motor in which the seller finances the purchase of the vessel or outboard motor, is the sole lender in the transaction, and retains exclusively the right to enforce the terms of the agreement evidencing the sale.
- (6) "Declaration" means the dealer's vessel and outboard motor inventory declaration form promulgated by the comptroller as required by this section.
- (7) "Fleet transaction" means the sale of five or more vessels or outboard motors from a dealer's vessel and outboard motor inventory to the same business entity within one calendar year.
- (8) "Outboard motor" has the meaning given it by Section 31.003, Parks and Wildlife Code.
- (9) "Owner" means a dealer who owes current year vessel and outboard motor inventory taxes levied against a dealer's vessel and outboard motor inventory.
- (10) "Person" means a natural person, corporation, partnership, or other legal entity.
- (11) "Sales price" means the total amount of money paid or to be paid for the purchase of:
  - (A) a vessel, other than a trailer that is treated as a vessel, as set forth as "sales price" in the form entitled "Application for Texas Certificate of Number/Title for Boat/Seller, Donor or Trader's Affidavit" promulgated by the Parks and Wildlife Department;
  - (B) an outboard motor as set forth as "sales price" in the form entitled "Application for Texas Certificate of Title for an Outboard Motor/Seller, Donor or Trader's Affidavit" promulgated by the Parks and Wildlife Department; or
  - (C) a trailer that is treated as a vessel as set forth as "sales price" in the form entitled "Application for Texas Certificate of Title" promulgated by the Texas Department of Motor Vehicles.In a transaction involving a vessel, an outboard motor, or a trailer that is treated as a vessel that does not involve the use of one of these forms, the term means an amount of money that is equivalent, or substantially equivalent, to the amount that would appear as "sales price" on the Application for Texas Certificate of Number/Title for Boat/Seller, Donor or Trader's Affidavit, the Application for Texas Certificate of Title for an Outboard Motor/Seller, Donor or Trader's Affidavit, or the Application for Texas Certificate of Title if one of these forms were involved.
- (12) "Subsequent sale" means a dealer-financed sale of a vessel or outboard motor that, at the time of the sale, has been the subject of a dealer-financed sale from the same dealer's vessel and outboard motor inventory in the same calendar year.
- (13) "Total annual sales" means the total of the sales price from every sale from a dealer's vessel and outboard motor inventory for a 12-month period.
- (14) "Vessel" has the meaning given it by Section 31.003, Parks and Wildlife Code, except such term shall not include:
  - (A) vessels of more than 65 feet in length, measured from end to end over the deck, excluding sheer; and



- (B) canoes, kayaks, punts, rowboats, rubber rafts, or other vessels under 14 feet in length when paddled, poled, oared, or windblown.

The term "vessel" also includes trailers that are treated as vessels as defined in this section.

(15) "Trailer treated as a vessel" means a vehicle that:

(A) is designed to carry a vessel; and

(B) is either a "trailer" or "semitrailer" as such terms are defined by Section 501.002, Transportation Code.

- (b) For the purpose of the computation of property tax, the market value of a dealer's vessel and outboard motor inventory on January 1 is the total annual sales from the dealer's vessel and outboard motor inventory, less sales to dealers, fleet transactions, and subsequent sales, for the 12-month period corresponding to the prior tax year, divided by 12.
- (c) For the purpose of the computation of property tax on the market value of a dealer's vessel and outboard motor inventory of an owner who was not a dealer on January 1 of the prior tax year, the chief appraiser shall estimate the market value of the dealer's vessel and outboard motor inventory. In making the estimate required by this subsection, the chief appraiser shall extrapolate using sales data, if any, generated by sales from the dealer's vessel and outboard motor inventory in the prior tax year.
- (d) Except for the dealer's vessel and outboard motor inventory, personal property held by a dealer is appraised as provided by other sections of this code. In the case of a dealer whose sales from the dealer's vessel and outboard motor inventory are made predominantly to dealers, the chief appraiser shall appraise the dealer's vessel and outboard motor inventory as provided by Section 23.12 of this code.
- (e) A dealer is presumed to be an owner of a dealer's vessel and outboard motor inventory on January 1 if, in the 12-month period ending on December 31 of the immediately preceding year, the dealer sold a vessel or outboard motor to a person other than a dealer. The presumption created by this subsection is not rebutted by the fact that a dealer has no vessels or outboard motors physically on hand for sale from a dealer's vessel and outboard motor inventory on January 1.
- (f) The comptroller shall promulgate a form entitled "Dealer's Vessel and Outboard Motor Inventory Declaration." Except as provided by Section 23.125(l) of this code, not later than February 1 of each year or, in the case of a dealer who was not in business on January 1, not later than 30 days after commencement of business, each dealer shall file a declaration with the chief appraiser and file a copy with the collector. The declaration is sufficient to comply with this subsection if it sets forth the following information:
  - (1) the name and business address of each location at which the dealer owner conducts business;
  - (2) each of the dealer's and manufacturer's numbers issued by the Parks and Wildlife Department;
  - (3) a statement that the dealer owner is the owner of a dealer's vessel and outboard motor inventory; and
  - (4) the market value of the dealer's vessel and outboard motor inventory for the current tax year as computed under Subsection (b) of this section.
- (g) Under the terms provided by this subsection, the chief appraiser may examine the books and records of the holder of a dealer's and manufacturer's number issued by the Parks and Wildlife Department. A request made under this subsection must be made in writing, delivered personally to the custodian of the records, must provide a period not less than 15 days for the person to respond to the request, and must state that the person to whom it is addressed has the right to seek judicial relief from compliance with the request. In a request made under this section the chief appraiser may examine:
  - (1) the document issued by the Parks and Wildlife Department showing the person's dealer's and manufacturer's number;
  - (2) documentation appropriate to allow the chief appraiser to ascertain the applicability of this section and Section 23.125 of this code to the person;
  - (3) sales records to substantiate information set forth in the dealer's declaration filed by the person.
- (h) If a dealer fails to file a declaration required by this section, or if, on the declaration required by this section, a dealer reports the sale of fewer than five vessels or outboard motors in the prior year, the chief appraiser shall report that fact to the Parks and Wildlife Department.
- (i) A dealer who fails to file a declaration required by this section commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed \$500. Each day during which a dealer fails to comply with the terms of this subsection is a separate violation.
- (j) A dealer who violates Subsection (g) of this section commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed \$500. Each day during which a dealer fails to comply with the terms of Subsection (g) of this section is a separate violation.
- (k) In addition to other penalties provided by law, a dealer who fails to file or fails to timely file a declaration required by this section shall forfeit a penalty. A tax lien attaches to the dealer's business personal property to secure payment of the penalty. The appropriate district attorney, criminal district attorney, or county attorney shall collect the penalty established by this section in the name of the chief appraiser or collector. Venue of an action brought under this subsection is in the county in which the violation occurred or in the county in which the owner maintains the owner's principal place of business or residence. A penalty forfeited under this subsection is \$1,000 for each month or part of a month in which a declaration is not filed or timely filed after it is due.

Added by Acts 1995, 74th Leg., ch. 836, Sec. 3, eff. Jan. 1, 1996. Renumbered from Tax Code Sec. 23.12D by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(73), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 1052, Sec. 1, 2, eff. Jan. 1, 1998.

Amended by: Acts 2009, 81st Leg., R.S., Ch. 116, Sec. 3, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 933, Sec. 3K.06, eff. September 1, 2009.

## **SUBTITLE E. SALES, EXCISE, AND USE TAXES**

### **CHAPTER 151. LIMITED SALES, EXCISE, AND USE TAX**

#### **Sec. 151.512. INTEREST**

Unpaid taxes imposed by this chapter draw interest beginning 60 days after the date on which the tax or the amount of the tax required to be collected became due and payable to the state.

#### **Sec. 151.329. CERTAIN SHIPS AND SHIP EQUIPMENT.**

The following items are exempted from the taxes imposed by this chapter:

- (1) materials, equipment, and machinery that enter into and become component parts of a ship or vessel that is of eight or more tons displacement and is:

- (A) used exclusively and directly in a commercial enterprise, including commercial fishing; or
- (B) used commercially as a vessel for pleasure fishing by individuals as paying passengers on the vessel;
- (2) a ship or vessel of eight or more tons displacement, that is used exclusively and directly in a commercial enterprise and is sold by the vessel's builder;
- (3) materials and labor used in repairing, renovating, or converting a ship or vessel that is of eight or more tons displacement and that is used exclusively and directly in a commercial enterprise;
- (4) materials and supplies purchased by the owner or operator of a ship or vessel operating exclusively in foreign or interstate coastal commerce if the materials and supplies:
  - (A) are loaded on the ship or vessel and used in the maintenance and operation of the ship or vessel; or
  - (B) enter into and become component parts of the ship or vessel; and
- (5) materials and supplies purchased by a person providing stevedoring services for a ship or vessel operating exclusively in foreign or interstate coastal commerce if the materials and supplies are loaded aboard the ship or vessel and are not removed before the departure of the ship or vessel.

Acts 1981, 67th Leg., p. 1568, ch. 389, § 1, eff. Jan. 1, 1982.

Amended by Acts 1995, 74th Leg., ch. 230, § 1, eff. July 1, 1995.

### **Sec. 151.3291. BOATS AND BOAT MOTORS.**

(a) The sale, other than the lease or rental, and the storage, use, or other consumption of a taxable boat or motor is exempt from the taxes imposed by this chapter.

(b) In this section, "taxable boat or motor" has the meaning assigned by Section 160.001.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, § 7.02, eff. Oct. 1, 1991.

## **CHAPTER 160. TAXES ON SALES AND USE OF BOATS AND BOAT MOTORS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

#### **Sec. 160.001. DEFINITIONS. In this section:**

- (1) "Agent of the department" means an agent authorized under Section 31.006, Parks and Wildlife Code.
- (2) "Boat" has the meaning assigned by Section 31.003, Parks and Wildlife Code.
- (3) "Dealer or manufacturer" means a dealer or manufacturer as defined under Section 31.003, Parks and Wildlife Code, who has applied for and holds a current number under Section 31.041, Parks and Wildlife Code.
- (4) "Department" means the Parks and Wildlife Department.
- (5) "Outboard motor" has the meaning assigned by Section 31.003, Parks and Wildlife Code.
- (6) "Retail sale" means a sale of an item other than a sale in which the dealer or manufacturer acquires the item for the exclusive purpose of resale.
- (7) "Sale" includes:
  - (A) an installment and credit sale;
  - (B) an exchange of property for property or money;
  - (C) an exchange in which property is transferred but the seller retains title as security for payment of the purchase price; and
  - (D) any other closed transaction that constitutes a sale.
- (8) "Tax assessor-collector" means a county tax assessor-collector.
- (9) "Taxable boat or motor" means:
  - (A) a boat other than a canoe, kayak, rowboat, raft, punt, or other vessel designed to be propelled by paddle, oar, or pole; or
  - (B) an outboard motor.
- (10) "Seller-financed sale" means a retail sale of a taxable boat or boat motor in which the seller collects all or part of the total consideration in periodic payments and retains a lien on the boat or boat motor until all payments have been received. The term does not include a retail sale of a taxable boat or boat motor in which a person other than the seller provides the consideration for the sale and retains a lien on the boat or boat motor as collateral.
- (11) "Title" means the certificate of title document as provided for under Chapter 31, Parks and Wildlife Code.
- (12) "Use" does not include the storage, display, or holding of an item exclusively for sale.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 587, Sec. 30, eff. Oct. 1, 1993; Acts 1993, 73rd Leg., ch. 718, Sec. 5, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(50), eff. Sept. 1, 1995.

#### **Sec. 160.002. TOTAL CONSIDERATION.**

- (a) "Total consideration" means the amount paid or to be paid for a taxable boat or motor, including accessories attached on or before the sale, without deducting:
  - (1) the cost of the item;
  - (2) the cost of material, labor or service, interest paid, loss, or any other expense;
  - (3) the cost of transportation of the item before its sale; or
  - (4) the amount of any manufacturer's or importer's excise tax imposed on the item by the United States.
- (b) "Total consideration" does not include amounts separately stated on the bill or contract for the following:
  - (1) a cash discount;
  - (2) a full cash or credit refund to a customer of the sales price of the item returned to the seller;
  - (3) the amount charged for labor or service rendered in installing, applying, remodeling, or repairing the item sold;
  - (4) a financing, carrying, or service charge or interest on credit extended on the item sold under a conditional sale or other deferred payment contract;
  - (5) the value of a taxable boat or motor taken by a seller as all or a part of the consideration for sale of the item; or
  - (6) a charge for transportation of the item after a sale.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991.

## SUBCHAPTER B. IMPOSITION OF TAX

### Sec. 160.021. RETAIL SALES TAX.

- (a) A tax is imposed on every retail sale of a taxable boat or motor sold in this state. The tax is an obligation of and shall be paid by the purchaser of the taxable boat or motor. If the purchaser pays the tax to the seller, the tax is an obligation of and shall be paid by the seller.
- (b) The tax rate is 6-1/4 percent of the total consideration.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 243, Sec. 1, eff. Sept. 1, 1999.

### Sec. 160.022. USE TAX.

- (a) A use tax is imposed on a taxable boat or motor purchased at retail outside this state and used in this state or brought into this state for use by a Texas resident or other person who is domiciled or doing business in this state. The tax is an obligation of and shall be paid by the person who uses the boat or motor in this state or brings the boat or motor into this state.
- (b) The tax rate is 6-1/4 percent of the total consideration.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991.

### Sec. 160.023. NEW RESIDENT.

- (a) A use tax is imposed on a new resident of this state who brings into this state for use in this state a taxable boat or motor that has been purchased and owned by the new resident in any other state or foreign country.
- (b) The tax is \$15 for each taxable boat or motor.
- (c) The tax imposed by this section is in lieu of the tax imposed by Section 160.022.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991.

### Sec. 160.025. CREDIT FOR OTHER TAXES.

A person is entitled to a credit against the tax imposed by Section 160.022 on a taxable boat or motor in an amount equal to the amount of any similar tax paid by the person in another state on the sale, purchase, or use of the taxable boat or motor if the state in which the tax was paid provides a similar credit for a taxpayer of this state.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991.

## SUBCHAPTER C. COLLECTION AND ENFORCEMENT OF TAXES

### Sec. 160.041. COLLECTION PROCEDURE.

- (a) The department, each agent of the department, and each tax assessor-collector shall collect the taxes imposed by this chapter. The department, agent of the department, or tax assessor-collector of the county in which an application for a Texas certificate of number or certificate of title for a taxable boat or motor is made shall collect the taxes imposed by this chapter on that boat or motor.
- (b) Except as provided by Subsection (d), the department, agent of the department, or the tax assessor-collector may not accept an application for a Texas certificate of number or certificate of title for a taxable boat or motor from a person unless the tax, if any, is paid.
- (c) The tax imposed by Section 160.021 is due on the 20th working day after the date that the taxable boat or motor is delivered to the purchaser. The purchaser or the seller, if the purchaser paid the tax to the seller, shall pay the tax to the department, to an agent of the department, or to a tax assessor-collector on or before the due date.
- (d) If a purchaser pays the tax imposed by Section 160.021 to the seller, and the seller fails to remit the tax in the time and manner required by Subsection (c), the department, agent of the department, or county tax assessor-collector shall accept an application for a Texas certificate of number or certificate of title for a taxable boat or motor from the purchaser if the purchaser provides proof that the tax was paid to the seller. The comptroller shall adopt rules establishing the method of proof required.
- (e) The tax imposed by Section 160.022 or 160.023 is due on the 20th working day after the date that the taxable boat or motor is brought into this state. The person liable for the tax shall pay the tax to the department or to a tax assessor-collector on or before the due date.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 718, Sec. 7, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 243, Sec. 2, eff. Sept. 1, 1999.

### Sec. 160.042. REQUIRED AFFIDAVITS.

- (a) A person obligated to pay a tax imposed by this chapter on a transaction shall file the affidavit as provided by this section with the department, agent of the department, or tax assessor-collector on payment of a tax imposed by this chapter.
- (b) If a taxable boat or motor is sold by a person at a retail sale, the seller and purchaser shall make a joint affidavit stating the value in dollars of the total consideration for the boat or motor at the time of sale.
- (c) If the ownership of a taxable boat or motor is transferred as a result of a gift, the donor shall make an affidavit stating the nature of the transaction.
- (d) If the ownership of a taxable boat or motor is transferred as a result of an even exchange, the parties shall make a joint affidavit stating the nature of the transaction.
- (e) The department, agent of the department, or the tax assessor-collector shall examine each affidavit for the purpose of determining the truth and accuracy of the information it contains. If the department, agent of the department, the tax assessor-collector, or the comptroller has reason to question the truth of the information in an affidavit, or if any material fact fails to meet the rules adopted by the comptroller, the department, agent of the department, the tax assessor-collector, or the comptroller may require any party to the affidavit to furnish substantiation of information in the affidavit before accepting an application for a Texas certificate of number or certificate of title.
- (f) The department, agent of the department, and the tax assessor-collector shall keep a copy of each affidavit and any substantiating materials until it is called for by the comptroller for auditing.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 718, Sec. 8, eff. Sept. 1, 1993.

#### **Sec. 160.043. PAYMENT BY SELLER.**

If the comptroller on an audit of the records of a seller finds that the amount of tax due was incorrectly reported on a joint affidavit and that the amount of tax paid was less than the amount due or that the seller failed to execute and deliver to the purchaser a joint affidavit and any other documents necessary to register the taxable boat or motor, the seller and purchaser are jointly and severally liable for the amount of the tax determined to be due.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991.

#### **Sec. 160.044. TAX RECEIPTS.**

- (a) The comptroller shall prescribe the form of a tax receipt to be issued to a person paying a tax imposed by this chapter.
- (b) The department, agent of the department, or tax assessor-collector collecting a tax imposed by this chapter shall:
  - (1) issue the original receipt to the person paying the tax; and
  - (2) retain one duplicate copy of the receipt as a permanent record of the transaction according to the rules of the comptroller.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 718, Sec. 9, eff. Sept. 1, 1993.

#### **Sec. 160.045. PENALTY.**

- (a) A person who fails to pay a tax imposed by this chapter when due forfeits five percent of the amount due as a penalty, and if the person fails to pay the tax before the 31st day after the date on which the tax is due, the person forfeits an additional five percent.
- (b) The minimum penalty imposed by this section is \$1.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991.

#### **Sec. 160.046. RECORDS.**

- (a) The seller of a taxable boat or motor shall keep at the seller's principal office for at least four years from the date of the sale a complete record of each sale of a taxable boat or motor. The record must include a copy of the invoice of each item sold. The invoice copy must show the full price of the taxable boat or motor and the itemized price of all its accessories. All sales and supporting records of a seller are open to inspection and audit by the comptroller.
- (b) A seller's business records must show the total receipts from all sources of income and expense, including transactions involving taxable boats and motors.
- (c) For a retail sale for which the seller receives full payment at the time of sale, the seller shall keep, at the seller's principal office for at least four years from the date of the sale, documentation of complete payment in the form of:
  - (1) a copy of the payment instrument or a receipt for cash received; and
  - (2) a copy of the receipt for title application, registration, and boat or boat motor tax issued by the county tax assessor-collector or the department or a written statement by the purchaser that:
    - (A) is signed and dated;
    - (B) indicates the date on which the seller provided to the purchaser each of the documents necessary to apply for the title, register the taxable boat or boat motor, and pay the boat or boat motor tax; and
    - (C) includes a statement that the seller advised the purchaser that the purchaser must pay a tax to the county tax assessor-collector or the department.
- (d) For a seller-financed sale, the seller shall keep at the seller's principal office for at least four years from the date on which the seller receives the final payment for the taxable boat or motor:
  - (1) the lienholder's copy of the receipt for title application, registration, and boat or boat motor tax issued by a county tax assessor-collector or the department; and
  - (2) a ledger or other document containing a complete record of the payment history for that boat or boat motor, including:
    - (A) the name and address of the purchaser;
    - (B) the total consideration;
    - (C) the amount of the down payment received at the time the boat or boat motor is sold;
    - (D) the date and amount of each subsequent payment;
    - (E) the date of sale; and
    - (F) the date of any repossession.
- (e) For a sale for resale, the seller shall keep, at the seller's principal office for at least four years from the date of the sale, the purchaser's written statement of resale on a form prescribed by the comptroller.
- (f) Any person, other than the seller's employee, acting for the seller of a taxable boat or boat motor has the same record-keeping responsibilities as the seller.
- (g) A person required to keep records under this section shall also keep records as required by Section 111.0041

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 587, Sec. 31, eff. Oct. 1, 1993. Amended by: Acts 2011, 82nd Leg., 1st C.S., Sec. 4.10, eff. October 1, 2011.

### **SUBCHAPTER D. PENALTIES**

#### **Sec. 160.061. OPERATION; PENALTY.**

- (a) A person commits an offense if the person knowingly operates a taxable boat or motor in this state and the person knows that a tax imposed by this chapter on the boat or motor has not been paid and is delinquent.
- (b) An offense under this section is a Class B misdemeanor.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.01, eff. Oct. 1, 1991.

#### **Sec. 160.062. PENALTY FOR SIGNING FALSE AFFIDAVITS.**

- (a) A person commits an offense if the person signs a joint affidavit required by Section 160.042 and knows that it is false in any material fact.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed \$500.  
Added by Acts 1993, 73rd Leg., ch. 587, Sec. 32, eff. Oct. 1, 1993.