



## **2009 LEGISLATIVE SUMMARY**

The 2009 Texas Legislative Session will go down in the annals as one of the strangest in memory. The session was largely frustrating and sluggish, and culminated in confusion and meltdown. Even long-time observers do not recall a similar session, and are having a hard time explaining exactly what happened, and why, during the past six months.

In this difficult legislative environment, TMDA still managed to have a very successful legislative session, positively impacting proposed legislation to protect and promote the interests of TMDA members. This session, TMDA engaged the services of Royce Poinsett, a government relations attorney with the Austin firm of McGinnis, Lochridge & Kilgore, LLP. Royce joined the firm after a long public service career in state and federal government, included serving as an advisor to the Texas Governor and the Texas House Speaker. Royce worked in conjunction with the dedicated and hard-working TMDA Legislative Committee.

As a result, TMDA continued to raise its “legislative profile” with legislators and staff, maintaining a constant presence in the House and Senate, at committee hearings, and at legislative drafting sessions. As discussed below, TMDA was “at the table” when important legislation affecting dealers was considered, and TMDA was able to amend bills to protect and promote dealer interests. TMDA also established new relationships with leading legislators, relationships which will benefit TMDA in sessions to come.

### **Introduction: Overview of the 2009 Legislative Session**

The session began in the House with an exciting Speaker’s race, resulting in a new House Speaker and dozens of new committee chairmen. In the Senate, the session began with a heated partisan debate over a controversial “Voter ID” proposal, resulting in an “amendment” to long-standing Senate rules of procedure. These two factors of the wholesale change in House management and the “Voter ID” debate set the stage for a slow and difficult session, which would culminate in a 5-day House filibuster and a final-day Senate meltdown.

The House stage was set in the November 2008 elections, when voters elected a Texas House with an almost even 76-74 split. This bare 2-vote Republican margin is the narrowest political divide the Texas House has ever seen. The closest previous divide was a six-vote Democratic majority in the 2001 and 2003 sessions. This even split severely weakened the coalition supporting conservative Republican Speaker Tom Craddick, who had come to the office three sessions ago when the Republicans enjoyed a 16-vote advantage.

At the beginning of the session in January, 65 Democrats joined with a dozen Republicans to replace Craddick with Republican Joe Straus of San Antonio. Straus promised a more moderate style as Speaker, in which power would be more evenly shared between Republicans and Democrats, and in which the Speaker would “let the House run itself” instead of setting and pushing a particular legislative agenda.

After the election of the new Speaker, the session took on a slow and sluggish feel as Speaker Straus took a few weeks to hire his own new staff and to select his own new committee chairs. Straus appointed 18 Republican chairs and 16 Democratic chairs. Only a third of these appointees had been chairs the previous session, and only four of them were returning to chair the same committee as in the previous session. Therefore a full 30 committees had new chairs at the helm, and most of these new chairs selected their own new committee staff. This widespread overhaul left the House lagging several weeks behind the typical schedule, with committees taking longer than usual to organize and begin holding hearings on legislation, and with few bills making it to the floor for debate by the full House. Quickly, the prevailing fear in both chambers of the Legislature was of a legislative logjam in the House.

This fear became reality in the waning days of session when House Democrats sought to prevent debate on the controversial “Voter ID” election law bill by engaging in a 5-day “filibuster” on the House floor. As a result, hundreds of bills died without being debated. Finally, on the last 2 days of session when the Voter ID legislation could no longer be brought up for debate, the House Democrats ended the filibuster and the House rushed to complete critical legislation which had been delayed. The Legislature did manage to complete most of its critical work: passing a state budget for 2010-2011-2011, raising the tax exemption for small businesses under the new state business tax, and bolstering funding for the state’s vulnerable windstorm insurance program.

However, on the last day of the session, as a result of the general frustration and confusion in the House, the Legislature failed to reauthorize two of the most important state agencies, the Department of Insurance and Department of Transportation. Without reauthorization, these state agencies will have to begin “winding down” and going out of business. The Legislature also failed to authorize \$5 billion in needed transportation bonds without which many “shovel-ready” transportation projects could be delayed canceled.

This final-day breakdown will result in the Governor calling a short special session this summer in order to reauthorize the two agencies and authorize the transportation bonds.

## **TMDA Priority Legislation**

These pieces of legislation received the most intense attention and advocacy from the TMDA Legislative Committee and the TMDA lobbyist, because they most directly affected the interests of TMDA members.

### **Moving Off-Road Vehicles from Sales Tax to Motor Vehicle Tax**

#### **HB 4516 by Rep. Homer**

This legislation was filed by Rep. Mark Homer (Paris, Texas) at the request of TMDA to address unfair competition from dealers in Oklahoma, Louisiana, and other border states who are selling “tax-free” vehicles to Texas resident. These practices cost Texas dealers and the State of Texas jobs and revenues. HB 4516 would have leveled the playing field, allowing Texas dealers to compete on equal terms with out-of-state competitors. The bill would have simply moved off-road vehicles from the general sales and use tax to the motor vehicle sales tax – just like on-road motorcycles – and required them to be titled. TMDA representatives testified for the bill in the House Ways & Means Committee, and the committee favorably reported the bill to the full House. *Unfortunately, due to the legislative logjam the session ended without this bill being debated by the full House. However, this bill did receive a very favorable hearing in the House, and did pick up significant support from leading House and Senate Members which can be utilized next session.*

### **New Dealer Protections within the Manufacturer/Dealer Franchise Laws**

#### **HB 2640 by Rep. T. Smith/Sen. Watson**

HB 2640 amends Chapter 2301, Occupations Code in several areas to improve the regulation of the motor vehicle manufacturer/dealer relationship and enhance protections for dealers, including Motorcycle Dealers. Given the current economic situation and the contraction in the marketplace for new motor vehicles, HB 2640 updates the franchise law to prevent unfair practices by manufacturers in buying back vehicles upon termination, to provide for consideration of economic and market conditions when evaluating new dealer points, the addition of line-makes at an existing facility, and manufacturer/distributor requirements for dealership facilities, and to prohibit manufacturers from taking adverse actions against a dealer under a franchise agreement when a motor vehicle sold by a dealer subsequently ends up exported to another country. TMDA supported this legislation as it progressed through the Legislature. *This legislation was passed and signed into law.*

### **Increased Fees for Inspectors and Stations**

#### **HB 3457 by Rep. Branch/SB 2110 by Sen. West**

This legislation was filed in response to news reports of inspection fraud in North Texas. As originally filed, the legislation would have increased inspector fees from \$10 to \$250 and station fees from \$30 to \$500, and impose new penalties for inspection fraud. TMDA approached Rep. Branch and advocated for the removal of the increased fees from the legislation, since increased fees on all inspectors and stations was unfair to law-abiding businesses, and would not hinder fraud in any way. Rep. Branch agreed with TMDA’s analysis and removed those increased fees. *However, due to the legislative logjam the bill was not enacted by the Legislature.*

## **Training Requirements for “High-Performance Motorcycles”**

### **HB 4531 by Rep. Chavez**

This legislation would have required all owners and operators of “high-performance motorcycles” to take the motorcycle operator training course within 180 days of purchase. The original version of this bill contained an ambiguous and unworkable definition of “high-performance motorcycles” that would have been difficult if not impossible for motorcycle dealers and the public to understand and follow. TMDA approached Rep. Chavez and offered our assistance in drafting a new, workable definition involving the ratio between a cycle weight and horsepower, which Rep. Chavez incorporated into her bill. *However, the bill was not enacted by the Legislature.*

## **New Texas Department of Motor Vehicles**

### **HB 3097 by Rep. McClendon/Sen. Carona)**

HB 3097 creates a new state agency, the Texas Department of Motor Vehicles, made up of the vehicle divisions (Motor Vehicle, Motor Carrier, Vehicle Titles and Registration, Automobile Burglary and Theft Prevention Authority) formerly housed within the Texas Department of Transportation (TxDOT). Oversight, rule-making and decision-making of this new agency will be provided by a Board appointed by the Governor of stakeholders (including franchised dealers) and public members. TMDA closely followed this legislation to ensure that it did not negatively affect TMDA interests. As this new legislation is implemented, TMDA will provide updates to you on the ramifications it may have on your dealership. *This legislation was passed and signed into law.*

## **Recreational Off-Highway Vehicles**

### **HB 2553 by Rep. Hildebran**

Creates a new definition of a “recreational off-highway vehicle”, and provides that such vehicles may be operated on a public or private beach in the same manner as a golf cart. TMDA closely followed this legislation to ensure that it did not have any unintended consequences for TMDA members. *This legislation was passed and signed into law.*

### *Other Legislation Passed by the Legislature this Session*

These pieces of legislation also received attention and advocacy from the TMDA Legislative Committee and the TMDA lobbyist, because they also affected the interests of TMDA members and their customers. These bills were passed and signed into law.

#### **Purchaser Protections**

##### **SB 1617 by Sen. Wentworth/Rep. W. Smith**

SB 1617 amends Sec. 501.021 of the Transportation Code to protect the rights of owners and purchasers of motor vehicles. Additional protections were needed to better inform consumers of the history of a motor vehicle when it has been subject to the state's "lemon law", to release an owner's liability for a motor vehicle once it has been sold, and to ensure the timely registration and titling of a vehicle when the sale is completed by a motor vehicle dealer.

#### **Three-Wheeled Passenger Vehicles**

##### **HB 3599 by Rep. F. Brown**

H.B. 3599 provides a definition for a motorcycle that is an enclosed three-wheeled passenger vehicle with car-like safety features. The bill allows drivers of these vehicles to operate them with a Class C driver's license, clarifies current law that drivers and riders of these vehicles are not required to wear helmets, and ensures that these enclosed three-wheeled vehicles join traditional motorcycles in having the use of preferential lanes.

#### **Perfection of Lienholders/Assignees**

##### **SB 1592 by Sen. Fraser**

This legislation seeks to respond to a recent court case which held that a lien is not perfected as to an assignee unless specifically named on the motor vehicle title. This legislation authorizes the holders of certain security interests or liens to assign those security interests or liens, and provides that an assignee's failure to make the application or notify the debtor of the assignment does not create a cause of action against the assignee or the security-interest holder, nor does it affect the validity or perfection of the security interest assigned to the assignee.

#### **Temporary Tags**

##### **SB 1235 by Sen. W. Davis**

This legislation amends the temporary tag rules to allow for the use of substances other than cardboard, extend the duration of the tag to 60 days, eliminate the supplemental tag, and eliminate the buyer notice.

#### **Safe Operation of Motorcycles; Child Motorcycle Passengers**

##### **SB 1967 by Carona**

This legislation relates to the safe operation of motorcycles and other vehicles in this state; providing penalties. This bill also incorporates provisions from HB 4449 prohibiting motorcyclists from carrying a passenger that is not at least five years of age, except in a sidecar.

### **Legislation Not Passed this Session**

TMDA also spent considerable time and energy monitoring and advocating on the following pieces of legislation, which were not passed by the Legislature. However, it is likely that some if not all of these bills will be re-filed and reconsidered during the next legislation session beginning January 2011. During the interim, the TMDA Legislative Committee and lobbyist will carefully follow these issues and make TMDA's positions known to relevant legislators.

#### **Moving Off-Road Vehicles from Sales Tax to Motor Vehicle Tax**

##### **HB 4516 by Rep. Homer**

Discussed above.

#### **Training Requirements for "High-Performance Motorcycles"**

##### **HB 4531 by Rep. Chavez**

Discussed above.

#### **Motorcyclist Protections**

##### **SB 488 by Sen. Ellis**

S.B. 488 would have provided new protections for designated "vulnerable road users", including pedestrians, runners, cyclists, motorcyclists, construction workers or someone on horseback. The bill would have mandated that drivers must vacate the lane that the vulnerable road user is in if the highway has at least two lanes in the same direction; or pass the vulnerable road user at a safe distance, defined as three feet for a car or light truck and six feet for commercial vehicles. Drivers turning left at intersections would have been required to yield the right of way to a vulnerable road user approaching from the opposite direction. Drivers could not overtake a vulnerable road user going the same direction and make a right turn in front of the user unless the user is a safe distance away. A violation resulting in property damage would be a misdemeanor punishable by up to a \$500 fine. A violation resulting in bodily injury would be a Class B misdemeanor, punishable by fines up to \$2,000 and up to 180 days in jail. This legislation was passed by the Legislature, but vetoed by the Governor.

#### **Lane-Splitting by Motorcyclists**

##### **HB 506 by Sen. Carona**

S.B. 506 would have authorized a motorcyclist to "lane split" (i.e., operate at a safe distance between lanes of traffic moving in the same direction) during periods of traffic congestion, so long as the motorcyclist and any passenger wear protective headgear and the motorcyclist moves at a speed of no more than five miles per hour greater than the speed of other traffic moving at a speed of 20 miles per hour or less. This bill would have prohibited lane-splitting in a school crossing zone or a location where the posted speed limit is 20 miles per hour or less.

#### **Duties in Repairs/Inspections**

##### **HB 1250 by Rep. Corte, HB 4526 by Rep. Villarreal**

HB 1250 sought new disclosures for repairs in connection with a vehicle inspection. HB 4526 sought new requirements in the vehicle repair process, including signed estimates, customer authorizations, and detailed charges and invoicing. Many feel the new requirements and restrictions contained in these bills would be extremely onerous to repair shops.

### **Transfer of Vehicle**

#### **HB 2299 by Y. Davis**

This legislation would have provided that a dealer may not sell, advertise for sale, or transfer a motor vehicle with an outstanding balance owed to a secured party until the dealer receives a notarized receipt from the secured party that the vehicle has been paid off.

### **Tire Disposal**

#### **SB 617 by Sen. Shapleigh**

SB 617 would have required tire retailers to render a tire unusable if the tire does not meet the inspection criteria adopted by the Department of Public Safety.

### **Motorcyclist Non-Discrimination**

#### **HB 1569 by Rep. Y. Davis**

H.B. 1569 would have prohibited an establishment from denying access or admission to group members solely because they operate a motorcycle or wear clothing that displays the name of an organization or association that operates motorcycles.

### **California Emissions Standards**

#### **HB 776 by Rep. Strama/SB 119 by Sen. Ellis**

These bills would have required the State of Texas commission to implement a low-emission vehicle program that is consistent with the California Low-Emission Vehicle program for motor vehicles with a model year of 2012 or later.

### **Local Option Transportation Funding**

#### **Various bills**

Various bills were introduced which would have allowed for certain counties to seek voter approval to impose local taxes and fees, including gas taxes and vehicle registration/mobility fees, to fund local transportation projects, including light rail in the DFW Metroplex.

### **TxDOT “Vision 21”**

#### **HB 4677 by Rep. Phillips/SB 1507 by Sen. Carona**

This TxDOT “modernization and cleanup” bill would have reorganized and streamlined the various statutes dealing with motor vehicles, and would have provided the framework for electronic online titling and other transactions in the future.