According to the Texas Occupations Code a "conversion" means a motor vehicle which has been substantially modified by a person other than the manufacturer or distributor of the chassis of the motor vehicle and which has not been the subject of a retail sale. A "converter" means a person who prior to the retail sale of a motor vehicle, assembles. installs, or affixes a body, cab, or special equipment to a chassis, or who substantially adds, subtracts from, or modifies a previously assembled or manufactured motor vehicle unless the resulting vehicle is a motor home, ambulance, or fire-fighting vehicle. A "retail sale" is defined as the sale of a motor vehicle except: (A) a sale in which the purchaser acquires a vehicle for the purpose of resale; or (B) a sale of a vehicle that is operated under and in accordance with Section 503.061 of the Texas Transportation Code, which allows for the use of metal dealer's license plates. Section 2301,252 of the Texas Occupations Code provides that a person must have a valid franchised dealer's license for the make or makes of new motor vehicles being bought. sold, or exchanged and that the "make" of a conversion is that of the chassis manufacturer.

What this means in English is that a new motor vehicle that has something substantial done to it prior to it being sold to the end-user customer must be sold to the end-user by a Texas dealer franchised and licensed to sell the make of the chassis of the converted product. Neither converters nor their representatives are allowed to sell converted products in Texas at retail.

So, the licenses needed to correctly sell such converted products in Texas, including by bid, are as follows:

**Manufacturer's license:** The entity that built the chassis, cab and chassis, or entire vehicle, depending on the extent of the conversion.

**Converter's license:** The entity that performed the conversion work on the chassis, cab and chassis, or entire vehicle.

**Representative's license:** The entity that acted as a representative for the converter (if the converter employs or contracts with a person as a representative).

**Franchised dealer's license:** The Texas dealer that is licensed to sell the make of the chassis, cab and chassis, or entire vehicle.

For example, if the conversion is being performed on a new heavy-duty International truck, then International Truck and Engine Corporation would have the manufacturer's license and the entity that ultimately sells the converted product would be a licensed International dealer. If the conversion was performed on a new Ford light truck, then Ford Motor Company would have the manufacturer's license and the entity that ultimately sells the converted product would be a licensed Ford dealer. If the vehicle on which the conversion is performed is a Ford truck, then the converted product should be considered a new Ford truck with "something on it."

#### FREQUENTLY ASKED QUESTIONS:

Can a converter or a converter's representative invoice and obtain payment from the end-user customer for the entire converted vehicle and have the franchised dealer just obtain title in the name of the customer?

No. The franchised dealer must handle the title work for the new motor vehicle, invoice the customer, and collect the entire purchase price of the new vehicle. The <u>dealer</u> must sell the new motor vehicle; allowing the converter or representative to invoice the customer makes it appear that the <u>converter</u> is selling the new motor vehicle. Once the conversion work has been done, the unit is a "new motor vehicle with something on it" and the complete unit, including the "body," must be sold by a franchised and licensed dealer of the underlying chassis.

How can a converter bid on a complete vehicle?

A franchised dealer for the underlying chassis must be listed on the bid as the seller of the complete unit; the purchase order must be from the franchised dealer for the complete unit; the payment for the complete unit must be made to the franchised dealer; and the franchised dealer must perform necessary title work on the complete new motor vehicle. The converter can be involved in the bidding process by providing information on the specifications of the conversion package and other relevant information and assistance in drafting the bid; however, a franchised dealer and only a franchised dealer can sell the unit.

If a customer (private or government) bought and paid for a new cab and chassis from a franchised dealer then later purchased a conversion body mounted by a licensed converter, could the converter invoice the body and conversion work to the customer?

If the customer bought the vehicle first and then took it to someone to have special equipment or a body installed, this is an "after-market" conversion. This transaction would not be subject to regulation by the Texas Occupations Code, as long as the end-user customer pays the converter only for the body and the installation of the body, and the franchised dealer that sold the cab and chassis has done the title work on the completed vehicle. Because this vehicle has not been titled, it is still on a Manufacturer's Certificate of Origin (MCO), and franchised dealers are the only licensees that are allowed to turn MCOs into the tax offices to have titles issued in the name of the purchasers.

Can a customer contact an out-of-state converter on his own, purchase a converted new motor vehicle, transport it into Texas and obtain title without the involvement of a Texas franchised dealer?

If the vehicle is not delivered to the Texas customer by the converter and no sales activity occurs in Texas, including advertising, signing of documents,

opening of a bid, etc., then the activity is not regulated by Texas law. Any Texas consumer can go to any other state and buy a vehicle without that out-of-state entity having to receive a license from Texas. But the customer must go to the dealer or converter or whoever, not the other way around. Please note that bidding on a vehicle to be sold to a Texas consumer, including a municipality, is considered sales activity in Texas.

## To whom should the end-user customer go when the vehicle needs service or warranty repairs, the converter, or the franchised dealer?

One of the main reasons converters are required to be licensed is because of warranty issues. The converter can still train and provide service on the special equipment or body that they install. What they are not allowed to do is sell the new motor vehicle that their equipment is mounted on. So, if the service or warranty issues involve the conversion package, then the converter is responsible for that work. Any licensed and franchised dealer of the linemake of the chassis would be responsible for the warranty work on the chassis.

### Can a converter sell a converted unit directly to a franchised dealer?

Yes, because this is not a retail sale. The converter would technically have to sell the converted new motor vehicle to the franchised dealer in order for the franchised dealer to sell the converted new motor vehicle to the end-user customer.

#### Is there any party a non-franchised dealer can buy and sell a new converted unit to out-of-state customers, for instance?

No one but a franchised dealer of the underlying chassis can sell a converted new motor vehicle in Texas. Other states may have different laws governing the sales of converted vehicles. Check with the individual state or states to determine what their laws permit.

Converters sometimes have new converted motor vehicles in their stock that they commit to being demonstrators and will title these units in the name of the converter. If the converter or one of their representatives has a general distinguishing number (license to sell used motor vehicles), can the converter or representative sell these units to the retail public?

If the converter did not purchase the vehicle for their personal use, but only to use it as a demonstrator and get someone else to buy it, the sale of the unit to the converter was not a "retail sale", as it was for the purpose of resale, and the unit is still a new motor vehicle. If it's still a new motor vehicle, then it can only be sold by a franchised and licensed dealer for the underlying chassis.

## What type of license plates should a converter use to demonstrate their products?

The Texas Transportation Code was amended in 1999 to allow converters to purchase metal converter license plates to attach to vehicles that they are engaged in the business of assembling or modifying, instead of having to title and register the vehicle. Converters may also obtain temporary cardboard tags to use on unregistered vehicles in order to demonstrate the complete unit to prospective buyers who are employees of a franchised motor vehicle dealer, or convey the vehicle under certain circumstances.

8-12-11

#### **KNOW THE LAW #4**



# CONVERTERS & CONVERSIONS





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