

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-11-00116-CV**

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**Dutchmen Manufacturing, Inc., Appellant**

**v.**

**Texas Department of Transportation, Motor Vehicle Division, Appellee**

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**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 353RD JUDICIAL DISTRICT  
NO. D-1-GN-09-004112, HONORABLE TIM SULAK, JUDGE PRESIDING**

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**CONCURRING OPINION**

I join in the majority’s judgment affirming the district court’s judgment affirming the Motor Vehicle Division’s final order, but depart from the majority’s analysis of Dutchman’s first issue. Construing subchapter M of occupations code chapter 2301 (a/k/a the “Lemon Law”) as a whole, as we are required to do,<sup>1</sup> section 2301.606 merely imposes a set of procedural requirements governing the Director’s administrative adjudication of the substantive rights and remedies created in sections 2301.603 and 2301.604. *See* Tex. Occ. Code Ann. §§ 2301.603, .604, .606 (West 2012). Consequently, the “opportunity to cure the alleged defect or nonconformity” contemplated by section 2301.606, subsection (c), entails the “reasonable number of [repair] attempts” that section 2301.604 makes a prerequisite for the remedy of replacement or return. *Compare id.*

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<sup>1</sup> *See, e.g., Great-West Life & Annuity Ins. Co. v. Texas Attorney Gen. Child Support Div.*, 331 S.W.3d 892, 893 (Tex. App.—Austin 2011, pet. denied) (“We consider [a statute’s] words in context, not in isolation.”) (citing *State v. Gonzalez*, 82 S.W.3d 322, 327 (Tex. 2002)).

§ 2301.604 *with id.* § 2301.606. But for the reasons stated in footnote 7 of the majority’s opinion, I agree that the unchallenged or undisputed facts would give rise to a rebuttable presumption under section 2301.605 that Dutchman (directly or through its agents) was afforded a “reasonable number of [repair] attempts” here and that substantial evidence would support a finding that this requirement was satisfied here. *Id.* § 2301.605. I also agree that substantial evidence supports the Director’s finding of a substantial impairment in value. *See id.* §§ 2301.601(1), .604. For these reasons, I concur in the judgment.

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Bob Pemberton, Justice

Before Chief Justice Jones, Justices Pemberton and Henson

Filed: August 17, 2012