

HOUSE BILL REPORT

HB 1445

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to the relationship between motor vehicle manufacturers and dealers.

Brief Description: Regulating motor vehicle manufacturer and dealer relationships.

Sponsors: Representatives Conway, Chandler, Kenney, Fromhold and Clements.

Brief History:

Committee Activity:

Commerce & Labor: 2/10/03, 2/19/03 [DPS].

Brief Summary of Substitute Bill

- Defines the relationship between automobile manufacturers and new auto dealers as to the sale of dealerships, dealer reimbursement for warranty work and incentive programs, and dealers selling multiple brands of new autos.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Conway, Chair; Wood, Vice Chair; Chandler, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Crouse, Holmquist, Hudgins, Kenney and McCoy.

Staff: Matt Cooper (786-7106).

Background:

Automobile manufacturers maintain a franchise relationship with their dealers. State law and the franchise agreement outline the responsibilities of each party. Generally the law dictates when a manufacturer may own a franchise, when manufacturers may terminate a dealer's franchise, and that manufacturers may not discriminate between dealerships.

Auto manufacturers' franchise agreements generally require manufacturers to approve any prospective buyer of a dealership. The law allows manufacturers to establish special provisions in franchise agreements that give preference in the sale of dealerships to

family members of current owners, to dealership management employees, and to individuals from groups who are generally under represented among existing dealers (a dealer diversity program).

Franchise agreements require dealers who perform warranty work to submit claims to manufacturers for reimbursement of the cost of the work.

Frequently manufacturers offer incentive programs like additional discounts or money back to consumers. Dealers give these discounts or money directly to the consumer and then file a claim for reimbursement with the manufacturer under the provisions of a franchise agreement.

Summary of Substitute Bill:

Manufacturers may own an interest in a dealership for up to two years when the manufacturer is assisting a new owner or a person in a dealer ownership diversity program to establish a dealership, and that person will make a substantial capital investment in the dealership within those two years.

A manufacturer may not cancel or fail to renew a dealer's franchise because the dealer owns or attempts to buy another dealership which sells another brand of automobiles, or because the dealer sells two or more brands of automobiles from the same dealership.

Manufactures may include a "right of first refusal" in a franchise agreement. If a manufacturer elects to assert the right, the manufacturer must notify the dealer within 45 days of the dealer receiving an offer to purchase the dealership. The manufacturer must agree on terms and conditions at least as favorable as those in the offer the dealer received, and must reimburse the dealer and prospective purchaser for any costs incurred. A manufacturer may not assert the right of first refusal if it has already approved the buyer, or if the buyer is a family member of the current owner or a management employee of the dealership. A stepchild is included in the definition of a family member.

Dealers must submit any claims for reimbursement for warranty work to the manufacturer within one year of the date the work was performed. A dealer may submit a claim for an incentive program reimbursement for up to one year after the incentive program ends. The manufacturer must pay an incentive program claim within 30 days of receiving it, but may audit and re-adjust past incentive claims for up to one year.

Washington is established as the venue for any franchise agreement legal actions.

Substitute Bill Compared to Original Bill:

The substitute bill deletes the list of factors for evaluating "reasonable business considerations" when a manufacturer may prohibit a new auto dealer from selling more than one line of new automobiles.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This bill is a product of negotiations between the dealers in the state of Washington and the auto manufacturers. The bill recognizes the differences in the bargaining power of dealers and manufacturers when it comes to negotiating franchise agreements for new car dealerships.

The standards set out in the bill will be good for the dealers, manufacturers, and the public. Dealers and manufacturers will have certainty and stability in their relationship. The provisions of the bill will ensure competition within the industry which serves the public interest.

Auto dealers will be assured flexibility of being able to sell more than one brand if that is best for their business. They also need the flexibility to be able sell their dealerships without the uncertainty of having the manufacturer unexpectedly exercise a right of first refusal. Having a manufacturer exercise that right unexpectedly creates uncertainty for the dealer, any prospective buyer, and the dealer's customers.

Right now there are no industry-wide standards for when dealers get paid for warranty reimbursement claims and dealer incentive claims. Last year one manufacturer offered more than 13,000 different dealer incentive programs. Dealers need time to be able to sort out the offers and submit claims to the manufacturer. If there is a problem with any of these claims, the dealers need to be able to amend the claims and resubmit them. Allowing the manufacturers time to audit these claims provides them a way to protect their interests.

It is very difficult for an individual to assemble the capital to buy a dealership. Allowing manufacturers to own an interest in a dealership with an individual for a limited time helps increase diversity of ownership in the auto industry. Requiring the individual who is purchasing the dealership from the manufacturer to make a significant investment in the dealership ensures that the individual is actually owning and running the dealership, not the manufacturer.

Testimony Against: Manufacturers should be able to contract with dealers to sell only

one line of new cars. The specific list of factors to be considered under "reasonable business considerations" should be deleted. There should not be a list of factors for a court to consider unless that list reflects the interests of both sides. That is the way it is in 26 other states.

The time period for submitting dealer incentive claims should mirror the time period for submitting warranty claims.

Testified: (In support) Jim Boldt, Mary Burn, Rod Parr, John Creedon, and Gene Johnson, Washington Auto Dealers.

(Opposed) Nancee Wildermuth, Alliance of Automotive Manufacturers; and Cliff Webster, General Motors Corporation.