
Commerce & Labor Committee

HB 2547

Brief Description: Concerning franchise agreements between new motor vehicle dealers and manufacturers.

Sponsors: Representatives Conway, Condotta, Maxwell, Sullivan, Roach, Kessler, Sells, Kenney, Appleton, Hunter, Pedersen, Upthegrove, Hinkle, Ormsby, Herrera, Kretz, Hasegawa, Campbell, Takko, Springer, Dammeier and Haler.

Brief Summary of Bill

- Modifies the provisions regarding motor vehicle manufacturer and dealer franchise agreements, including those related to terminations of franchises, warranty work, designated successors to franchise ownership, unfair practices, and transfers of dealerships.

Hearing Date: 1/15/10

Staff: Alison Hellberg (786-7152).

Background:

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

Termination, Cancellation, or Nonrenewal of a Franchise.

A manufacturer's ability to terminate, cancel, or fail to renew a franchise is restricted. A manufacturer must comply with notice requirements. A dealer may also request a hearing by an administrative law judge to determine that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Except in certain cases that constitute good cause for termination, cancellation, or nonrenewal of a franchise, a manufacturer must pay the dealer:

- the unexpired term of the lease or one year, whichever is less, if the dealer is leasing the dealership facilities from someone other than the manufacturer; or
- the reasonable rental value of the dealership facilities for one year or until the facilities are leased or sold, whichever is less, if the dealer owns the new motor dealership facilities.

Warranty Work.

Manufacturers must specify the dealer's obligation to perform warranty work or service on the manufacturer's products in franchise agreements. Manufacturers must provide dealers with a schedule of compensation to be paid to the dealer for warranty work or service required of the dealer by the manufacturer in connection with the manufacturer's products.

Designated Successor to Franchise Ownership.

An owner may appoint a designated successor to ownership of the franchise upon the owner's death or incapacity if the designated successor meets certain requirements.

Sale, Transfer, or Exchange of Franchise.

A manufacturer may not unreasonably withhold consent to the sale, transfer, or exchange of a franchise to a qualified buyer who meets the normal, reasonable, and uniformly applied standards established by the manufacturer for the appointment of a new dealer. In determining whether a manufacturer unreasonably withheld its approval, the manufacturer has the burden of proof that it acted reasonably. A manufacturer's refusal to accept or approve a proposed buyer who otherwise meets the normal, reasonable, and uniformly applied standards established by the manufacturer for the appointment of a new dealer, or who otherwise is capable of being licensed as a new motor vehicle dealer, is presumed to be unreasonable.

Summary of Bill:

Termination, Cancellation, or Nonrenewal of a Franchise.

During a legal dispute concerning the termination, cancellation, or nonrenewal of a franchise, a dealer's franchise is maintained. For purposes of the notice requirements of the termination, cancellation, or nonrenewal of a franchise, a discontinuance of the sale and distribution of a motor vehicle line, or the constructive discontinuance by material reduction in selection offered, is considered a termination, cancellation, or nonrenewal of a franchise.

In addition to the other required sums that the manufacturer is required to pay in certain terminations, cancellations, or nonrenewals of a franchise, a manufacturer must also pay the dealer for the costs of any relocation, substantial alteration, or remodeling of a dealer's facilities required by a manufacturer that was completed within three years of the termination, cancellation, or nonrenewal. The manufacturer must also pay the dealer the fair market value of the dealer's goodwill within 90 days of the termination.

Warranty Work.

The schedule of compensation for warranty work must not be less than the rates charged by the dealer for similar service to retail customers for nonwarranty service and repairs and the schedule of compensation for any existing dealer.

Designated Successor to Franchise Ownership.

If an owner has owned the dealership for more than five consecutive years, the owner may appoint a designated successor to be effective on a date of the owner's choosing that is prior to the owner's death or disability.

Unfair Practices.

Several unfair practices by manufacturers are added. A manufacturer may not:

- discriminate against a dealer by preventing, offsetting, or otherwise impairing the dealer's right to request a documentary service fee on affinity or similar program purchases;
- terminate a franchise based upon the failure of a franchisee to change the location of the dealership or to make substantial alterations to the use or number of franchises on the dealership premises or facilities;
- require a dealer to make a material alteration, expansion, or addition to any dealership facility, unless the required alteration, expansion, or addition is uniformly required of similarly situated dealers and is reasonable in light of all existing circumstances, including economic conditions;
- prevent any dealer from changing the executive management of a dealer unless the manufacturer can show that a proposed change will result in executive management by a person who is not of good moral character or who does not meet reasonable, preexisting, and equitably applied standards of the manufacturer; or
- condition the sale, transfer, relocation, or renewal of a franchise agreement or condition sales, services, parts, or financial incentives upon site control or an agreement to renovate or make improvements to a facility.

It is also an unfair practice for a manufacturer to enter into an agreement in which a dealer is asked or required to waive any of the franchise provisions.

Sale, Transfer, or Exchange of Franchise.

A manufacturer may not withhold consent to the sale, transfer, or exchange of a franchise to a qualified buyer who meets the normal, reasonable, and uniformly applied standards established by the manufacturer for the appointment of a new dealer who does not already hold a franchise with the manufacturer. The qualification that the manufacturer may not "unreasonably" withhold consent is removed.

Vehicle Export.

A manufacturer may not take or threaten to take any adverse action against a dealer because the dealer sold or leased a vehicle to a customer who exported the vehicle or who resold the vehicle, unless the manufacturer definitively proves that the dealer had actual knowledge of the customer's intentions. A manufacturer must indemnify, hold harmless, and defend dealers from claims against the franchisee for any policy or program of the manufacturer for sales of vehicles to parties that intend to export a vehicle purchased from the franchisee.

Manufacturer liability.

Manufacturers are liable for claims against the dealer if the claim results from:

- the condition, characteristics, manufacture, assembly, or design of any vehicle, parts, accessories, tools, or equipment manufactured by the manufacturer;
- service systems, procedures, or methods required or recommended by the manufacturer;

- improper use of nonpublic personal information obtained from a dealer; or
- any act or omission of the manufacturer for which the dealer would have a claim for contribution or indemnity.

Attorney's Fees.

A dealer injured by a violation of the franchise provisions may bring a civil action to recover damages, together with the costs of the suit, including reasonable attorneys' fees.

Appropriation: None.

Fiscal Note: Not requested.

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