

HOUSE BILL REPORT

HB 2547

As Reported by House Committee On: Commerce & Labor

Title: An act relating to franchise agreements between new motor vehicle dealers and manufacturers.

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 History:

Committee Activity:

Commerce & Labor: 1/15/10, 2/2/10 [DPS].

Brief Summary of Substitute 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.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Crouse, Green, Moeller and Williams.

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

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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.

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 Substitute 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. If a manufacturer proves that the rate unreasonably exceeds the rates charged by other dealers in the relevant market area, a dealer must submit a lower rate.

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. A dealer must notify the manufacturer at least 30 days before a designated successor's proposed succession.

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 because the dealer relocates the manufacturer's or distributor's make or line of vehicles to an existing dealership facility, except that, in any non-emergency circumstance, the dealer must give the manufacturer at least 60 days notice;
- terminate a franchise based on 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 make improvements or substantial renovations to a facility. A "substantial renovation" is anything that costs a dealer more than \$5,000.

A waiver of franchise law is prohibited, except that certain manufacturer obligations and dealer rights may be waived if the waiver is set forth in a written contract and separate consideration is given.

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 knew or should have known 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 by the manufacturer 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.

Attorneys' 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 if the dealer prevails.

Substitute Bill Compared to Original Bill:

A manufacturer must accept the dealer's retail rate for warranty work unless manufacturers prove that the rate unreasonably exceeds the rates charged by other dealers in the relevant market area. A dealer must submit a lower rate if the manufacturer proves that the rate is unreasonable.

In non-emergency circumstances, a dealer must give the manufacturer at least 60 days notice before relocating the manufacturer's make or line of new motor vehicles or service to the dealer's existing dealership facility. A "substantial renovation" is defined as anything that costs a dealer more than \$5,000. Manufacturers are required to pay the goodwill value of a dealership when the manufacturer terminates the franchise, not when the dealer voluntarily

leaves the business. A dealer must notify the manufacturer at least 30 days before a designated successor's proposed succession.

A manufacturer is prohibited from taking adverse action against a dealer because a customer exported a vehicle, unless the dealer knew or reasonably should have known the customer would export the vehicle, instead of requiring the dealer to have actual knowledge. A limited waiver of certain manufacturer obligations and dealer rights is allowed if the waiver is set forth in a written contract and separate consideration is given.

A manufacturer is only required to pay a dealer's attorney's fees only when the dealer prevails in litigation. It is clarified that manufacturers are only liable for improper use of non-public personal information concerning any customer or employee of the dealer, if the manufacturer improperly used it.

A severability clause is added.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) This bill updates the motor vehicle franchise laws. As the economy and the industry has changed, the relationship between dealers and manufactures has been tested. This bill will restore balance and level the playing field between dealers and manufacturers. It also allows dealers to make the best decisions regarding their businesses. A dealer understands the local business climate and it is the dealer's investment, community, and employees. Dealers provide family wage jobs, and in many communities, they collect the largest amount of sales tax. Selling cars is a tough industry, but the market should decide when a dealership fails, not the manufacturer.

This bill addresses several areas where dealers have struggled. Dealers are given very detailed instructions on how they build their dealerships and are often required to make substantial alterations. It is understandable that dealerships must meet the image of the company, but these demands should be reasonable and fair. If requiring dealers to make substantial changes, manufacturers should stand by those requirements.

Dealers and manufacturers have met and there are places where they are working on compromised language. There should be a proposed substitute bill that addresses some of the manufacturers' concerns.

(With concerns) Manufacturers and the automobile (auto) industry are facing great economic difficulties. The Legislature passed sweeping changes to the franchise law just last year.

There are some changes in this bill that will hurt manufacturers, but manufacturers understand why they are necessary. There are some changes in this bill, however, that will hurt manufacturers for a great deal. The bill is flawed the way it is drafted, particularly in sections 4 and 6 of the bill, in regards to warranty work and site control. This legislation should not go too far.

The warranty work provisions would be a major change from how things currently work. The work at a dealership is more expensive than any other auto repair facility. This bill makes manufacturers pay those high costs. This is a disincentive to the entire industry. Another issue is in the area of vehicle export. The "actual knowledge" language should be replaced. Dealers should be asking questions related to whether a vehicle is for export.

Recreational vehicle (RV) manufacturers have some concerns with the warranty work provisions and would like to be exempted. It would be better to have RV-specific franchise laws like Oregon. The RV manufacturers have not been included in discussions and the bill applies to them even though the issues surrounding them are so different.

(Opposed) None.

Persons Testifying: (In support) Scott Hazlegrove and Mary Byrne, Washington State Auto Dealers Association.

(With concerns) Cliff Webster, General Motors; Stu Halsan, Recreation Vehicle Industry Association; and Ryan Spiller, Auto Alliance.

Persons Signed In To Testify But Not Testifying: None.