

# SENATE BILL REPORT

## ESHB 2547

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As Reported by Senate Committee On:  
Labor, Commerce & Consumer Protection, February 25, 2010

**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:** House Committee on Commerce & Labor (originally sponsored by 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:** Passed House: 2/13/10, 95-0.

**Committee Activity:** Labor, Commerce & Consumer Protection: 2/18/10, 2/25/10 [DPA].

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### SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

**Majority Report:** Do pass as amended.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin, Honeyford, King and Kline.

**Staff:** Ingrid Mungia (786-7423)

**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.

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*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 (Recommended Amendments):** Termination, Cancellation, or Nonrenewal of a Franchise. During a legal dispute concerning the termination of a franchise, a dealer's franchise is maintained. For purposes of the notice requirements of the termination 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 such that continuing to retail the line is no longer economically viable for a dealer, is considered a termination of a franchise.

In addition to the other required sums that the manufacturer is required to pay in certain termination 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. A manufacturer is not required to pay the sums if the dealer voluntarily terminates the franchise. 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. The mark-up charged by the dealer to the manufacturer for warranty reimbursement for parts is equal to the mark-up

charge by the dealer to the retailer customer. If a manufacturer proves that the rate for labor 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 that is within the relevant market area, 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 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.

A manufacturer may recover the amount of consideration paid, plus interest, from a dealer in the event a dealer breaches a contract to exclusively sell and service a single make or line of new motor vehicles at a specific facility for a defined period of time.

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.

**EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Amendments):** Establishes that the mark-up charged by the dealer to the manufacturer for warranty reimbursement for parts is equal to the mark-up charge by the dealer to the retailer customer.

Establishes that a manufacturer may recover the amount of consideration paid, plus interest, from a dealer in the event a dealer breaches a contract to exclusively sell and service a single make or line of new motor vehicles at a specific facility for a defined period of time.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Engrossed Substitute House Bill:** PRO: The upheaval in our auto industry has created great problems for our dealers. Our dealers are very fragile in this economy. There are still issues to resolve, but it came out of the House unanimously. RV dealers would like us to look at separating them from the auto franchise law. Believe the proposal is complete and strikes an appropriate balance. There has been a commitment with the RV dealers to see if a separate RV law should be established.

CON: This is not a negotiated bill. RV dealers are a different kind of animal. The RV dealers want a separate RV franchise law and lemon law. There is still contention over warranty reimbursements. Suggest using the Oregon model for warranty reimbursements. There are three issues that still need to be resolved: relocation; definition of tangible economic benefit; and voluntary termination. It is unfair and expensive to require a manufacturer to pay full-retail for warranty parts. Please remove reference to retail price. Voluntary agreements for separate consideration for site control are increasingly usual and customary between dealers and manufacturers. Language should be inserted to ensure a manufacturer had a remedy to recover any consideration paid for a voluntary site control agreement in the event of a breach of the agreement by the dealer. Still want to fix a few things, including the warranty piece.

**Persons Testifying:** PRO: Representative Conway, prime sponsor; Scott Hazelgrove, Washington State Auto Dealers Association.

CON: Stu Halsan, Recreation Vehicle Industry Association; Steve Buckner, Association of International Automobile Manufacturers; Cliff Webster, General Motors Corporation; Ryan Spiller, Auto Alliance.