

SENATE BILL REPORT

SB 6391

As of February 3, 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: Senators Keiser, King, Kohl-Welles, Holmquist, Kline, Honeyford and Shin.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 1/26/10.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

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.

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.

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.

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 attorney's fees.

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: PRO: The community of Burien has had a difficult time with the economy and then manufacturers who have not been helpful in terms of their franchise. This legislation rights the playing field a little better between our local businesses that employ our local citizens and the manufacturers who have had, until now, an unfair amount of leverage over those dealerships. Two things are covered in this bill: dealers being able to manage their own business without undue interference from manufacturers; and dealers being compensated fairly when a manufacturer terminates their business. This is very important and the law needs an update. There are three main things this bill is designed to do: level the playing field between the dealers and the manufacturer; allow the dealers to make the best decisions for themselves and the people they hire and not just for the manufacturer; and finally to provide fair compensation to the dealers when the manufacturer terminates the franchise.

CON: RVs and campers are included in this bill, but RV manufacturers have a different relationship with their dealers than auto manufacturer have with auto dealers. Manufacturers continue to struggle and they do not believe this bill creates a level playing field. Last session significant legislation was passed that cost a lot of money and has been a burden on manufacturers. We want some reasonable upper limits on warranty reimbursement rates. Other states have some sort of export language, but the language in the bill needs to be reasonable. If possible, we want to wait on the changes from last session to see if they are working before we move forward with this bill.

Persons Testifying: PRO: Senator Keiser, prime sponsor; Scott Hazlegrove, Washington State Auto Dealers Association; Mary Byrne, Washington State Auto Dealers Association.

CON: Stu Haesan, Recreation Vehicle Industry Association; Ryan Spiller, Auto Alliance; Cliff Webster, General Motors LLC.