HOUSE BILL REPORT
ESSB 6137

As Passed House:
February 27, 2018

Title: An act relating to clarifying the relationship between manufacturers and new motor vehicle dealers by providing tools to resolve disparities including expanding compensation for recalled vehicles.

Brief Description: Clarifying the relationship between manufacturers and new motor vehicle dealers by providing tools to resolve disparities including expanding compensation for recalled vehicles.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Conway, King, Keiser, Hasegawa and Wilson).

Brief History:
Committee Activity:
Business & Financial Services: 2/21/18 [DP].
Floor Activity:
Passed House: 2/27/18, 98-0.

Brief Summary of Engrossed Substitute Bill

- Requires motor vehicle manufacturers (manufacturers) to compensate their franchised new motor vehicle dealers (dealers) for all labor and parts required to perform recall repairs.
- Requires manufacturers to compensate their dealers if parts or a remedy are not reasonably available to perform a recall service or repair on a used vehicle held for sale by the dealer in certain circumstances, at a rate tied to the average trade-in value of the vehicle.
- Establishes requirements and procedures for submitting reimbursement claims to manufacturers and for when a claim must be paid.
- Limits how manufacturers may modify their franchise agreements with dealers, and when a dealer's designated area of primary responsibility may include out-of-state areas.
- Establishes a process for the Department of Licensing (DOL) to handle an alleged violation of the franchise law as an adjudicative proceeding, and gives

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a corporation or association of dealers standing to represent itself or individual dealers before the DOL and in court.

- Modifies the relief that a dealer and a corporation or association of dealers may seek in court, and specifies that for a willful violation of the franchise law a court may increase an award by up to three times the actual damages sustained.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: Do pass. Signed by 11 members: Representatives Kirby, Chair; Reeves, Vice Chair; Vick, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Barkis, Bergquist, Blake, Jenkin, McCabe, Santos and Stanford.

Staff: Peter Clodfelter (786-7127).

Background:

The Department of Licensing (DOL) regulates persons who engage in business as new motor vehicle dealers (dealers) and motor vehicle manufacturers (manufacturers). The DOL has the authority to issue and deny licenses. Manufacturers maintain a franchise relationship with their dealers, and the responsibilities of each party are delineated in state law and the franchise agreement with the parties. State law generally dictates when a manufacturer may own or terminate a dealer's franchise and the compensation a manufacturer must pay a dealer for warranty work. Also, various practices are prohibited in the franchise law.

For example, a manufacturer is prohibited from taking any adverse action against a dealer, including but not limited to, charge backs or reducing vehicle allocations for sales and service performance within a designated area of primary responsibility unless the area is reasonable in light of proximity to relevant census tracts to the dealership and competing dealerships, highways and road networks, state borders, any natural or man-made barriers, demographics, including economic factors, and buyer behavior information.

Each manufacturer must specify in its franchise agreement, or in a separate written agreement, with each of its dealers, the dealer's obligation to perform warranty work or service on the manufacturer's products. Each manufacturer must provide each of its dealers with a schedule of compensation to be paid to the dealer for any warranty work or service, including parts, labor, and diagnostic work, required of the dealer by the manufacturer in connection with the manufacturer's products. The schedule of compensation must not be less than the rates charged by the dealer for similar service to retail customers for non-warranty service and repairs, and must not be less than the schedule of compensation for an existing dealer as of a date in 2010.

All claims for warranty work for parts and labor made by dealers must be submitted to the manufacturer within 90 days of the date the work was performed. All claims submitted must be paid by the manufacturer within 30 days following receipt, provided the claim has been approved by the manufacturer. The manufacturer must notify the dealer in writing of any

disapproved claim, and must set forth the reasons why the claim was not approved. Any claim not specifically disapproved in writing within 30 days following receipt is approved, and the manufacturer is required to pay that claim within 30 days of receipt of the claim. The manufacturer may audit claims for warranty work and to charge the dealer for any unsubstantiated, incorrect, or false claims for a period of nine months following payment.

A dealer injured in the dealer's business by a violation of the franchise law may bring an action in superior court or district court, depending on the amount of damages, to recover the actual damages sustained by the dealer, together with the costs of the suit, including reasonable attorneys' fees if the dealer prevails.

Summary of Bill:

A motor vehicle manufacturer (manufacturer) must compensate its franchised new motor vehicle dealers (dealers) for all labor and parts required by the manufacturer to perform recall repairs at rates no lower than rates set in accordance with the process in the franchise law for determining rates paid by manufacturers to dealers for warranty work performed by dealers.

If parts or a remedy are not reasonably available to perform a recall service or repair on a used vehicle held for sale by a dealer authorized to sell new vehicles of the same line make within 15 days of the manufacturer issuing the initial notice of recall, and the manufacturer has issued a stop-sale, do-not-drive order, or the manufacturer has not certified that the issue identified in the notice of recall does not affect the safe operation of the vehicle, the manufacturer must compensate the dealer at a prorated rate of at least 1.75 percent of the average trade-in value as indicated in an independent third-party guide for the year, make, model, and mileage of the recalled vehicle, per month, or portion of a month, while the recall or remedy parts are unavailable and the order remains in effect.

A stop-sale or do-not-drive order is defined as a notification issued by a manufacturer to its franchised dealers stating that certain used vehicles in inventory should not be sold or leased, at retail or wholesale, due to a federal safety recall for a defect or a noncompliance, or a federal or state of California emissions recall.

A manufacturer's duty to compensate a dealer ends on the earlier of the date the remedy or repair parts necessary to resolve the recall, stop-sale, or do-not drive order are available to the dealer for vehicles in the dealer's inventory or the date the dealer sells, trades, or otherwise disposes of the vehicle. A manufacturer is not required to compensate a dealer for more than the total trade-in value of the vehicle, or for vehicles purchased by the dealer at a wholesale auction after the date the order was issued.

The new reimbursement requirement applies only to used vehicles subject to safety or emissions recalls pursuant to and recalled in accordance with federal law and regulations and where a stop-sale, do-not-drive order has been issued, or the manufacturer has not certified that the issue identified in the notice of recall does not affect the safe operation of the vehicle. Additionally, the new requirement applies only to dealers holding used vehicles for sale that are a line make that the dealer is franchised to sell or on which the dealer is authorized to perform recall repairs.

Generally, all reimbursement claims made by dealers for recall remedies or repairs, or for compensation where no part or repair is reasonably available, are subject to the same limitations and requirements as a warranty reimbursement claim. Claims must be either approved or disapproved within 30 days after a claim's submission to the manufacturer in the manner and on the forms the manufacturer reasonably prescribes, and a manufacturer must pay a claim within 30 days following approval. Any claim not specifically disapproved in writing within 30 days following receipt is approved.

A manufacturer may compensate its franchised dealers under a national recall compensation program provided the compensation under the program is equal to or greater than the compensation provided in the new requirements. A manufacturer may not recover all or any portion of its costs for compensating its dealers licensed in this state for recalled vehicles, parts, and service either by reduction in the amount due to the dealer or by separate charge, surcharge, or other imposition.

It is specified that a dealer's designated area of primary responsibility must contain only areas inside the state unless specifically approved by the dealer, for the purposes of determining when a manufacturer may take adverse action against a dealer such as charge backs or reducing vehicle allocations, for sales and service performance within a designated area of primary responsibility.

It is provided that a manufacturer may not modify the franchise agreement for any dealer unless the manufacturer notifies the dealer in writing of its intention to modify the agreement at least 90 days before the effective date of the modification, stating the specific grounds for the modification, and undertakes the modification in good faith, for good cause, and in a manner that would not adversely and substantially alter the rights, obligations, investment, or return on investment of the dealer under the existing agreement.

A process is established for dealers and a corporation or association primarily owned by or composed of dealers and that primarily represents dealers' interests to file a petition with the Department of Licensing to have an alleged violation of the motor vehicle franchise law handled as an adjudicative proceeding.

A corporation or association of dealers may also bring a cause of action for itself or on behalf of a dealer or dealers in a court of competent jurisdiction. It is provided that the relief that a dealer and a corporation or association of dealers may seek in court includes actual damages, declaratory relief, and injunctive relief. It is provided that a court may, in its discretion, for a willful violation of the franchise law by a manufacturer, increase an award of damages up to an amount not to exceed three times the actual damages sustained.

Appropriation: None.

Fiscal Note: Available.

Effective Date: 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 is an extremely important bill for new motor vehicle dealers (dealers) in the state. The business relationship between dealers and motor vehicle manufacturers (manufacturers) is regulated in state law, and needs updating to address issues like the proliferation of vehicle recalls, which is putting significant pressure on dealers. The bill offers dealers struggling to address vehicle recall issues much needed relief. Since the bill was introduced, stakeholders have negotiated, and the bill has changed to reflect compromises made by dealers. However, the bill in its current form retains the following five critical elements for dealers: (1) compensation to dealers for used vehicles subject to recalls; (2) standing for an association of dealers to protect its members; (3) additional damages when there is a willful violation of the franchise law; (4) notice to dealers before a change is made to the dealer and manufacturer's franchise agreement; and (5) no assignment of out-of-state sales territory without the dealer's consent. The work done represents a complete package and is in final form.

(Opposed) Manufacturers remain opposed to this version but will continue working to find a solution in the middle of manufacturers and dealers' respective positions. The national framework for compensation agreed to by groups of auto manufacturers and dealers was a well-negotiated process and is a fair approach. This bill and its House companion (House Bill 2439) do not track the national framework or the agreement that manufacturers and dealers previously made on this bill. The reimbursement rate in the bill is 1.75 percent of a vehicle's average trade in value, which is higher than any state in the United States. The highest rate in other states' laws is 1.5 percent, which is still high but is more reasonable. On the issue of associational standing for an association of dealers to litigate against a manufacturer, only two other states identified allow this, and in those states the authorization is narrower. In California, it is limited to one specific type of dispute. In North Carolina, it is limited to when an association seeks only declaratory or injunctive relief. North Carolina's approach is reasonable.

Manufacturers offer three amendments to this version of the bill for consideration. First, consider removing the language about a manufacturer's duty to compensate a dealer if the manufacturer fails to certify that a recall does not affect the safe operation of the vehicle. This is a double negative, is vague, and the compensation requirement should be triggered only when the manufacturer has issued a recall notice as well as a stop-sale or do-not-drive order. If a recall is a safety issue it will include a stop-sale or do-not-drive order, so this additional "certification" requirement is superfluous, and manufacturers should not be required to compensate dealers for recalled vehicles that may be sold. Second, consider amending the bill to modify or remove the associational standing provisions because this does not exist in this form in many places in the United States, and where it does exist it is very limited. Third, consider limiting the availability of treble damages to violations that are willful and malicious, not just willful, in order to further raise the bar for treble damages. Manufacturers have respected proponents and sponsors' desires to move the bill through the process despite the bill being a work in progress, but as of now the process has not resulted in a fair compromise. The proposed amendments will address the main concerns, and manufacturers pledge to work toward common ground.

Persons Testifying: (In support) Senator Conway, prime sponsor; and Scott Hazlegrove, Washington State Auto Dealers Association.

(Opposed) Michael Transue, Association of Global Auto Makers; Ryan Spiller, Automobile Alliance; and Tom McBride, American Honda Motor Company.

Persons Signed In To Testify But Not Testifying: None.