

SENATE BILL REPORT

SB 5945

As of January 25, 2024

Title: An act relating to manufacturer and new dealer franchise agreements.

Brief Description: Concerning manufacturer and new dealer franchise agreements.

Sponsors: Senators Conway, King, Billig, Dozier, Hasegawa, Keiser, Liias, Nobles, Schoesler and Stanford.

Brief History:

Committee Activity: Business, Financial Services, Gaming & Trade: 1/09/24 [w/oRec-LC].

Labor & Commerce: 1/25/24.

Brief Summary of Bill

- Modifies the definition of manufacturer with respect to common control.
- Makes it unlawful for a vehicle manufacturer to offer certain customer subscription services utilizing already installed components and hardware.
- Makes it unlawful to take reservations, dictate sales price, or negotiate binding terms for sale or lease of new vehicles directly between a manufacturer or certain others and a buyer for delivery in Washington.
- Stipulates warranty service and parts compensation from manufacturers to dealers.
- Modifies the term relevant market area to increase the radius miles for smaller counties.
- Adds overburdened communities for diversification in dealership ownership.
- Limits manufacturers from requiring dealers to install fast charging stations unless certain requirements are met.

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

- Prohibits a manufacturer from implementing inventive programs unless they provide equal opportunities for all dealers in limited circumstances.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Susan Jones (786-7404)

Background: A new motor vehicle manufacturer (manufacturer) or new motor vehicle brand owner (brand owner) maintains a relationship with a new motor vehicle dealer (dealer) through a franchise agreement. The certain responsibilities of each party are delineated in state law and the franchise agreement between the parties. State law generally dictates when a manufacturer may own or terminate a dealer's franchise, that manufacturers may not discriminate between dealers, and how manufacturers must reimburse a dealer for warranty work. Various practices are prohibited.

A number of these statutes use the term relevant market area. For example, a manufacturer may not coerce, threaten, intimidate, or require a new motor vehicle dealer, as a condition to granting or renewing a franchise, to waive, limit, or disclaim a right that the dealer may have to protest the establishment or relocation of another motor vehicle dealer in the relevant market area.

Summary of Bill: Manufacturer Definition. The definition of manufacturer is modified to include an entity who directly or indirectly through one or more intermediaries, controls, is controlled by, or is under the common direction and possesses direct or indirect power to direct or cause the direction of the management and policies of such person, firm, association, corporation, or trust, resident or nonresident.

Unlawful Actions—Offering Subscription Services by Manufacturers. It is unlawful for a manufacturer to offer to a consumer a subscription service for any motor vehicle feature that utilizes components and hardware already installed on the motor vehicle at the time of purchase or lease and would function after activation without ongoing cost to or support by the dealer, manufacturer, distributor, or a third-party service provider.

Motor vehicle feature means any convenience or safety function included on the motor vehicle, such as heated seats or driver assistance, that typically is offered to a consumer as an upgrade at the time of purchase or lease of the motor vehicle. Subscription service means a service provided in exchange for a recurring payment including, but not limited to, a weekly, monthly, or annual payment charged to and made by a consumer, but does not include a consumer's reoccurring payment made pursuant to a conditional sales contract or lease contract.

The prohibition does not apply to navigation system updates, satellite radio, roadside

assistance, software-dependent driver assistance or driver automation features, and vehicle-connected services that rely on cellular or other data networks for continued operation.

Unlawful Actions—Certain Direct Reservations, Sales, and Leases. It is unlawful to take reservations, dictate the selling price, or negotiate binding terms of sale or leasing of a new motor vehicle directly between the manufacturer, factory branch, distributor, or distributor branch and retail buyers or lessees including purchase agreements, trade-in value, or other substantive terms of sale or leasing of new vehicles if the new motor vehicle will be delivered for sale or lease in Washington.

Rates for Warranty Service or Parts. Provisions are modified related to the requirement that written agreements between manufacturers and dealers specify warranty work or service on the manufacturer's products and provide a schedule for compensation, which must not be less than the rates charged by the dealer for similar service to retail customers for nonwarranty service and repairs. If a manufacturer or distributor furnishes or arranges the order or distribution of a part or component to a new motor vehicle dealer at no or reduced cost to use in performing repairs, the manufacturer or distributor must compensate the dealer for the part or component in the same manner as warranty parts compensation by compensating the dealer the retail parts rate on the wholesale cost for the part or component as listed price schedule, minus the wholesale cost for the part or component. A manufacturer may not establish or implement a special part or component number for parts if it results in lower compensation to the dealer than as calculated in this section.

A manufacturer must pay the dealer for labor and diagnostic work at a rate calculated by dividing the total customer labor charges for qualifying nonwarranty repairs in the repair orders by the total number of hours that would be allowed for the repairs if the repairs were made under the manufacturer's, importer's, or distributor's time allowances used in compensating the dealer for warranty work.

Modifying Distance for Certain Relevant Market Areas. For counties with populations of 400,000 or more in which a proposed new or relocated dealership is to be located, the relevant market area is the geographic area within a radius of ten miles around the proposed site, rather than eight miles around the proposed site.

Prohibited Actions by Manufacturers and Others—Competing. For the exception to the prohibition on manufacturers, distributors, factory branches, or factory representatives competing with a new motor vehicle dealer by owning or operating a dealership in conjunction with an independent person to broaden the diversity and enhance opportunities for underrepresented groups in its dealer body is expanded to allow for independent persons in overburdened communities. An overburdened community is a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts, and includes highly impacted communities, which are communities designated by the Department of Health based on cumulative impact analyses or a community located in census tracts that are fully or partially on Indian country.

Prohibited Actions by Manufacturers and Others—Charging Stations. A manufacturer, distributor, factory branch, or factory representative may not implement a program that encourages or requires a franchisee to install direct current fast charging stations, unless the program:

- requires the franchisor, for public required access stations, to reimburse the dealer for one-half of the cost to install and maintain the stations if the dealer pays the franchisor half of the net income generated from the ongoing use of the stations;
- does not encourage or require the franchisee to install direct current fast charging stations at its dealership location if the franchisee can obtain access to direct current fast charging stations that satisfy the program or policy within a reasonable distance, with a minimum of five miles, of the franchisee's dealership location;
- is reasonable in light of all existing circumstances including local conditions, supply constraints, time constraints, advancements in vehicular technology, and electric grid integration; and
- allow a new motor vehicle dealer the right to purchase or lease goods or services of like kind and quality from an alternative vendor selected by the dealer if the goods or services are to be supplied by a vendor selected, identified, or designated by the manufacturer or distributor.

Prohibited Actions by Manufacturers—Incentive Programs. A manufacturer may not implement an incentive program that does not provide an equal opportunity for all motor vehicle dealers to qualify based on consideration of dealership location and sales volume, predetermines the price of a vehicle, limits eligibility based on nonvehicle product penetration, or requires use of specific software or service vendors to qualify.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: Periodically manufacturers and dealers need to revisit their relationships. We will be discussing and negotiating on the bill. It is critical for consumers and businesses to have separation between manufacturers and dealers. The bill was passed because there was an uneven playing fields. The bill is an update to laws that have been on the books for decades. Dealers provide tax revenue and service and access to communities.

Allowing EV only and other direct sales to cut dealers would hurt consumer and would turn dealers into delivery agents.

Dealers resolving manufacturers' defects should be paid fairly. Manufacturers are requiring dealers to work at a discount. Technicians are paid a certain rate and the discount comes out of the technicians' pocket. We are losing skilled technicians. Consumers are having to wait for repairs.

CON: We recognize that manufacturers and dealers depend on each other for their success.

The dealers are already getting a gross markup. Manufacturers pay dealers for the warranty work. How dealers choose to compensate the technicians is not within manufacturers control. Current law is clear for warranty repair work. This bill codifies a practice of dealer charging customers for hours not worked. Manufacturers want to make sure the dealer is whole on warranty work and there is an appeal process. There is a base core for a part returned to manufacturer who replaces the part. The exchange part can cost more than the vehicle. They would be better off totaling the car. Changing to a new cumbersome process would increase cost to the manufacturer. The cost of the warranty will increase by over 1 billion. This cost will be born by consumers.

The EV charging station program is intended to boost EV sales. The EV modeling program is voluntary. We don't think manufacturers should be paid for the cost. Manufacturers have invested in EVs. Dealers should make investments in charging stations.

Washington has passed laws related to environmental incentives. The bill creates a disincentive for changes. The incentives help marginalize communities. If we are going to live up to the CCA, we cannot provide disincentives to dealers on charging stations

Under the Franchise Act, only one EV vehicle manufacturer can sell directly. The bill would provide further restrictions. This limits consumer choice. We are asking for a level playing field. States with EV sales have higher employer. Allowing EV direct sales would encourage innovations. More EVs on the road help provide jobs and there are programs to help with training the workforce. The bill limits competition. We cannot buy an EV vehicle or take a test drive from the EV show room where consumers can come and learn more about EVs. The workers can answer questions about the range and service. They cannot answer questions about costs or allow test drives. Consumers would have to travel far to other states to test drive and negotiate a sale.

OTHER: Ten state agencies are working to encourage EV sales transition. The prohibition on reservations will impact a number of other new EV models and we don't want to lose supply to Washington State. The 50/50 split concern on charging stations will limit investment in charging stations.

The bill requires an EV direct seller manufacturer to cease operations in the state. We are concerned about subscription services. If a consumer changes their mind on a product, they should be able to do that.

Persons Testifying: PRO: Senator Steve Conway, Prime Sponsor; Scott Hazlegrove, WA State Auto Dealers Association; Jen Moran, Carter Motors; Miles Richardson, University VW/Audi; Andy Yale, Titus-Will; David Bright, Alliance for Automotive Innovation.

CON: Jeffrey Perry, General Motors; Thomas Lawson, Ford Motor Company; Nicolina Hernandez, Toyota Motor North America; Hannah Steinweg, Rivian; KEVIN BURNS, Rivian; Mark Prentice; Paula Sardinas, WBBA & EV Advisory Counsel Co-Chair (TES); Scott Moser, Rivian.

OTHER: Jeff Gombosky, Tesla; Steven Hershkowitz, Washington State Department of Commerce.

Persons Signed In To Testify But Not Testifying: PRO: Kyle Sullivan; Brian Piper, I-5 Cars; Kamal Yeam, I-5 Cars; Timothy Thompson, I-5 CARS; DAVE ANDERSON, I-5 CARS; Tony Pho, Volkswagen of Kirkland; Antonio Olivares, Lee Johnson Kia (Technician); EVAN REESE; justin irwin; David Moreno; VONDA HADALLER; John Goodwin; Nancy Novak, Carter Subaru Shoreline, Sales Consultant.

CON: Leah Missik, Climate Solutions.