

BILL ANALYSIS

C.S.H.B. 2640
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Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The current economic downturn and subsequent lack of consumer demand is causing many Texas franchised motor vehicle dealers to experience serious financial distress. Under current law, undue financial burden is placed on the dealer in favor of manufacturers and distributors, rather than providing an equitable route to share the costs of a depressed market.

For example, current law provides a process through which a terminated franchised motor vehicle dealer may return certain unsold inventory to the manufacturer or distributor. The manufacturer or distributor compensates the franchised dealer for the dealer cost of the vehicle, with allowances for mileage, if the new vehicle is the current or previous model year. However, certain manufacturers attempt to circumvent the intent of the law by arbitrarily declaring new model years, thus reducing the number of vehicles covered and payments due under the statute. In addition, there is nothing to prevent a manufacturer or distributor from taking adverse action against a franchised dealer on the grounds that the dealer sold or leased a vehicle which was subsequently exported to a location outside the United States. Manufacturers and distributors are increasingly utilizing provisions within their franchise agreements to charge back dealers on exported sales or leases. This occurs even in cases where the vehicle is sold to a second individual and the dealer has no way of knowing about the exportation; in such cases, charge backs are particularly onerous and unjustified.

C.S.H.B. 2640 attempts to leverage many of the burdens on franchised motor vehicle dealers through such measures as requiring a manufacturer to compensate the dealer for the return of new vehicle inventory, regardless of the model year, and prohibiting an adverse action against a franchised dealer on the grounds that a sold or leased vehicle was subsequently exported, except when the dealer had actual knowledge that the vehicle would be exported and appropriate taxes were paid, in addition to several other provisions.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2640 amends the Occupations Code to provide that the act of filing an application for a motor vehicle dealer's license or a prescribed form relating to such a dealer's license does not establish the applicant as a franchised dealer.

C.S.H.B. 2640 authorizes a motor vehicle manufacturer or distributor, in determining whether to approve an application to transfer a franchise or the controlling interest in a dealership to another person, to consider whether a prospective transferee has been a franchised dealer in Texas, the moral character of the prospective transferee, and the extent to which a prospective transferee meets the criteria, if any, developed by the manufacturer or distributor and made available to the prospective transferee specifically to determine the business experience and financial

qualifications of the prospective transferee. The bill authorizes these criteria to be applied by a manufacturer or distributor only if the criteria are written, reasonable, and uniformly applied in similar situations, and establishes that it is unreasonable for a manufacturer or distributor to withhold approval of a prospective transferee who is of good moral character and who meets these criteria.

C.S.H.B. 2640 requires a franchised dealer to provide written notice of the dealer's intent to relocate a dealership to the dealer's manufacturer, distributor, or representative not later than the 60th day before the date the dealer proposes to begin the relocation. The bill requires the notice to be sent by certified mail, return receipt requested. The bill decreases from 6,000 miles to 5,000 miles the maximum mileage of each new motor vehicle in a dealer's inventory for which a manufacturer, distributor, or representative is required to pay the dealer cost, reduced by the net discount value of each vehicle, to a franchised dealer or any lienholder following the termination of a franchise. The bill establishes that provisions relating to payments to a franchised dealer following the termination of the franchise do not require a manufacturer, distributor, or representative to repurchase a motor vehicle that at the time of termination of the franchise had been in the dealer's inventory for at least 24 months after the date the dealer took delivery of the vehicle or that the dealer purchased not more than 30 days before the date of termination of the franchise solely in anticipation of the termination and would not have purchased in the ordinary course of business. The bill provides that a sale of the assets or stock of a franchised dealership to a buyer who continues the operation of the dealership is not a termination of a franchise.

C.S.H.B. 2640 prohibits a manufacturer, distributor, or representative from unreasonably requiring a franchised motor vehicle dealer to relocate, or to replace or substantially change, alter, or remodel the dealer's facilities. The bill provides that, for these purposes, such an act is reasonable if it is justifiable in light of current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area. The bill applies this prohibition to the relationship between a manufacturer and a current franchisee of the manufacturer or a franchised dealer who is seeking to become a franchisee of the manufacturer.

C.S.H.B. 2640 includes any harm to the distributor and the manufacturer's or distributor's investment and obligations and whether the denial or withholding of approval is justifiable in light of current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area in the circumstances the director of the Motor Vehicle Division of the Texas Department of Transportation must consider in determining whether a manufacturer or distributor has established as reasonable the denial or withholding of approval of a franchise dealer's application to add a line-make.

C.S.H.B. 2640 authorizes money paid by a manufacturer or distributor under an incentive program to only be paid to a dealer, unless the dealer agrees to the payment of the money to another person, including an employee of the dealer, before the payment is made.

C.S.H.B. 2640 prohibits a manufacturer, distributor, or representative from taking an adverse action against a franchised motor vehicle dealer because the dealer sells or leases a vehicle that is later exported to a location outside the United States, and provides that a franchise provision allowing such adverse action is enforceable only if, at the time of the original sale or lease, the dealer knew or reasonably should have known that the vehicle would be exported to a location outside the United States. The bill provides that a franchised dealer is presumed to have no actual knowledge that a vehicle the dealer sells or leases will be exported to a location outside the United States if, under the laws of a state of the United States, the vehicle is titled and registered and applicable state and local taxes are paid for the vehicle. The bill provides for this presumption to be rebutted by direct, clear, and convincing evidence that the franchised dealer had actual knowledge or reasonably should have known at the time of the original sale or lease that the vehicle would be exported to a location outside the United States. The bill establishes a

franchise provision allowing a manufacturer, distributor, or representative to take adverse action against a franchised dealer because the dealer sells or leases a vehicle that is later exported to a location outside the United States as void and unenforceable, except as otherwise expressly permitted by these provisions.

C.S.H.B. 2640 includes any harm to the applicant and current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area in the required considerations by the director for determining good cause for establishing a dealership. The bill increases from one mile to two miles the maximum distance from the current site of a dealership for which a franchised dealer is prohibited from protesting an application to relocate the dealership.

C.S.H.B. 2640 removes from the definition of "net cost" that the motor vehicle be of the current model year or the previous model year. The bill defines "net discount value."

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2640 adds a provision not in the original specifying that the act of filing an application for a motor vehicle dealer's license or a prescribed form relating to such a license does not establish the applicant as a franchised dealer.

C.S.H.B. 2640 adds provisions not in the original specifying the criteria a manufacturer or distributor is authorized to use in determining whether to approve an application to transfer a franchise or controlling interest in a dealership to another person, specifying how such criteria are authorized to be applied by a manufacturer or distributor, and requiring a franchised dealer to provide written notice of the dealer's intent to relocate.

C.S.H.B. 2640 adds a provision not in the original decreasing the maximum mileage of each new motor vehicle in a dealer's inventory for which a manufacturer, distributor, or representative is required to pay the dealer cost, with certain adjustments; specifying circumstances under which a manufacturer, distributor, or representative is not required to repurchase a motor vehicle at the time a franchise is terminated; and specifying that a sale of dealership assets or stock to a buyer who continues the operation of the dealership is not a termination of a franchise.

C.S.H.B. 2640 differs from the original by adding the manufacturer's or distributor's investment and obligations to the circumstances the division's director must consider in determining whether a manufacturer or distributor has established as reasonable the denial or withholding of approval of a franchise dealer's application to add a line-make.

C.S.H.B. 2640 differs from the original by requiring money paid by a manufacturer or distributor under an incentive program to only be paid to a dealer unless the dealer agrees to the payment of the money to another person, including an employee of the dealer, before the payment is made, rather than requiring money paid as the result of such a program to be paid to a dealer and prohibiting it to be paid to an employee of a dealer.

C.S.H.B. 2640 differs from the original by applying prohibitions regarding adverse actions against a franchised motor vehicle dealer that exports a vehicle to a location outside the United State to a manufacturer, distributor, or representative that knew or reasonably should have known of the export, rather than to a manufacturer, distributor, or representative that had actual knowledge that the vehicle would be exported, as in the original.

C.S.H.B. 2640 adds a provision not in the original including any harm to the applicant in the required considerations by the director for determining good cause for establishing a dealership. The substitute adds a provision not in the original to increase from one mile to two miles the maximum distance from the current site of a franchised dealership for which a franchised dealer is prohibited from protesting the application to relocate the dealership.

C.S.H.B. 2640 adds a definition not in the original for "net discount value."

C.S.H.B. 2640 adds saving and prospective clauses not in the original.