

By: Smith of Tarrant

H.B. No. 2640

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of motor vehicle manufacturers and distributors.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2301.257, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) The act of filing an application under this section or a form prescribed under this section does not establish the applicant as a franchised dealer.

SECTION 2. Section 2301.359, Occupations Code, is amended by amending Subsection (e) and adding Subsections (g), (h), and (i) to read as follows:

(e) A manufacturer or distributor may not unreasonably withhold approval of an application filed under Subsection (a).

~~[It is unreasonable for a manufacturer or distributor to reject a prospective transferee who is of good moral character and who meets the written, reasonable, and uniformly applied standards or qualifications, if any, of the manufacturer or distributor relating to the prospective transferee's business experience and financial qualifications.]~~

(g) In determining whether to approve an application filed under Subsection (a), a manufacturer or distributor may consider:

(1) whether a prospective transferee has been a franchised dealer in this state;

1 (2) the moral character of the prospective transferee;

2 and

3 (3) the extent to which a prospective transferee meets
4 the criteria, if any, developed by the manufacturer or distributor
5 and made available to the prospective transferee, specifically to
6 determine the business experience and financial qualifications of a
7 prospective transferee.

8 (h) The criteria described by Subsection (g)(3) may be
9 applied by a manufacturer or distributor only if the criteria are
10 written, reasonable, and uniformly applied in similar situations.

11 (i) It is unreasonable for a manufacturer or distributor to
12 withhold approval of a prospective transferee who is of good moral
13 character and who meets the criteria described by Subsection
14 (g)(3).

15 SECTION 3. Section 2301.360(b), Occupations Code, is
16 amended to read as follows:

17 (b) In a protest under this section, the board must
18 determine whether the rejection was reasonable under the criteria
19 described by Section 2301.359(g)(3) [~~prospective transferee is~~
20 qualified]. The burden is on the manufacturer or distributor to
21 prove that the prospective transferee is not qualified under the
22 criteria. The board shall enter an order holding that the
23 prospective transferee either is qualified or is not qualified.

24 SECTION 4. Section 2301.464(a), Occupations Code, is
25 amended to read as follows:

26 (a) Not later than the 60th day before the date a franchised
27 dealer proposes to begin the relocation of a dealership, the dealer

1 must provide written notice of the dealer's intent to relocate to
2 the dealer's manufacturer, distributor, or representative. The
3 notice must be sent by certified mail, return receipt requested.

4 Notwithstanding the terms of any franchise, a manufacturer,
5 distributor, or representative may not deny or withhold approval of
6 a written application to relocate a franchise unless:

7 (1) the applicant receives written notice of the
8 denial or withholding of approval not later than the 60th day after
9 the date the application is received; and

10 (2) if the applicant files a protest with the board,
11 the board makes a determination of reasonable grounds under this
12 section.

13 SECTION 5. Section 2301.465, Occupations Code, is amended
14 by amending Subsections (a) and (b) and adding Subsections (h) and
15 (i) to read as follows:

16 (a) In this section:

17 (1) "Net cost" means the franchised dealer cost for a
18 new, unsold, undamaged, and complete motor vehicle [~~of the current~~
19 ~~model year or the previous model year~~] in a dealer's inventory:

20 (A) plus any charges by the manufacturer,
21 distributor, or representative for distribution, delivery, and
22 taxes; and

23 (B) less all allowances paid to the franchised
24 dealer by the manufacturer, distributor, or representative.

25 (2) "Net discount value" is the net cost multiplied by
26 the total mileage, exclusive of mileage placed on the motor vehicle
27 before it was delivered to the dealer, divided by 100,000.

1 (b) Notwithstanding the terms of any franchise, after the
2 termination of a franchise, a manufacturer, distributor, or
3 representative shall pay to a franchised dealer or any lienholder,
4 in accordance with the interest of each, the following amounts:

5 (1) the dealer cost of each new motor vehicle in the
6 dealer's inventory with mileage of 5,000 [~~6,000~~] miles or less,
7 exclusive of mileage placed on the vehicle before it was delivered
8 to the dealer, reduced by the net discount value of each vehicle,
9 except that if a vehicle cannot be reduced by the net discount
10 value, the manufacturer or distributor shall pay the dealer the net
11 cost of the vehicle;

12 (2) the dealer cost of each new, unused, undamaged,
13 and unsold part or accessory that:

14 (A) is in the current parts catalogue and is
15 still in the original, resalable merchandising package and in an
16 unbroken lot, except in the case of sheet metal, a comparable
17 substitute for the original package may be used; and

18 (B) was purchased by the dealer either directly
19 from the manufacturer or distributor or from an outgoing authorized
20 dealer as a part of the dealer's initial inventory;

21 (3) the fair market value of each undamaged sign owned
22 by the dealer that bears a trademark or tradename used or claimed by
23 the manufacturer, distributor, or representative and that was
24 purchased from or at the request of the manufacturer, distributor,
25 or representative;

26 (4) the fair market value of all special tools, data
27 processing equipment, and automotive service equipment owned by the

1 dealer that:

2 (A) were recommended in writing and designated as
3 special tools and equipment;

4 (B) were purchased from or at the request of the
5 manufacturer, distributor, or representative; and

6 (C) are in usable and good condition except for
7 reasonable wear and tear; and

8 (5) the cost of transporting, handling, packing,
9 storing, and loading any property subject to repurchase under this
10 section.

11 (h) Notwithstanding any other law, this section does not
12 require a manufacturer, distributor, or representative to
13 repurchase a motor vehicle that:

14 (1) at the time of termination of the franchise had
15 been in the dealer's inventory for at least 24 months after the date
16 the dealer took delivery of the vehicle; or

17 (2) the dealer purchased not more than 30 days before
18 the date of termination of the franchise solely in anticipation of
19 the termination and, in the ordinary course of business, would not
20 have purchased.

21 (i) For purposes of this section, a sale of the assets or
22 stock of a dealership to a buyer who continues the operation of the
23 dealership is not a termination of a franchise.

24 SECTION 6. Section 2301.467, Occupations Code, is amended
25 to read as follows:

26 Sec. 2301.467. PROHIBITIONS: SALES STANDARDS, RELOCATIONS,
27 FACILITY CHANGES, PURCHASE OF EQUIPMENT. (a) Notwithstanding the

1 terms of any franchise, a manufacturer, distributor, or
2 representative may not:

3 (1) require adherence to unreasonable sales or service
4 standards; or

5 (2) unreasonably require a franchised dealer to
6 purchase special tools or equipment.

7 (b) Notwithstanding the terms of any franchise, a
8 manufacturer, distributor, or representative may not unreasonably
9 require a franchised dealer to relocate, or to replace or
10 substantially change, alter, or remodel the dealer's facilities.
11 For purposes of this subsection, an act is reasonable if it is
12 justifiable in light of current and reasonably foreseeable
13 projections of economic conditions, financial expectations, and
14 the market for new motor vehicles in the relevant market area.

15 (c) The prohibitions under this section apply to the
16 relationship between a manufacturer and:

17 (1) a current franchisee of the manufacturer; or

18 (2) a franchised dealer who is seeking to become a
19 franchisee of the manufacturer.

20 SECTION 7. Section 2301.472(d), Occupations Code, is
21 amended to read as follows:

22 (d) In determining whether a manufacturer or distributor
23 has established that the denial or withholding of approval is
24 reasonable, the board shall consider all existing circumstances,
25 including:

26 (1) the dealer's sales in relation to the sales in the
27 market;

- 1 (2) the dealer's investment and obligations;
- 2 (3) injury or benefit to the public;
- 3 (4) the adequacy of the dealer's sales and service
4 facilities, equipment, parts, and personnel in relation to those of
5 other dealers of new motor vehicles of the same line-make;
- 6 (5) whether warranties are being honored by the dealer
7 agreement;
- 8 (6) the parties' compliance with the franchise, except
9 to the extent that the franchise conflicts with this chapter;
- 10 (7) the enforceability of the franchise from a public
11 policy standpoint, including issues of the reasonableness of the
12 franchise's terms, oppression, adhesion, and the parties' relative
13 bargaining power;
- 14 (8) whether the dealer complies with reasonable
15 capitalization requirements or will be able to comply with
16 reasonable capitalization requirements within a reasonable time;
- 17 (9) any harm to the manufacturer or distributor if the
18 denial or withholding of approval is not upheld; ~~and~~
- 19 (10) any harm to the dealer if the denial or
20 withholding of approval is upheld;
- 21 (11) the manufacturer's or distributor's investment
22 and obligations; and
- 23 (12) whether the denial or withholding of approval is
24 justified in light of current and reasonably foreseeable
25 projections of economic conditions, financial expectations, and
26 the market for new motor vehicles in the relevant market area.

27 SECTION 8. Section 2301.475, Occupations Code, is amended

1 by adding Subsection (c) to read as follows:

2 (c) Money paid by a manufacturer or distributor under an
3 incentive program may only be paid to a dealer, unless the dealer
4 agrees to the payment of the money to another person, including an
5 employee of the dealer, before the payment is made.

6 SECTION 9. Subchapter J, Chapter 2301, Occupations Code, is
7 amended by adding Section 2301.479 to read as follows:

8 Sec. 2301.479. ADVERSE ACTION IN CONNECTION WITH EXPORT OF
9 VEHICLE. (a) Except as otherwise provided by this section, a
10 manufacturer, distributor, or representative may not take an
11 adverse action against a franchised dealer because the franchised
12 dealer sells or leases a vehicle that is later exported to a
13 location outside the United States.

14 (b) A franchise provision that allows a manufacturer,
15 distributor, or representative to take adverse action against a
16 franchised dealer because the franchised dealer sells or leases a
17 vehicle that is later exported to a location outside the United
18 States is enforceable only if, at the time of the original sale or
19 lease, the dealer knew or reasonably should have known that the
20 vehicle would be exported to a location outside the United States.

21 (c) A franchised dealer is presumed to have no actual
22 knowledge that a vehicle the dealer sells or leases will be exported
23 to a location outside the United States if, under the laws of a
24 state of the United States:

25 (1) the vehicle is titled;

26 (2) the vehicle is registered; and

27 (3) applicable state and local taxes are paid for the

1 vehicle.

2 (d) The presumption under Subsection (c) may be rebutted by
3 direct, clear, and convincing evidence that the franchised dealer
4 had actual knowledge or reasonably should have known at the time of
5 the original sale or lease that the vehicle would be exported to a
6 location outside the United States.

7 (e) Except as otherwise permitted by this section, a
8 franchise provision that allows a manufacturer, distributor, or
9 representative to take adverse action against a franchised dealer
10 because the franchised dealer sells or leases a vehicle that is
11 later exported to a location outside the United States is void and
12 unenforceable.

13 SECTION 10. Sections 2301.652(a) and (c), Occupations Code,
14 are amended to read as follows:

15 (a) The board may deny an application for a license to
16 establish a dealership if, following a protest, the applicant fails
17 to establish good cause for establishing the dealership. In
18 determining good cause, the board shall consider:

19 (1) whether the manufacturer or distributor of the
20 same line-make of new motor vehicle is being adequately represented
21 as to sales and service;

22 (2) whether the protesting franchised dealer
23 representing the same line-make of new motor vehicle is in
24 substantial compliance with the dealer's franchise, to the extent
25 that the franchise is not in conflict with this chapter;

26 (3) the desirability of a competitive marketplace;

27 (4) any harm to the protesting franchised dealer;

1 [~~and~~]

2 (5) the public interest;

3 (6) any harm to the applicant; and

4 (7) current and reasonably foreseeable projections of
5 economic conditions, financial expectations, and the market for new
6 motor vehicles in the relevant market area.

7 (c) A franchised dealer may not protest an application to
8 relocate a dealership under this section if the proposed relocation
9 site is not:

10 (1) more than two miles [~~one mile~~] from the site where
11 the dealership is currently located; or

12 (2) closer to the franchised dealer than the site from
13 which the dealership is being relocated.

14 SECTION 11. (a) The change in law made by this Act applies
15 only to an agreement entered into or renewed under Chapter 2301,
16 Occupations Code, on or after the effective date of this Act. An
17 agreement entered into or renewed before the effective date of this
18 Act is governed by the law in effect on the date the agreement was
19 entered into or renewed, and the former law is continued in effect
20 for that purpose.

21 (b) The change in law made by this Act applies only to an
22 application filed under Chapter 2301, Occupations Code, on or after
23 the effective date of this Act. An application filed before that
24 date is governed by the law in effect on the date the application
25 was filed, and the former law is continued in effect for that
26 purpose.

27 SECTION 12. This Act takes effect September 1, 2009.