

By: Smith of Tarrant

H.B. No. 2640

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the regulation of motor vehicle manufacturers and
3 distributors.

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

5 SECTION 1. Section 2301.465(a)(1), Occupations Code, is
6 amended to read as follows:

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

10 (A) plus any charges by the manufacturer,
11 distributor, or representative for distribution, delivery, and
12 taxes; and

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

15 SECTION 2. Section 2301.467, Occupations Code, is amended
16 to read as follows:

17 Sec. 2301.467. PROHIBITIONS: SALES STANDARDS, RELOCATIONS,
18 FACILITY CHANGES, PURCHASE OF EQUIPMENT. (a) Notwithstanding the
19 terms of any franchise, a manufacturer, distributor, or
20 representative may not:

21 (1) require adherence to unreasonable sales or service
22 standards; or

23 (2) unreasonably require a franchised dealer to
24 purchase special tools or equipment.

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

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

- 11 (1) a current franchisee of the manufacturer; or
12 (2) a franchised dealer who is seeking to become a
13 franchisee of the manufacturer.

14 SECTION 3. Section 2301.472(d), Occupations Code, is
15 amended to read as follows:

16 (d) In determining whether a manufacturer or distributor
17 has established that the denial or withholding of approval is
18 reasonable, the board shall consider all existing circumstances,
19 including:

- 20 (1) the dealer's sales in relation to the sales in the
21 market;
- 22 (2) the dealer's investment and obligations;
- 23 (3) injury or benefit to the public;
- 24 (4) the adequacy of the dealer's sales and service
25 facilities, equipment, parts, and personnel in relation to those of
26 other dealers of new motor vehicles of the same line-make;
- 27 (5) whether warranties are being honored by the dealer

1 agreement;

2 (6) the parties' compliance with the franchise, except
3 to the extent that the franchise conflicts with this chapter;

4 (7) the enforceability of the franchise from a public
5 policy standpoint, including issues of the reasonableness of the
6 franchise's terms, oppression, adhesion, and the parties' relative
7 bargaining power;

8 (8) whether the dealer complies with reasonable
9 capitalization requirements or will be able to comply with
10 reasonable capitalization requirements within a reasonable time;

11 (9) any harm to the manufacturer or distributor if the
12 denial or withholding of approval is not upheld; ~~and~~

13 (10) any harm to the dealer if the denial or
14 withholding of approval is upheld; and

15 (11) whether the denial or withholding of approval is
16 justified in light of current and reasonably foreseeable
17 projections of economic conditions, financial expectations, and
18 the market for new motor vehicles in the relevant market area.

19 SECTION 4. Section 2301.475, Occupations Code, is amended
20 by adding Subsection (c) to read as follows:

21 (c) Money paid by a manufacturer or distributor as a result
22 of an incentive program:

23 (1) shall be paid to a dealer; and

24 (2) may not be paid to an employee of a dealer.

25 SECTION 5. Subchapter J, Chapter 2301, Occupations Code, is
26 amended by adding Section 2301.479 to read as follows:

27 Sec. 2301.479. ADVERSE ACTION IN CONNECTION WITH EXPORT OF

1 VEHICLE. (a) Except as otherwise provided by this section, a
2 manufacturer, distributor, or representative may not take an
3 adverse action against a franchised dealer because the franchised
4 dealer sells or leases a vehicle that is later exported to a
5 location outside the United States.

6 (b) A franchise provision that allows a manufacturer,
7 distributor, or representative to take adverse action against a
8 franchised dealer because the franchised dealer sells or leases a
9 vehicle that is later exported to a location outside the United
10 States is enforceable only if, at the time of the original sale or
11 lease, the dealer has actual knowledge that the vehicle will be
12 exported to a location outside the United States.

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

17 (1) the vehicle is titled;
18 (2) the vehicle is registered; and
19 (3) applicable state and local taxes are paid for the
20 vehicle.

21 (d) The presumption under Subsection (c) may be rebutted by
22 direct, clear, and convincing evidence that the franchised dealer
23 had actual knowledge at the time of the original sale or lease that
24 the vehicle will be exported to a location outside the United
25 States.

26 (e) Except as otherwise expressly permitted by this
27 section, a franchise provision that allows a manufacturer,

1 distributor, or representative to take adverse action against a
2 franchised dealer because the franchised dealer sells or leases a
3 vehicle that is later exported to a location outside the United
4 States is void and unenforceable.

5 SECTION 6. Section 2301.652(a), Occupations Code, is
6 amended to read as follows:

7 (a) The board may deny an application for a license to
8 establish a dealership if, following a protest, the applicant fails
9 to establish good cause for establishing the dealership. In
10 determining good cause, the board shall consider:

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

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

18 (3) the desirability of a competitive marketplace;

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

20 [~~and~~]

21 (5) the public interest; and

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

25 SECTION 7. This Act takes effect September 1, 2009.