

1-1 By: Smith of Tarrant (Senate Sponsor - Watson) H.B. No. 2640  
1-2 (In the Senate - Received from the House May 1, 2009;  
1-3 May 4, 2009, read first time and referred to Committee on  
1-4 Transportation and Homeland Security; May 14, 2009, reported  
1-5 favorably, as amended, by the following vote: Yeas 7, Nays 0;  
1-6 May 14, 2009, sent to printer.)

1-7 COMMITTEE AMENDMENT NO. 1 By: Watson

1-8 Amend H.B. 2640 (Engrossed version) as follows:

1-9 (1) On page 1, line 22, through page 1, line 50, strike  
1-10 SECTION 2 and renumber subsequent SECTIONS accordingly

1-11 (2) On page 1, line 55, strike "(g) (3)".

1-12 A BILL TO BE ENTITLED  
1-13 AN ACT

1-14 relating to the regulation of motor vehicle manufacturers and  
1-15 distributors.

1-16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-17 SECTION 1. Section 2301.257, Occupations Code, is amended  
1-18 by adding Subsection (d) to read as follows:

1-19 (d) The act of filing an application under this section or a  
1-20 form prescribed under this section does not establish the applicant  
1-21 as a franchised dealer.

1-22 SECTION 2. Section 2301.359, Occupations Code, is amended  
1-23 by amending Subsection (e) and adding Subsections (g), (h), and (i)  
1-24 to read as follows:

1-25 (e) A manufacturer or distributor may not unreasonably  
1-26 withhold approval of an application filed under Subsection (a).  
1-27 ~~[It is unreasonable for a manufacturer or distributor to reject a~~  
1-28 ~~prospective transferee who is of good moral character and who meets~~  
1-29 ~~the written, reasonable, and uniformly applied standards or~~  
1-30 ~~qualifications, if any, of the manufacturer or distributor relating~~  
1-31 ~~to the prospective transferee's business experience and financial~~  
1-32 ~~qualifications.]~~

1-33 (g) In determining whether to approve an application filed  
1-34 under Subsection (a), a manufacturer or distributor may consider:

1-35 (1) whether a prospective transferee has been a  
1-36 franchised dealer in this state;

1-37 (2) the moral character of the prospective transferee;  
1-38 and

1-39 (3) the extent to which a prospective transferee meets  
1-40 the criteria, if any, developed by the manufacturer or distributor  
1-41 and made available to the prospective transferee, specifically to  
1-42 determine the business experience and financial qualifications of a  
1-43 prospective transferee.

1-44 (h) The criteria described by Subsection (g)(3) may be  
1-45 applied by a manufacturer or distributor only if the criteria are  
1-46 written, reasonable, and uniformly applied in similar situations.

1-47 (i) It is unreasonable for a manufacturer or distributor to  
1-48 withhold approval of a prospective transferee who is of good moral  
1-49 character and who meets the criteria described by Subsection  
1-50 (g)(3).

1-51 SECTION 3. Section 2301.360(b), Occupations Code, is  
1-52 amended to read as follows:

1-53 (b) In a protest under this section, the board must  
1-54 determine whether the rejection was reasonable under the criteria  
1-55 described by Section 2301.359(g)(3) [prospective transferee is  
1-56 qualified]. The burden is on the manufacturer or distributor to  
1-57 prove that the prospective transferee is not qualified under the  
1-58 criteria. The board shall enter an order holding that the  
1-59 prospective transferee either is qualified or is not qualified.

1-60 SECTION 4. Section 2301.464(a), Occupations Code, is  
1-61 amended to read as follows:

1-62 (a) Not later than the 60th day before the date a franchised

2-1 dealer proposes to begin the relocation of a dealership, the dealer  
 2-2 must provide written notice of the dealer's intent to relocate to  
 2-3 the dealer's manufacturer, distributor, or representative. The  
 2-4 notice must be sent by certified mail, return receipt requested.  
 2-5 Notwithstanding the terms of any franchise, a manufacturer,  
 2-6 distributor, or representative may not deny or withhold approval of  
 2-7 a written application to relocate a franchise unless:

2-8 (1) the applicant receives written notice of the  
 2-9 denial or withholding of approval not later than the 60th day after  
 2-10 the date the application is received; and

2-11 (2) if the applicant files a protest with the board,  
 2-12 the board makes a determination of reasonable grounds under this  
 2-13 section.

2-14 SECTION 5. Section 2301.465, Occupations Code, is amended  
 2-15 by amending Subsections (a) and (b) and adding Subsections (h) and  
 2-16 (i) to read as follows:

2-17 (a) In this section:

2-18 (1) "Net cost" means the franchised dealer cost for a  
 2-19 new, unsold, undamaged, and complete motor vehicle [~~of the current~~  
 2-20 ~~model year or the previous model year~~] in a dealer's inventory:

2-21 (A) plus any charges by the manufacturer,  
 2-22 distributor, or representative for distribution, delivery, and  
 2-23 taxes; and

2-24 (B) less all allowances paid to the franchised  
 2-25 dealer by the manufacturer, distributor, or representative.

2-26 (2) "Net discount value" is the net cost multiplied by  
 2-27 the total mileage, exclusive of mileage placed on the motor vehicle  
 2-28 before it was delivered to the dealer, divided by 100,000.

2-29 (b) Notwithstanding the terms of any franchise, after the  
 2-30 termination of a franchise, a manufacturer, distributor, or  
 2-31 representative shall pay to a franchised dealer or any lienholder,  
 2-32 in accordance with the interest of each, the following amounts:

2-33 (1) the dealer cost of each new motor vehicle in the  
 2-34 dealer's inventory with mileage of 5,000 [~~6,000~~] miles or less,  
 2-35 exclusive of mileage placed on the vehicle before it was delivered  
 2-36 to the dealer, reduced by the net discount value of each vehicle,  
 2-37 except that if a vehicle cannot be reduced by the net discount  
 2-38 value, the manufacturer or distributor shall pay the dealer the net  
 2-39 cost of the vehicle;

2-40 (2) the dealer cost of each new, unused, undamaged,  
 2-41 and unsold part or accessory that:

2-42 (A) is in the current parts catalogue and is  
 2-43 still in the original, resalable merchandising package and in an  
 2-44 unbroken lot, except in the case of sheet metal, a comparable  
 2-45 substitute for the original package may be used; and

2-46 (B) was purchased by the dealer either directly  
 2-47 from the manufacturer or distributor or from an outgoing authorized  
 2-48 dealer as a part of the dealer's initial inventory;

2-49 (3) the fair market value of each undamaged sign owned  
 2-50 by the dealer that bears a trademark or tradename used or claimed by  
 2-51 the manufacturer, distributor, or representative and that was  
 2-52 purchased from or at the request of the manufacturer, distributor,  
 2-53 or representative;

2-54 (4) the fair market value of all special tools, data  
 2-55 processing equipment, and automotive service equipment owned by the  
 2-56 dealer that:

2-57 (A) were recommended in writing and designated as  
 2-58 special tools and equipment;

2-59 (B) were purchased from or at the request of the  
 2-60 manufacturer, distributor, or representative; and

2-61 (C) are in usable and good condition except for  
 2-62 reasonable wear and tear; and

2-63 (5) the cost of transporting, handling, packing,  
 2-64 storing, and loading any property subject to repurchase under this  
 2-65 section.

2-66 (h) Notwithstanding any other law, this section does not  
 2-67 require a manufacturer, distributor, or representative to  
 2-68 repurchase a motor vehicle that:

2-69 (1) at the time of termination of the franchise had

3-1 been in the dealer's inventory for at least 24 months after the date  
 3-2 the dealer took delivery of the vehicle; or  
 3-3 (2) the dealer purchased not more than 30 days before  
 3-4 the date of termination of the franchise solely in anticipation of  
 3-5 the termination and, in the ordinary course of business, would not  
 3-6 have purchased.

3-7 (i) For purposes of this section, a sale of the assets or  
 3-8 stock of a dealership to a buyer who continues the operation of the  
 3-9 dealership is not a termination of a franchise.

3-10 SECTION 6. Section 2301.467, Occupations Code, is amended  
 3-11 to read as follows:

3-12 Sec. 2301.467. PROHIBITIONS: SALES STANDARDS, RELOCATIONS,  
 3-13 FACILITY CHANGES, PURCHASE OF EQUIPMENT. (a) Notwithstanding the  
 3-14 terms of any franchise, a manufacturer, distributor, or  
 3-15 representative may not:

3-16 (1) require adherence to unreasonable sales or service  
 3-17 standards; or

3-18 (2) unreasonably require a franchised dealer to  
 3-19 purchase special tools or equipment.

3-20 (b) Notwithstanding the terms of any franchise, a  
 3-21 manufacturer, distributor, or representative may not unreasonably  
 3-22 require a franchised dealer to relocate, or to replace or  
 3-23 substantially change, alter, or remodel the dealer's facilities.

3-24 For purposes of this subsection, an act is reasonable if it is  
 3-25 justifiable in light of current and reasonably foreseeable  
 3-26 projections of economic conditions, financial expectations, and  
 3-27 the market for new motor vehicles in the relevant market area.

3-28 (c) The prohibitions under this section apply to the  
 3-29 relationship between a manufacturer and:

3-30 (1) a current franchisee of the manufacturer; or

3-31 (2) a franchised dealer who is seeking to become a  
 3-32 franchisee of the manufacturer.

3-33 SECTION 7. Section 2301.472(d), Occupations Code, is  
 3-34 amended to read as follows:

3-35 (d) In determining whether a manufacturer or distributor  
 3-36 has established that the denial or withholding of approval is  
 3-37 reasonable, the board shall consider all existing circumstances,  
 3-38 including:

3-39 (1) the dealer's sales in relation to the sales in the  
 3-40 market;

3-41 (2) the dealer's investment and obligations;

3-42 (3) injury or benefit to the public;

3-43 (4) the adequacy of the dealer's sales and service  
 3-44 facilities, equipment, parts, and personnel in relation to those of  
 3-45 other dealers of new motor vehicles of the same line-make;

3-46 (5) whether warranties are being honored by the dealer  
 3-47 agreement;

3-48 (6) the parties' compliance with the franchise, except  
 3-49 to the extent that the franchise conflicts with this chapter;

3-50 (7) the enforceability of the franchise from a public  
 3-51 policy standpoint, including issues of the reasonableness of the  
 3-52 franchise's terms, oppression, adhesion, and the parties' relative  
 3-53 bargaining power;

3-54 (8) whether the dealer complies with reasonable  
 3-55 capitalization requirements or will be able to comply with  
 3-56 reasonable capitalization requirements within a reasonable time;

3-57 (9) any harm to the manufacturer or distributor if the  
 3-58 denial or withholding of approval is not upheld; ~~and~~

3-59 (10) any harm to the dealer if the denial or  
 3-60 withholding of approval is upheld;

3-61 (11) the manufacturer's or distributor's investment  
 3-62 and obligations; and

3-63 (12) whether the denial or withholding of approval is  
 3-64 justified in light of current and reasonably foreseeable  
 3-65 projections of economic conditions, financial expectations, and  
 3-66 the market for new motor vehicles in the relevant market area.

3-67 SECTION 8. Section 2301.475, Occupations Code, is amended  
 3-68 by adding Subsection (c) to read as follows:

3-69 (c) Money paid by a manufacturer or distributor under an

4-1 incentive program may only be paid to a dealer, unless the dealer  
 4-2 agrees to the payment of the money to another person, including an  
 4-3 employee of the dealer, before the payment is made.

4-4 SECTION 9. Subchapter J, Chapter 2301, Occupations Code, is  
 4-5 amended by adding Section 2301.479 to read as follows:

4-6 Sec. 2301.479. ADVERSE ACTION IN CONNECTION WITH EXPORT OF  
 4-7 VEHICLE. (a) Except as otherwise provided by this section, a  
 4-8 manufacturer, distributor, or representative may not take an  
 4-9 adverse action against a franchised dealer because the franchised  
 4-10 dealer sells or leases a vehicle that is later exported to a  
 4-11 location outside the United States.

4-12 (b) A franchise provision that allows a manufacturer,  
 4-13 distributor, or representative to take adverse action against a  
 4-14 franchised dealer because the franchised dealer sells or leases a  
 4-15 vehicle that is later exported to a location outside the United  
 4-16 States is enforceable only if, at the time of the original sale or  
 4-17 lease, the dealer knew or reasonably should have known that the  
 4-18 vehicle would be exported to a location outside the United States.

4-19 (c) A franchised dealer is presumed to have no actual  
 4-20 knowledge that a vehicle the dealer sells or leases will be exported  
 4-21 to a location outside the United States if, under the laws of a  
 4-22 state of the United States:

4-23 (1) the vehicle is titled;  
 4-24 (2) the vehicle is registered; and  
 4-25 (3) applicable state and local taxes are paid for the  
 4-26 vehicle.

4-27 (d) The presumption under Subsection (c) may be rebutted by  
 4-28 direct, clear, and convincing evidence that the franchised dealer  
 4-29 had actual knowledge or reasonably should have known at the time of  
 4-30 the original sale or lease that the vehicle would be exported to a  
 4-31 location outside the United States.

4-32 (e) Except as otherwise permitted by this section, a  
 4-33 franchise provision that allows a manufacturer, distributor, or  
 4-34 representative to take adverse action against a franchised dealer  
 4-35 because the franchised dealer sells or leases a vehicle that is  
 4-36 later exported to a location outside the United States is void and  
 4-37 unenforceable.

4-38 SECTION 10. Sections 2301.652(a) and (c), Occupations Code,  
 4-39 are amended to read as follows:

4-40 (a) The board may deny an application for a license to  
 4-41 establish a dealership if, following a protest, the applicant fails  
 4-42 to establish good cause for establishing the dealership. In  
 4-43 determining good cause, the board shall consider:

4-44 (1) whether the manufacturer or distributor of the  
 4-45 same line-make of new motor vehicle is being adequately represented  
 4-46 as to sales and service;

4-47 (2) whether the protesting franchised dealer  
 4-48 representing the same line-make of new motor vehicle is in  
 4-49 substantial compliance with the dealer's franchise, to the extent  
 4-50 that the franchise is not in conflict with this chapter;

4-51 (3) the desirability of a competitive marketplace;

4-52 (4) any harm to the protesting franchised dealer;

4-53 [~~and~~]

4-54 (5) the public interest;

4-55 (6) any harm to the applicant; and

4-56 (7) current and reasonably foreseeable projections of  
 4-57 economic conditions, financial expectations, and the market for new  
 4-58 motor vehicles in the relevant market area.

4-59 (c) A franchised dealer may not protest an application to  
 4-60 relocate a dealership under this section if the proposed relocation  
 4-61 site is not:

4-62 (1) more than two miles [~~one mile~~] from the site where  
 4-63 the dealership is currently located; or

4-64 (2) closer to the franchised dealer than the site from  
 4-65 which the dealership is being relocated.

4-66 SECTION 11. (a) The change in law made by this Act applies  
 4-67 only to an agreement entered into or renewed under Chapter 2301,  
 4-68 Occupations Code, on or after the effective date of this Act. An  
 4-69 agreement entered into or renewed before the effective date of this

5-1 Act is governed by the law in effect on the date the agreement was  
5-2 entered into or renewed, and the former law is continued in effect  
5-3 for that purpose.

5-4 (b) The change in law made by this Act applies only to an  
5-5 application filed under Chapter 2301, Occupations Code, on or after  
5-6 the effective date of this Act. An application filed before that  
5-7 date is governed by the law in effect on the date the application  
5-8 was filed, and the former law is continued in effect for that  
5-9 purpose.

5-10 SECTION 12. This Act takes effect September 1, 2009.

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