

## **BILL ANALYSIS**

C.S.H.B. 2293

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Licensing & Administrative Procedures  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The relationship between motor vehicle manufacturers and distributors and their franchised dealers is governed by the franchise agreement between the parties and state law. Interested parties contend that, given the economic and financial conditions the retail automobile industry has experienced in the past two years, including the bankruptcy of major automobile manufacturers and the loss of more than 100 franchised dealerships in Texas, the law needs to be updated to address certain practices that continue to threaten the viability of Texas franchised dealerships and the retail automobile industry. C.S.H.B. 2293 seeks to implement these updates by, among other provisions, preserving dealer property rights and protecting customer information at a dealership.

### **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. 2293 amends the Occupations Code to authorize a manufacturer or distributor, in determining whether to approve an application filed by a dealer for the transfer of a vehicle, to consider the prospective transferee's financial and operational performance as a franchised dealer, if the prospective transferee is or has been a franchised dealer, or the prospective transferee's moral character. The bill includes the depreciated value of computer software that was recommended and required in writing by the manufacturer, distributor, or representative among the amounts a franchise, manufacturer, distributor, or representative of such an entity must pay to a franchised dealer or lienholder, in accordance with the interest of each, after the termination of a franchise.

C.S.H.B. 2293 requires a manufacturer, distributor, or representative that terminates or discontinues a franchise by any means without complying with state laws governing such an action or, regardless of whether such an entity complies with those laws, that terminates or discontinues a franchise by discontinuing a line-make, ceasing to do business in Texas, or changing the distributor or method of distribution of its products in Texas, in addition to the duties placed on the entity under provisions of law relating to payments to a franchised dealer following the termination of a franchise, to pay the franchised dealer upon termination of the franchise specified amounts based on certain conditions and criteria.

C.S.H.B. 2293 requires a franchised dealer receiving money from a manufacturer, distributor, or representative equivalent to the fair monthly rental value of the dealership to make a reasonable effort to earn income from the dealership after a termination or discontinuance and inform the manufacturer, distributor, or representative of such efforts and of any income earned from the dealership. The bill requires the amounts to be paid to the dealer relating to certain construction costs, the fair monthly rental value of the dealership, or certain costs associated with upgrading or substantially altering a dealership by a manufacturer, distributor, or representative to be based

on the percentage of the total square footage of the dealership that was allocated to the franchise being terminated or discontinued at the time of the termination or discontinuance if the termination or discontinuance does not involve each franchise operated by a franchised dealer at a single location. The bill requires a franchised dealer receiving such amounts to mitigate damages by listing the dealership for lease or sublease with a real estate broker not later than the 30th day after the effective date of the termination or discontinuance and to reasonably cooperate with the broker in the performance of the broker's duties. The bill authorizes a manufacturer, distributor, or representative to reduce the amount of the fair monthly rental value payment made to the dealer by the amount of any income earned by the dealer from the dealership during the month preceding the payment. The bill requires a manufacturer, distributor, or representative, as appropriate, to pay, not later than the 90th day after the date of the termination or discontinuance, specified amounts described by the bill's provisions relating to certain construction costs, certain costs associated with upgrading or substantially altering a dealership, and an amount equal to the value of the goodwill associated with the franchise as it existed on the day before the earlier of the date of the termination or discontinuance or the date on which the manufacturer, distributor, or representative announced its intention to terminate or discontinue the franchise. The bill establishes that an amount payable to a franchised dealer relating to certain construction costs and certain costs associated with upgrading or substantially altering a dealership does not include any tax depreciation benefit received by the franchised dealer or any amount previously paid to the dealer by the manufacturer, distributor, or representative to subsidize the costs incurred by the dealer in performing those activities.

C.S.H.B. 2293 establishes that it is unreasonable for a manufacturer, distributor, or representative to require a franchised dealer to construct a new dealership before the 15th anniversary of the date the construction of the dealership at that location was completed if the construction was in substantial compliance with standards or plans provided by a manufacturer, distributor, or representative or through a subsidiary or agent of the manufacturer, distributor, or representative. The bill establishes that it is unreasonable for a manufacturer, distributor, or representative to require a franchised dealer to substantially change, alter, or remodel an existing dealership before the 10th anniversary of the date that a prior change, alteration, or remodel of the dealership at that location was completed if the change, alteration, or remodel was in substantial compliance with standards or plans provided by a manufacturer, distributor, or representative or through a subsidiary or agent of the manufacturer, distributor, or representative. The bill, in a provision of law making prohibitions on a manufacturer, distributor, or representative requiring adherence to unreasonable sales or service standards or unreasonably requiring a franchised dealer to make certain purchases of equipment or facility relocations or changes applicable 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, provides that those prohibitions are applicable to a relationship between a manufacturer, distributor, or representative and a current franchisee of such an entity, a successor of a current franchisee of such an entity, or a franchised dealer who is seeking to become a franchisee of such an entity.

C.S.H.B. 2293 prohibits a manufacturer, distributor, or representative from unreasonably limiting or impairing the ability of a franchised dealer to use the dealership property as the dealer considers appropriate, controlling the use of the dealership property after the franchise is terminated or discontinued, or at any time exercising exclusive control over the use of the dealership property. The bill prohibits a manufacturer, distributor, or representative from treating franchised dealers of the same line-make differently and prohibits a manufacturer, distributor, or representative from enforcing standards or guidelines applicable to its franchised dealers in the sale of motor vehicles if, in the application of the standards or guidelines, the dealers are treated unfairly or inequitably.

C.S.H.B. 2293 requires a manufacturer or distributor to pay a dealer's claim filed under a manufacturer or distributor incentive program not later than the 30th day after the date the claim is approved. The bill establishes that a claim is considered approved unless a manufacturer or

distributor rejects the claim not later than the 31st day after the date of receipt of the claim by the manufacturer or distributor and requires the manufacturer or distributor to provide the dealer with written notice of a rejection of a claim and the reasons for the rejection. The bill changes from the first anniversary of the ending date of a manufacturer or distributor incentive program to the first anniversary of the date a franchised dealer pays a claim under such a program the date after which a manufacturer or distributor is prohibited from charging back to a dealer certain amounts or auditing the records of the dealer.

C.S.H.B. 2293 prohibits a manufacturer, distributor, or representative from requiring a franchised dealer to provide to the entity or representative information regarding a customer, with certain specified exceptions.

C.S.H.B. 2293 makes a provision in a property use agreement that unreasonably limits or impairs the ability of a franchised dealer to use the dealership as the dealer considers appropriate void and unenforceable. The bill prohibits a manufacturer, distributor, or representative from requiring a dealer to enter into a property use agreement for specified purposes and makes provisions in such an agreement that limit the dealer's ability to add a line-make or bind a franchised dealer's successor void and unenforceable. The bill establishes that a property use agreement expires on the earlier of the date provided by the property use agreement or the termination of the franchise between the parties to the property use agreement and that the bill's provisions relating to such agreements apply to a subsidiary of, or a person controlled by, a manufacturer, distributor, or representative.

C.S.H.B. 2293 expands the circumstances under which mediation requirements apply to the parties involved in an action brought against a manufacturer or distributor by a franchised dealer to include statutory provisions governing the relationship between the parties and manufacturer or distributor incentive programs and related provisions of the bill. The bill expands the application of a provision of law authorizing a franchised dealer to institute an action under the Deceptive Trade Practices-Consumer Protection Act to include a franchised dealer who has sustained damages as a result of a violation of statutory provisions governing the relationship between the parties and manufacturer or distributor incentive programs and related provisions of the bill.

C.S.H.B. 2293 authorizes a franchised dealer to protest an application to relocate a dealership from a location in an affected county to a location within the same affected county or an adjacent affected county only if the dealer is a dealer of the same line-make as the relocating dealership and is in the affected county where the proposed dealership is being relocated and is nearest to the proposed relocation site or a dealer of the same line-make as the relocating dealership whose dealership location is within 15 miles of the proposed relocation site. The bill defines "affected county," for purposes of these provisions of the bill, as a county with a population of one million or more or a county with a population of 500,000 or more but less than one million that is adjacent to a county with a population of one million or more. The bill authorizes each dealer, if more than one dealership location is an equal distance from the proposed relocation site and each dealer and dealership location is a dealer of the same line-make as the relocating dealership and is in the affected county where the proposed dealership is being relocated and is nearest to the proposed relocation site, to protest the relocation of the dealership under the provisions of the bill. The bill prohibits a dealer from protesting an application to relocate a dealership if the proposed relocation site is two miles or less from the dealership's current location.

C.S.H.B. 2293 prohibits a dealer from protesting the relocation of an economically impaired dealer if the relocation is reasonably expected to be completed before the first anniversary of the date of the event leading to its classification as an economically impaired dealer and the proposed relocation site is two miles or less from the economically impaired dealer's current location. The bill authorizes a dealer of the same line-make as an economically impaired dealer whose dealership is nearest to the proposed relocation site of the economically impaired dealer to protest the relocation if the proposed relocation site is more than two miles closer to the

protesting dealer's dealership than the site of the economically impaired dealer's current location and authorizes each dealer, if more than one dealership location is an equal distance from the proposed relocation site and each dealer and dealership location meets that description, to protest the relocation under the bill's provisions. The bill defines "economically impaired dealer" for the purposes of these provisions of the bill.

C.S.H.B. 2293 defines "property use agreement" and makes conforming and nonsubstantive changes.

### **EFFECTIVE DATE**

September 1, 2011.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 2293 omits a provision included in the original relating the applicability of statutory provisions governing the sale or lease of motor vehicles to the bankruptcy of a motor vehicle manufacturer, distributor, or representative.

C.S.H.B. 2293 differs from the original by authorizing a manufacturer or distributor to consider, in determining whether to approve an application for a transfer of ownership by a dealer, a prospective transferee's financial and operational performance as a franchised dealer, if the prospective transferee is or has been a franchised dealer, whereas the original authorizes a manufacturer or distributor to consider whether a prospective transferee is or has been a franchised dealer in Texas.

C.S.H.B. 2293 contains a provision not included in the original by including the depreciated value of computer software that was recommended and required in writing by the manufacturer, distributor, or representative among the amounts a manufacturer, distributor, or representative of such an entity is required to pay to a franchised dealer or lienholder, in accordance with the interest of each, after the termination of a franchise. The substitute omits a provision included in the original including in those amounts the fair market value of certain computer software owned by the dealer that meets certain conditions.

C.S.H.B. 2293 omits a provision included in the original, in a provision requiring a manufacturer, distributor, or representative that terminates a franchise under certain conditions to pay the franchised dealer specified amounts, requiring the manufacturer, distributor, or representative to pay the dealer's costs for furnishing a dealership in a certain period. The substitute differs from the original by requiring the payment of an amount equal to the value of the goodwill associated with the franchise as it existed before the date on which the manufacturer, distributor, or representative announced its intention to terminate or discontinue the franchise in accordance with the substitute's provisions, whereas the original requires that amount to be computed from the date on which the intention of the manufacturer, distributor, or representative to terminate or discontinue the franchise became publicly known in the area in which the dealership is located.

C.S.H.B. 2293 contains provisions not included in the original requiring the amounts to be paid to the dealer by a manufacturer, distributor, or representative to be based on a specified percentage of the total square footage of the dealership and under certain conditions and requiring a franchised dealer receiving money to mitigate damages by listing the dealership for lease or sublease with a real estate broker within a certain period and to reasonably cooperate with the broker in the performance of the broker's duties.

C.S.H.B. 2293 differs from the original by requiring the manufacturer, distributor, or representative, as appropriate, to pay any amount relating to specified construction and other costs to the owner of a franchise terminated or discontinued under certain conditions not later

than the 90th day after the date of the termination or discontinuance, whereas the original requires such payment not later than the 30th day after that date. The substitute contains a provision not included in the original specifying that such an amount does not include any tax depreciation benefit received by the franchised dealer.

C.S.H.B. 2293 differs from the original by establishing that it is unreasonable for a manufacturer, distributor, or representative to require a franchised dealer to substantially change, alter, or remodel an existing dealership before the 10th anniversary of the date that a prior change, alteration, or remodel of the dealership at that location was completed if the change, alteration, or remodel was in substantial compliance with certain standards or plans, whereas the original specifies such a requirement is unreasonable before the 15th anniversary of that date.

C.S.H.B. 2293 omits a provision included in the original establishing that, to the extent of any conflict between restrictions relating to a dealer's use of dealership property and another provision of law, the other provision of law controls.

C.S.H.B. 2293 differs from the original by making provisions prohibiting inequitable treatment of dealers or franchisees apply only to franchised dealers of the same line-make, whereas the original makes those provisions applicable to franchised dealers. The substitute differs from the original by making that prohibition apply to the enforcement of standards or guidelines applicable to franchised dealers if the dealers are treated unfairly or inequitably, whereas the original applies the prohibition to the enforcement of standards or guidelines applicable to dealers who are unreasonably treated differently.

C.S.H.B. 2293 contains a provision not included in the original relating to manufacturer or distributor incentive programs and the payment of a dealer's claim under such a program. The substitute differs from the original by setting the deadline for the manufacturer or distributor to charge back certain amounts to a dealer as a result of an incentive program or audit the dealer's records relating to the program as the first anniversary of the date a manufacturer or distributor pays a claim under such a program, whereas the original sets the deadline as the first anniversary of the date a franchised dealer submits a claim.

C.S.H.B. 2293 contains a provision not included in the original including a specific item of information that is necessary for reasonable marketing purposes among the exceptions to a prohibition against a manufacturer, distributor, or representative requiring a franchised dealer to provide certain information regarding a customer.

C.S.H.B. 2293 differs from the original by omitting the applicability of provisions relating to property use agreements to a person owned by a manufacturer, distributor, or representative and to a person whose business decisions are substantially influenced by a manufacturer, distributor, or representative.

C.S.H.B. 2293 contains provisions not included in the original relating to a dealer's right to protest the relocation of a dealership in certain affected counties and the relocation of the dealership of an economically impaired dealer. The substitute contains definitions not included in the original for "affected county" and "economically impaired dealer."

C.S.H.B. 2293 differs from the original in nonsubstantive ways.