

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of motor vehicle dealers, manufacturers,
distributors, and representatives.

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

SECTION 1. Section 2301.002, Occupations Code, is amended
by adding Subdivision (27-a) to read as follows:

(27-a) "Property use agreement" means a contract,
other than a franchise, between a franchised dealer and a
manufacturer, distributor, or representative that grants the
manufacturer, distributor, or representative the right to regulate
the franchised dealer's use of the dealership and other facilities
covered by the franchise.

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

1 under Subsection (a), a manufacturer or distributor may consider:

2 (1) the prospective transferee's financial and
3 operational performance as a franchised dealer, if the prospective
4 transferee is or has been a franchised dealer;

5 (2) the prospective transferee's moral character; or

6 (3) the extent to which a prospective transferee
7 satisfies any criteria developed by the manufacturer or distributor
8 and made available to the prospective transferee, specifically to
9 determine the business experience and financial qualifications of a
10 prospective transferee.

11 (h) A manufacturer or distributor may consider the criteria
12 developed under Subsection (g)(3) only if the criteria are in
13 writing, are reasonable, and are uniformly applied in similar
14 situations.

15 (i) It is unreasonable for a manufacturer or distributor to
16 reject a prospective transferee who is of good moral character and
17 who satisfies the criteria developed under Subsection (g)(3).

18 SECTION 3. Subsection (b), Section 2301.465, Occupations
19 Code, is amended to read as follows:

20 (b) Notwithstanding the terms of any franchise, after the
21 termination of a franchise, a manufacturer, distributor, or
22 representative shall pay to a franchised dealer or any lienholder,
23 in accordance with the interest of each, the following amounts:

24 (1) the dealer cost of each new motor vehicle in the
25 dealer's inventory with mileage of 5,000 miles or less, exclusive
26 of mileage placed on the vehicle before it was delivered to the
27 dealer, reduced by the net discount value of each vehicle, except

1 that if a vehicle cannot be reduced by the net discount value, the
2 manufacturer or distributor shall pay the dealer the net cost of the
3 vehicle;

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

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

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

13 (3) the fair market value of each undamaged sign owned
14 by the dealer that bears a trademark or tradename used or claimed by
15 the manufacturer, distributor, or representative and that was
16 purchased from or at the request of the manufacturer, distributor,
17 or representative;

18 (4) the fair market value of all special tools, data
19 processing equipment, and automotive service equipment owned by the
20 dealer that:

21 (A) were recommended in writing and designated as
22 special tools and equipment;

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

25 (C) are in usable and good condition except for
26 reasonable wear and tear; [~~and~~]

27 (5) the cost of transporting, handling, packing,

1 storing, and loading any property subject to repurchase under this
2 section; and

3 (6) the depreciated value of computer software that
4 was recommended and required in writing by the manufacturer,
5 distributor, or representative.

6 SECTION 4. Subchapter J, Chapter 2301, Occupations Code, is
7 amended by adding Section 2301.4651 to read as follows:

8 Sec. 2301.4651. ADDITIONAL PAYMENT TO FRANCHISED DEALER IN
9 CERTAIN SITUATIONS. (a) This section applies to a manufacturer,
10 distributor, or representative that:

11 (1) terminates or discontinues a franchise by any
12 means without complying with Section 2301.453; or

13 (2) regardless of whether the manufacturer,
14 distributor, or representative complies with Section 2301.453,
15 terminates or discontinues a franchise by:

16 (A) discontinuing a line-make;

17 (B) ceasing to do business in this state; or

18 (C) changing the distributor or method of
19 distribution of its products in this state.

20 (b) In addition to the duties placed on a manufacturer,
21 distributor, or representative by Section 2301.465, a
22 manufacturer, distributor, or representative to whom this section
23 applies shall pay to the franchised dealer the following amounts as
24 applicable:

25 (1) either:

26 (A) the dealer's construction costs for a new
27 dealership completed in the two years preceding the date of the

1 termination or discontinuance described by Subsection (a); or
2 (B) if the dealer does not have any costs
3 described by Paragraph (A), the fair monthly rental value of the
4 dealership payable in cash each month beginning on the first day of
5 the first month following the date of the termination or
6 discontinuance described by Subsection (a) and ending on the
7 earlier of:

8 (i) the first anniversary of the
9 termination or discontinuance date; or

10 (ii) the date on which the dealer no longer
11 owns the dealership;

12 (2) the dealer's costs for upgrading or substantially
13 altering a dealership if the upgrades or alterations were completed
14 or added in the two years preceding the date of the termination or
15 discontinuance described by Subsection (a); and

16 (3) an amount equal to the value of the goodwill
17 associated with the franchise as it existed on the day before the
18 earlier of:

19 (A) the date of the termination or discontinuance
20 described by Subsection (a); or

21 (B) the date on which the manufacturer,
22 distributor, or representative announced its intention to
23 terminate or discontinue the franchise in a manner described by
24 Subsection (a).

25 (c) A franchised dealer receiving money under Subsection
26 (b)(1)(B) shall:

27 (1) make a reasonable effort to earn income from a

1 dealership after a termination or discontinuance described by
2 Subsection (a); and

3 (2) inform the manufacturer, distributor, or
4 representative of the dealer's efforts under Subdivision (1) and of
5 any income earned from the dealership.

6 (d) The amounts to be paid under Subsection (b)(1) or (2) to
7 the dealer by a manufacturer, distributor, or representative shall
8 be based on the percentage of the total square footage of the
9 dealership attributable to sales, service, and parts suggested by a
10 manufacturer or distributor and allocated to the franchise being
11 terminated or discontinued at the time of the termination or
12 discontinuance.

13 (e) A franchised dealer receiving money under Subsection
14 (b)(1) or (2) shall mitigate damages by listing the dealership for
15 lease or sublease with a real estate broker licensed under Chapter
16 1101 not later than the 30th day after the effective date of the
17 termination or discontinuance described by Subsection (a) and shall
18 reasonably cooperate with the broker in the performance of the
19 broker's duties.

20 (f) A manufacturer, distributor, or representative may
21 reduce the amount of a payment made to a franchised dealer under
22 Subsection (b)(1)(B) by the amount of any income earned by the
23 dealer from the dealership during the month preceding the payment.

24 (g) The manufacturer, distributor, or representative, as
25 appropriate, shall pay any amount described by Subsection
26 (b)(1)(A), (b)(2), or (b)(3) not later than the 90th day after the
27 date of the termination or discontinuance described by Subsection

1 (a).

2 (h) An amount payable under Subsection (b)(1)(A) or (b)(2)
3 does not include any tax depreciation benefit received by the
4 franchised dealer or any amount previously paid to the franchised
5 dealer by the manufacturer, distributor, or representative to
6 subsidize the costs incurred by the dealer in performing the
7 activities described by Subsection (b)(1)(A) or (b)(2).

8 SECTION 5. Section 2301.467, Occupations Code, is amended
9 by amending Subsections (b) and (c) and adding Subsections (b-1)
10 and (b-2) to read as follows:

11 (b) Notwithstanding the terms of any franchise, a
12 manufacturer, distributor, or representative may not unreasonably
13 require a franchised dealer to relocate, or to replace or
14 substantially change, alter, or remodel the dealer's facilities.
15 Except as provided by Subsections (b-1) and (b-2) [~~For purposes of~~
16 ~~this subsection~~], an act is reasonable if it is justifiable in light
17 of current and reasonably foreseeable projections of economic
18 conditions, financial expectations, and the market for new motor
19 vehicles in the relevant market area.

20 (b-1) Except as necessary to comply with health or safety
21 laws or to comply with technology requirements necessary to sell or
22 service a line-make, it is unreasonable for a manufacturer,
23 distributor, or representative to require a franchised dealer to
24 construct a new dealership or to substantially change, alter, or
25 remodel an existing dealership before the 10th anniversary of the
26 date the construction of the dealership at that location was
27 completed if the construction was in substantial compliance with

1 standards or plans provided by a manufacturer, distributor, or
2 representative or through a subsidiary or agent of the
3 manufacturer, distributor, or representative.

4 (b-2) Except as necessary to comply with health or safety
5 laws or to comply with technology requirements necessary to sell or
6 service a line-make, it is unreasonable for a manufacturer,
7 distributor, or representative to require a franchised dealer to
8 substantially change, alter, or remodel an existing dealership
9 before the 10th anniversary of the date that a prior change,
10 alteration, or remodel of the dealership at that location was
11 completed if the change, alteration, or remodel was in substantial
12 compliance with standards or plans provided by a manufacturer,
13 distributor, or representative or through a subsidiary or agent of
14 the manufacturer, distributor, or representative.

15 (c) This [~~The prohibitions under this~~] section applies
16 [~~apply~~] to the relationship between a manufacturer, distributor, or
17 representative and:

18 (1) a current franchisee of the manufacturer,
19 distributor, or representative; [or]

20 (2) a successor of a current franchisee of the
21 manufacturer, distributor, or representative; or

22 (3) a franchised dealer who is seeking to become a
23 franchisee of the manufacturer, distributor, or representative.

24 SECTION 6. Subchapter J, Chapter 2301, Occupations Code, is
25 amended by adding Section 2301.4671 to read as follows:

26 Sec. 2301.4671. FRANCHISE PROVISION ESTABLISHING
27 RESTRICTION ON DEALER'S USE OF DEALERSHIP PROPERTY.

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

3 (1) unreasonably limit or impair the ability of a
4 franchised dealer to use the dealership property as the dealer
5 considers appropriate;

6 (2) control the use of the dealership property after
7 the franchise is terminated or discontinued; or

8 (3) at any time exercise exclusive control over the
9 use of the dealership property.

10 SECTION 7. Section 2301.468, Occupations Code, is amended
11 to read as follows:

12 Sec. 2301.468. INEQUITABLE TREATMENT OF [~~DISCRIMINATION~~
13 ~~AMONG~~] DEALERS OR FRANCHISEES. Notwithstanding the terms of a
14 franchise, a [A] manufacturer, distributor, or representative may
15 not[+]

16 [~~(1) notwithstanding the terms of any franchise,~~
17 ~~directly or indirectly discriminate against a franchised dealer or~~
18 ~~otherwise] treat franchised dealers of the same line-make
19 differently as a result of the application of a formula or other
20 computation or process intended to gauge the performance of a
21 dealership or otherwise enforce standards or guidelines applicable
22 to its franchised dealers in the sale of motor vehicles if, in the
23 application of the standards or guidelines, the franchised dealers
24 are treated unfairly or inequitably[+, or~~

25 [~~(2) discriminate unreasonably between or among~~
26 ~~franchisees] in the sale of a motor vehicle owned by the
27 manufacturer or distributor.~~

1 SECTION 8. Subchapter J, Chapter 2301, Occupations Code, is
2 amended by adding Section 2301.4749 to read as follows:

3 Sec. 2301.4749. MANUFACTURER OR DISTRIBUTOR INCENTIVE
4 PROGRAMS: PAYMENT TO DEALER. (a) A manufacturer or distributor
5 shall pay a dealer's claim filed under a manufacturer or
6 distributor incentive program not later than the 30th day after the
7 date the claim is approved.

8 (b) A claim is considered approved unless a manufacturer or
9 distributor rejects the claim not later than the 31st day after the
10 date of receipt of the claim by the manufacturer or distributor.

11 (c) The manufacturer or distributor shall provide the
12 dealer with written notice of a rejection of a claim and the reasons
13 for the rejection.

14 SECTION 9. The heading to Section 2301.475, Occupations
15 Code, is amended to read as follows:

16 Sec. 2301.475. MANUFACTURER OR DISTRIBUTOR INCENTIVE
17 PROGRAMS: AUDIT OR CHARGEBACK.

18 SECTION 10. Subsection (a), Section 2301.475, Occupations
19 Code, is amended to read as follows:

20 (a) Except as provided by Subsection (b), after the first
21 anniversary of the ~~[ending]~~ date ~~[of]~~ a manufacturer or distributor
22 pays a claim under Section 2301.4749, the ~~[incentive program, a]~~
23 manufacturer or distributor may not:

24 (1) charge back to a dealer money paid by the
25 manufacturer or distributor as a result of the incentive program;

26 (2) charge back to a dealer the cash value of a prize
27 or other thing of value awarded to the dealer as a result of the

1 incentive program; or

2 (3) audit the records of a dealer to determine
3 compliance with the terms of the incentive program, unless the
4 manufacturer or distributor has reasonable grounds to believe the
5 dealer committed fraud with respect to the incentive program.

6 SECTION 11. Subchapter J, Chapter 2301, Occupations Code,
7 is amended by adding Sections 2301.480, 2301.481, and 2301.482 to
8 read as follows:

9 Sec. 2301.480. DISCLOSURE OF CERTAIN INFORMATION. A
10 manufacturer, distributor, or representative may not require that a
11 franchised dealer provide to the manufacturer, distributor, or
12 representative information regarding a customer, except to the
13 extent that a specific item of information is necessary:

14 (1) for the sale or delivery of a new motor vehicle to
15 a customer;

16 (2) for reasonable marketing purposes;

17 (3) to validate a claim and make payment under an
18 incentive program;

19 (4) to support a dealer's claim for reimbursement for
20 repairs performed under a manufacturer's warranty; or

21 (5) to satisfy a product recall or safety obligation.

22 Sec. 2301.481. PROPERTY USE AGREEMENT. (a) A
23 manufacturer, distributor, or representative may not require that a
24 dealer enter into a property use agreement as a condition of the
25 manufacturer, distributor, or representative:

26 (1) entering into a franchise;

27 (2) approving a franchised dealer's application to add

1 a line-make;

2 (3) approving a franchised dealer's application to
3 relocate a franchise; or

4 (4) approving a sale or transfer of a dealer,
5 dealership, or franchise.

6 (b) The following provisions in a property use agreement are
7 void and unenforceable:

8 (1) a limitation on the franchised dealer's ability to
9 add a line-make; or

10 (2) a provision that binds a franchised dealer's
11 successor.

12 (c) A property use agreement expires on the earlier of:

13 (1) the date provided by the property use agreement;
14 or

15 (2) the termination of the franchise between the
16 parties to the property use agreement.

17 (d) This section applies to a subsidiary of, or a person
18 controlled by, a manufacturer, distributor, or representative.

19 Sec. 2301.482. CERTAIN PROPERTY USE AGREEMENTS.

20 (a) Notwithstanding Section 2301.481(b)(1), and subject to this
21 section, a dealer may enter into a property use agreement for cash
22 consideration that grants the manufacturer or distributor the
23 exclusive rights to direct the use of the dealership.

24 (b) In the event the dealer breaches the terms of the
25 property use agreement described by Subsection (a) by altering the
26 use of the property during the term of the agreement in violation of
27 the agreement, the property use agreement is terminated and the

1 dealer must reimburse the manufacturer or distributor in an amount
2 determined by dividing the amount of the manufacturer's or
3 distributor's cash consideration provided under Subsection (a) by
4 the market value of the property identified in the original
5 property use agreement at the time any necessary real estate has
6 been purchased and any necessary construction has been completed,
7 and multiplying the resulting quotient by the market value of the
8 property at the time of the breach.

9 (c) For purposes of this section, the market value of
10 property is to be determined by three appraisers chosen as follows:

11 (1) one selected by the affected manufacturer or
12 distributor;

13 (2) one selected by the affected dealer; and

14 (3) one selected by mutual agreement of the
15 manufacturer or distributor and the dealer.

16 SECTION 12. Subsection (a), Section 2301.522, Occupations
17 Code, is amended to read as follows:

18 (a) In an action brought against a manufacturer or
19 distributor under Subchapter J [~~Sections 2301.451-2301.474~~] by a
20 franchised dealer whose franchise provides for arbitration in
21 compliance with this chapter, the board shall order the parties to
22 submit the dispute to mediation in the manner provided by this
23 subchapter.

24 SECTION 13. Subsection (b), Section 2301.652, Occupations
25 Code, is amended to read as follows:

26 (b) Except as provided by Subsection (c) and Sections
27 2301.6521 and 2301.6522, a person has standing under this section

1 to protest an application to establish or relocate a dealership if
2 the person filing the protest is a franchised dealer of the same
3 line-make whose dealership is located:

4 (1) in the county in which the proposed dealership is
5 to be located; or

6 (2) within a 15-mile radius of the proposed
7 dealership.

8 SECTION 14. Subchapter N, Chapter 2301, Occupations Code,
9 is amended by adding Sections 2301.6521 and 2301.6522 to read as
10 follows:

11 Sec. 2301.6521. RIGHT TO PROTEST: CERTAIN RELOCATIONS.

12 (a) In this section, "affected county" means:

13 (1) a county with a population of one million or more;

14 or

15 (2) a county with a population of 500,000 or more but
16 less than one million that is adjacent to a county with a population
17 of one million or more.

18 (b) Notwithstanding any other provision of this chapter and
19 except as provided by Subsection (d), a franchised dealer may
20 protest an application to relocate a dealership from a location in
21 an affected county to a location within the same affected county or
22 an adjacent affected county only if the dealer is:

23 (1) a dealer of the same line-make as the relocating
24 dealership and is in the affected county where the proposed
25 dealership is being relocated and is nearest to the proposed
26 relocation site, if no dealership of the same line-make as the
27 relocating dealership is located within 15 miles of the proposed

1 relocation site; or

2 (2) a dealer of the same line-make as the relocating
3 dealership whose dealership location is within 15 miles of the
4 proposed relocation site.

5 (c) If more than one dealership location is an equal
6 distance from the proposed relocation site and each dealer and
7 dealership location satisfies the requirements of Subsection
8 (b)(1), each dealer may protest the relocation under Subsection
9 (b)(1).

10 (d) A dealer may not protest an application to relocate a
11 dealership under this section if the proposed relocation site is
12 two miles or less from the dealership's current location.

13 Sec. 2301.6522. RIGHT TO PROTEST: ECONOMICALLY IMPAIRED
14 DEALER. (a) In this section, "economically impaired dealer" means
15 a franchised dealer whose profitability has been, or is reasonably
16 expected to be, substantially reduced at the dealer's current
17 location, with no reasonable expectation of substantial
18 improvement at that location, due to:

19 (1) a natural disaster;

20 (2) the exercise of eminent domain authority with
21 respect to the dealership; or

22 (3) the sale of all or part of the dealership to a
23 governmental entity under threat of the exercise of eminent domain
24 authority.

25 (b) Notwithstanding any other provision of this chapter and
26 except as provided by Subsections (c) and (d), a dealer may not
27 protest the relocation of an economically impaired dealer if:

1 (1) the relocation is reasonably expected to be
2 completed before the first anniversary of the date of the event
3 described by Subsection (a); and

4 (2) the proposed relocation site is two miles or less
5 from the economically impaired dealer's current location.

6 (c) A dealer of the same line-make as an economically
7 impaired dealer whose dealership is nearest to the proposed
8 relocation site of the economically impaired dealer may protest the
9 relocation if the proposed relocation site is more than two miles
10 closer to the protesting dealer's dealership than the site of the
11 economically impaired dealer's current location.

12 (d) If more than one dealership location is an equal
13 distance from the proposed relocation site and each dealer and
14 dealership location satisfies the requirements of Subsection (c),
15 each dealer may protest the relocation under Subsection (c).

16 SECTION 15. Subsection (a), Section 2301.805, Occupations
17 Code, is amended to read as follows:

18 (a) Notwithstanding any other law, including Subchapter E,
19 Chapter 17, Business & Commerce Code, in addition to the other
20 remedies provided by this subchapter, a person may institute an
21 action under Subchapter E, Chapter 17, Business & Commerce Code, or
22 any successor statute to that subchapter, and is entitled to any
23 procedure or remedy under that subchapter, if the person:

24 (1) has sustained damages as a result of a violation of
25 Sections 2301.351-2301.354 or Section 2301.357; or

26 (2) is a franchised dealer who has sustained damages
27 as a result of a violation of:

1 (A) Subchapter J of this chapter [~~Sections~~
2 ~~2301.451-2301.474~~]; or

3 (B) Subchapter E, Chapter 17, Business & Commerce
4 Code.

5 SECTION 16. The change in law made by this Act applies only
6 to an agreement entered into or renewed under Chapter 2301,
7 Occupations Code, on or after the effective date of this Act. An
8 agreement entered into or renewed before the effective date of this
9 Act is governed by the law in effect on the date the agreement was
10 entered into or renewed, and the former law is continued in effect
11 for that purpose.

12 SECTION 17. This Act takes effect September 1, 2011.