

By: Huffman

S.B. No. 529

A BILL TO BE ENTITLED

AN ACT

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

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 a franchise.

SECTION 2. Subchapter A, Chapter 2301, Occupations Code, is
amended by adding Section 2301.008 to read as follows:

Sec. 2301.008. APPLICABILITY OF CHAPTER TO BANKRUPTCY OF
MANUFACTURER, DISTRIBUTOR, OR REPRESENTATIVE. Except as expressly
provided by an order of a court with jurisdiction over a filing in
bankruptcy by a manufacturer, distributor, or representative, the
terms of this chapter apply to the manufacturer, distributor, or
representative during the pendency of the bankruptcy.

SECTION 3. 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

1 withhold approval of an application filed under Subsection (a).
2 ~~[It is unreasonable for a manufacturer or distributor to reject a~~
3 ~~prospective transferee who is of good moral character and who meets~~
4 ~~the written, reasonable, and uniformly applied standards or~~
5 ~~qualifications, if any, of the manufacturer or distributor relating~~
6 ~~to the prospective transferee's business experience and financial~~
7 ~~qualifications.]~~

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

10 (1) whether a prospective transferee is or has been a
11 franchised dealer in this state;

12 (2) the moral character of the prospective transferee;
13 or

14 (3) the extent to which a prospective transferee
15 satisfies any criteria developed by the manufacturer or distributor
16 and made available to the prospective transferee, specifically to
17 determine the business experience and financial qualifications of a
18 prospective transferee.

19 (h) A manufacturer or distributor may consider the criteria
20 developed under Subsection (g)(3) only if the criteria are in
21 writing, are reasonable, and are uniformly applied in similar
22 situations.

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

26 SECTION 4. Section 2301.465(b), Occupations Code, is
27 amended to read as follows:

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 miles or less, exclusive
7 of mileage placed on the vehicle before it was delivered to the
8 dealer, reduced by the net discount value of each vehicle, except
9 that if a vehicle cannot be reduced by the net discount value, the
10 manufacturer or distributor shall pay the dealer the net cost of the
11 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, computer software, and automotive service

1 equipment owned by the dealer that:

2 (A) were recommended in writing and designated as
3 special tools, computer software, or ~~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 SECTION 5. Subchapter J, Chapter 2301, Occupations Code, is
12 amended by adding Section 2301.4651 to read as follows:

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

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

18 (2) regardless of whether the manufacturer,
19 distributor, or representative complies with Section 2301.453,
20 terminates or discontinues a franchise by:

21 (A) discontinuing a line-make;

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

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

25 (b) In addition to the duties placed on a manufacturer,
26 distributor, or representative by Section 2301.465, a
27 manufacturer, distributor, or representative to whom this section

1 applies shall pay to the franchised dealer the following amounts as
2 applicable:

3 (1) either:

4 (A) the dealer's construction costs for a new
5 dealership constructed in the two years preceding the date of the
6 termination or discontinuance described by Subsection (a); or

7 (B) if the dealer does not have any costs
8 described by Paragraph (A), the fair monthly rental value of the
9 dealership payable in cash each month beginning on the first day of
10 the first month following the date of the termination or
11 discontinuance described by Subsection (a) and ending on the
12 earlier of:

13 (i) the first anniversary of the
14 termination or discontinuance date; or

15 (ii) the date on which the dealer no longer
16 owns the dealership;

17 (2) the dealer's costs for upgrading, substantially
18 altering, or furnishing a dealership in the two years preceding the
19 date of the termination or discontinuance described by Subsection
20 (a); and

21 (3) an amount equal to the value of the goodwill
22 associated with the franchise as it existed on the day before the
23 earlier of:

24 (A) the date of the termination or discontinuance
25 described by Subsection (a); or

26 (B) the date on which the intention of the
27 manufacturer, distributor, or representative to terminate or

1 discontinue the franchise in a manner described by Subsection (a)
2 became publicly known in the area in which the dealership is
3 located.

4 (c) A franchised dealer receiving money under Subsection
5 (b)(1)(B) shall:

6 (1) make a reasonable effort to earn income from a
7 dealership after a termination or discontinuance described by
8 Subsection (a); and

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

12 (d) A manufacturer, distributor, or representative may
13 reduce the amount of a payment made to a franchised dealer under
14 Subsection (b)(1)(B) by the amount of any income earned by the
15 dealer from the dealership during the month preceding the payment.

16 (e) The manufacturer, distributor, or representative, as
17 appropriate, shall pay any amount described by Subsection
18 (b)(1)(A), (2), or (3) not later than the 30th day after the date of
19 the termination or discontinuance described by Subsection (a).

20 (f) An amount payable under Subsection (b)(1)(A) or (2) does
21 not include any amount previously paid to the franchised dealer by
22 the manufacturer, distributor, or representative to subsidize the
23 costs incurred by the dealer in performing the activities described
24 by Subsection (b)(1)(A) or (2).

25 SECTION 6. Section 2301.467, Occupations Code, is amended
26 by amending Subsections (b) and (c) and adding Subsection (b-1) to
27 read as follows:

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 Except as provided by Subsection (b-1) [~~For purposes of this~~
6 ~~subsection~~], an act is reasonable if it is justifiable in light of
7 current and reasonably foreseeable projections of economic
8 conditions, financial expectations, and the market for new motor
9 vehicles in the relevant market area.

10 (b-1) It is unreasonable for a manufacturer, distributor,
11 or representative to require a franchised dealer to construct a new
12 dealership or to substantially change, alter, or remodel an
13 existing dealership before the 15th anniversary of the date the
14 dealership at that location was constructed or substantially
15 changed, altered, or remodeled if the construction, change,
16 alteration, or remodel was in substantial compliance with standards
17 or plans provided by a manufacturer, distributor, or
18 representative, or through a subsidiary or agent of the
19 manufacturer, distributor, or representative.

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

23 (1) a current franchisee of the manufacturer,
24 distributor, or representative; [~~or~~]

25 (2) a successor of a current franchisee of the
26 manufacturer, distributor, or representative; or

27 (3) a franchised dealer who is seeking to become a

1 franchisee of the manufacturer, distributor, or representative.

2 SECTION 7. Subchapter J, Chapter 2301, Occupations Code, is
3 amended by adding Section 2301.4671 to read as follows:

4 Sec. 2301.4671. RESTRICTION ON DEALER'S USE OF DEALERSHIP
5 PROPERTY. (a) Notwithstanding the terms of any franchise, a
6 manufacturer, distributor, or representative may not:

7 (1) unreasonably limit or impair the ability of a
8 franchised dealer to use the dealership property as the dealer
9 considers appropriate;

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

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

14 (b) To the extent of any conflict between this section and
15 another section of this chapter, the other section controls over
16 this section.

17 SECTION 8. Section 2301.468, Occupations Code, is amended
18 to read as follows:

19 Sec. 2301.468. INEQUITABLE TREATMENT OF [~~DISCRIMINATION~~
20 ~~AMONG~~] DEALERS OR FRANCHISEES. Notwithstanding the terms of a
21 franchise, a [A] manufacturer, distributor, or representative may
22 not[+]

23 [~~(1) notwithstanding the terms of any franchise,~~
24 ~~directly or indirectly discriminate against a franchised dealer or~~
25 ~~otherwise] treat franchised dealers differently as a result of the
26 application of a formula or other computation or process intended
27 to gauge the performance of a dealership or otherwise enforce~~

1 standards or guidelines applicable to its franchised dealers in the
2 sale of motor vehicles if, in the application of the standards or
3 guidelines, the franchised dealers are unreasonably treated
4 differently [~~or~~

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

8 SECTION 9. Section 2301.475(a), Occupations Code, is
9 amended to read as follows:

10 (a) Except as provided by Subsection (b), after the first
11 anniversary of the date a franchised dealer submits a claim under
12 [~~ending date of~~] a manufacturer or distributor incentive program, a
13 manufacturer or distributor may not:

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

16 (2) charge back to a dealer the cash value of a prize
17 or other thing of value awarded to the dealer as a result of the
18 incentive program; or

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

23 SECTION 10. Subchapter J, Chapter 2301, Occupations Code,
24 is amended by adding Sections 2301.480 and 2301.481 to read as
25 follows:

26 Sec. 2301.480. DISCLOSURE OF CERTAIN INFORMATION. A
27 manufacturer, distributor, or representative may not require that a

1 franchised dealer provide to the manufacturer, distributor, or
2 representative information regarding a customer, except to the
3 extent that a specific item of information is necessary:

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

6 (2) to validate a claim and make payment under an
7 incentive program;

8 (3) to support a dealer's claim for reimbursement for
9 repairs performed under a manufacturer's warranty; or

10 (4) to satisfy a product recall or safety obligation.

11 Sec. 2301.481. PROPERTY USE AGREEMENT. (a) A provision in
12 a property use agreement that unreasonably limits or impairs the
13 ability of a franchised dealer to use the dealership as the dealer
14 considers appropriate is void and unenforceable.

15 (b) A manufacturer, distributor, or representative may not
16 require that a dealer enter into a property use agreement as a
17 condition of the manufacturer, distributor, or representative:

18 (1) entering into a franchise;

19 (2) approving a franchised dealer's application to add
20 a line-make;

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

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

25 (c) The following provisions in a property use agreement are
26 void and unenforceable:

27 (1) a limitation on the franchised dealer's ability to

1 add a line-make; or

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

4 (d) A property use agreement expires on the earlier of:

5 (1) the date provided by the property use agreement;

6 or

7 (2) the termination of the franchise between the
8 parties to the property use agreement.

9 (e) This section applies to a subsidiary of, a person owned
10 or controlled by, or a person whose business decisions are
11 substantially influenced by a manufacturer, distributor, or
12 representative.

13 SECTION 11. Section 2301.522(a), Occupations Code, is
14 amended to read as follows:

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

21 SECTION 12. Section 2301.805(a), Occupations Code, is
22 amended to read as follows:

23 (a) Notwithstanding any other law, including Subchapter E,
24 Chapter 17, Business & Commerce Code, in addition to the other
25 remedies provided by this subchapter, a person may institute an
26 action under Subchapter E, Chapter 17, Business & Commerce Code, or
27 any successor statute to that subchapter, and is entitled to any

1 procedure or remedy under that subchapter, if the person:

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

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

6 (A) Subchapter J of this chapter [~~Sections~~
7 ~~2301.451-2301.474~~]; or

8 (B) Subchapter E, Chapter 17, Business & Commerce
9 Code.

10 SECTION 13. The change in law made by this Act applies only
11 to an agreement entered into or renewed under Chapter 2301,
12 Occupations Code, on or after the effective date of this Act. An
13 agreement entered into or renewed before the effective date of this
14 Act is governed by the law in effect on the date the agreement was
15 entered into or renewed, and the former law is continued in effect
16 for that purpose.

17 SECTION 14. This Act takes effect September 1, 2011.