

By: Phillips

H.B. No. 2054

A BILL TO BE ENTITLED

1 AN ACT

2 relating to certain rights of a motor vehicle manufacturer or
3 distributor concerning a proposed transfer of ownership of a
4 dealership.

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

6 SECTION 1. Section 2301.359, Occupations Code, is amended
7 by amending Subsection (i) and adding Subsections (j) and (k) to
8 read as follows:

9 (i) Except as provided by Subsection (j), it ~~it~~ is
10 unreasonable for a manufacturer or distributor to reject a
11 prospective transferee who is of good moral character and who
12 satisfies the criteria developed under Subsection (g)(3).

13 (j) A manufacturer or distributor has a right of first
14 refusal as specified in the franchise agreement to acquire the
15 assets or ownership of a dealership for which an application is
16 filed under Subsection (a) if the application proposes a change in
17 control of the dealership, a change in the controlling interest of
18 the dealership, or a sale or transfer of 50 percent or more of the
19 dealership's assets and all of the following conditions are met:

20 (1) the manufacturer or distributor notifies the
21 dealer in writing of the intent to exercise the manufacturer's or
22 distributor's right of first refusal during the 60-day period
23 prescribed by Subsection (d);

24 (2) the manufacturer's or distributor's exercise of

1 the right of first refusal will result in the dealer and the
2 dealer's owners receiving consideration, terms, and conditions
3 that are equal to or better than the consideration, terms, and
4 conditions the dealer or owners would receive under the dealer's
5 agreement with the proposed transferee, as evidenced by a written
6 contract between the dealer and proposed transferee; and

7 (3) the proposed change of the dealership's ownership
8 or the sale or transfer of assets does not involve the transfer of a
9 controlling interest in the dealership, the transfer of the
10 controlling assets of the dealer, or the transfer or issuance of the
11 controlling stock position of a dealer's owner to:

12 (A) a designated family member of the owner,
13 including the owner's spouse, child, grandchild, sibling, niece,
14 nephew, or parent, or the spouse of the owner's child or grandchild;

15 (B) a manager of the dealer who:

16 (i) has been employed continuously by the
17 dealer in the dealership during the four years preceding the date of
18 the application; and

19 (ii) is otherwise qualified as a dealer
20 operator according to the usual standards of the manufacturer or
21 distributor;

22 (C) a partnership or corporation controlled by
23 any person described by Paragraph (A); or

24 (D) a trust arrangement established or to be
25 established to:

26 (i) allow the dealer to continue to qualify
27 under the manufacturer's or distributor's usual standards; or

1 (ii) provide for the succession of the
2 franchise agreement to a designated family member or qualified
3 manager in the event of the death or incapacity of the dealer or a
4 principal owner of the dealer.

5 (k) Except as otherwise provided by this subsection, a
6 manufacturer or distributor exercising the right of first refusal
7 under Subsection (j) must agree to pay the reasonable expenses of
8 the prospective transferee in negotiating and implementing the
9 contract for the proposed change of ownership or transfer of assets
10 incurred before the manufacturer's or distributor's exercise of
11 that right. Reasonable expenses under this subsection include
12 reasonable attorney's fees. Payment of expenses and attorney's fees
13 is not required if the dealer fails to submit an accounting of those
14 expenses before the 21st day after the date the dealer receives the
15 manufacturer's or distributor's written request for an accounting.
16 An expense accounting may be requested by a manufacturer or
17 distributor before exercising the right of first refusal.

18 SECTION 2. The change in law made by this Act to Section
19 2301.359, Occupations Code, applies only to an application to sell
20 or transfer a dealership that is made on or after the effective date
21 of this Act. An application made before that date is governed by
22 the law in effect on the date the application was made, and the
23 former law is continued in effect for that purpose.

24 SECTION 3. This Act takes effect September 1, 2013.