

1-1 By: Van de Putte S.B. No. 854  
 1-2 (In the Senate - Filed February 26, 2013; March 5, 2013,  
 1-3 read first time and referred to Committee on Transportation;  
 1-4 April 29, 2013, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 9, Nays 0; April 29, 2013,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 854 By: Paxton

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to the regulation of motor vehicle dealers, manufacturers,  
 1-22 distributors, and representatives.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Subchapter J, Chapter 2301, Occupations Code, is  
 1-25 amended by adding Section 2301.483 to read as follows:

1-26 Sec. 2301.483. SPECIFIC USE AGREEMENTS. (a) In this  
 1-27 section:

1-28 (1) "Necessary real estate" means real estate that is  
 1-29 necessary for the proper operation of a dealership in the  
 1-30 dealership's location as determined by the manufacturer's,  
 1-31 distributor's, or representative's facility requirements or to  
 1-32 comply with any applicable law or zoning requirement.

1-33 (2) "Owner" means a manufacturer, distributor, or  
 1-34 representative, including an entity owned or controlled by a  
 1-35 manufacturer, distributor, or representative.

1-36 (3) "Specific use agreement" means a property use  
 1-37 agreement that is executed in conjunction with a sale or as part of  
 1-38 the terms of a lease by an owner of real property to a transferee for  
 1-39 use by the transferee as a dealership under the terms of a franchise  
 1-40 executed or to be executed between the owner and the transferee.

1-41 (4) "Transferee" means a person who is a purchaser or  
 1-42 lessee of real property subject to a specific use agreement.

1-43 (b) To the extent of any conflict between this section and  
 1-44 another section of this chapter regarding a specific use agreement,  
 1-45 this section controls. Notwithstanding any other section of this  
 1-46 chapter and except as provided by this section, a specific use  
 1-47 agreement may include provisions that allow an owner to:

1-48 (1) limit the transferee's ability to add a line-make  
 1-49 after the transferee has opened a franchised dealership on the  
 1-50 property to which the specific use agreement applies;

1-51 (2) prohibit the sale or sublease of the dealership  
 1-52 property by the transferee to a person for a purpose other than the  
 1-53 operation of a dealership under a franchise with the owner of the  
 1-54 property; or

1-55 (3) make the limitations described by Subdivisions (1)  
 1-56 and (2) applicable to any successor or sublessee of the transferee.

1-57 (c) An owner may not coerce or attempt to coerce an existing  
 1-58 franchised dealer of the owner to relocate an existing dealership  
 1-59 of the same line-make to property that is subject to a specific use  
 1-60 agreement. If it is proven in a civil suit that a person entered

2-1 into a specific use agreement containing a provision described by  
2-2 Subsection (b) as a result of coercion, the specific use agreement  
2-3 is void.

2-4 (d) A specific use agreement executed in conjunction with  
2-5 the sale of real property may apply only to the necessary real  
2-6 estate.

2-7 (e) A specific use agreement executed in conjunction with  
2-8 the sale of real property to an existing franchised dealer for the  
2-9 purpose of relocating an existing dealership of the same line-make  
2-10 to property that is the subject of the specific use agreement or to  
2-11 a person for the purpose of establishing a new dealership expires on  
2-12 the earliest of:

2-13 (1) the date established by the specific use  
2-14 agreement;

2-15 (2) the termination or discontinuance of the franchise  
2-16 between the parties to the specific use agreement as a result of the  
2-17 owner:

2-18 (A) discontinuing all line-makes applicable to  
2-19 the necessary real estate that are under the control of a  
2-20 manufacturer or distributor holding property use rights for the  
2-21 necessary real estate under the specific use agreement;

2-22 (B) ceasing to do business in this state; or

2-23 (C) changing the distributor or method of  
2-24 distribution of the owner's products in this state;

2-25 (3) the 10th anniversary of the date the dealership  
2-26 opens for business; or

2-27 (4) any time after the expiration of nine years from  
2-28 the date the dealership opens for business if the transferee has  
2-29 performed all the transferee's financial duties as provided by the  
2-30 contract and title to the property has passed to the transferee.

2-31 (f) Unless a specific use agreement associated with the sale  
2-32 of property expressly provides otherwise, there is no penalty for  
2-33 the full performance by the transferee and transfer of title to the  
2-34 transferee prior to the time set forth by the contract's terms.

2-35 SECTION 2. Subsection (d), Section 2301.6521, Occupations  
2-36 Code, is amended to read as follows:

2-37 (d) A franchised dealer may not protest an application to  
2-38 relocate a dealership under this section if the proposed relocation  
2-39 site is not:

2-40 (1) more than two miles [~~or less~~] from the site where  
2-41 the dealership is currently located; or

2-42 (2) closer to the franchised dealer than the site from  
2-43 which the dealership is being relocated [~~dealership's current~~  
2-44 ~~location~~].

2-45 SECTION 3. Section 2301.483, Occupations Code, as added by  
2-46 this Act, applies only to an agreement entered into or renewed under  
2-47 Chapter 2301, Occupations Code, on or after the effective date of  
2-48 this Act. An agreement entered into or renewed before that date is  
2-49 governed by the law in effect on the date the agreement was entered  
2-50 into or renewed, and the former law is continued in effect for that  
2-51 purpose.

2-52 SECTION 4. Subsection (d), Section 2301.6521, Occupations  
2-53 Code, as amended by this Act, applies only to an application to  
2-54 relocate a dealership that is made on or after the effective date of  
2-55 this Act. An application made before that date is governed by the  
2-56 law in effect on the date the application was made, and the former  
2-57 law is continued in effect for that purpose.

2-58 SECTION 5. This Act takes effect immediately if it receives  
2-59 a vote of two-thirds of all the members elected to each house, as  
2-60 provided by Section 39, Article III, Texas Constitution. If this  
2-61 Act does not receive the vote necessary for immediate effect, this  
2-62 Act takes effect September 1, 2013.

2-63 \* \* \* \* \*