

SUBJECT: Regulating motor vehicle dealers, manufacturers, and distributors

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 6 ayes — Hamilton, Quintanilla, Driver, Menendez, Kuempel, Thompson

0 nays

3 absent — Geren, Gutierrez, Harless

WITNESSES: *(On original House version :)*
For — Robert Braziel, Texas Automobile Dealers Association; Royce Poinsett, Texas Motorcycle Dealers Association; John Zwiacher, Scoggin-Dickey Chevrolet-Buick, Texas Automotive Dealers Association; *(Registered, but did not testify:* Jon Buquet, Coastal Bend New Car Dealers Association, El Paso New Car Dealers Association, Valley Automobile Dealers Association; Lee Chapman, Dallas Fort Worth New Car Dealers Association; Pamela Crail, San Antonio Auto Dealers Association; Foster Edwards, Corpus Christi Chamber of Commerce; Dean McWilliams, Texas Recreational Vehicle Association; Wyatt Wainwrite, Houston Auto Dealers Association; Morris Wilkes, New Car Dealers of West Texas)

Against — Amy Brink, Alliance of Automobile Manufacturers; Ross Good, Chrysler Group LLC; Brian Lee, General Motors; Tony Reinhart, Ford Motor Company; *(Registered, but did not testify:* Richard Hardy, Motorcycle Industry Council, Specialty Vehicle Institute of America; Nef Partida, Gulf States Toyota; Chris Shields, Toyota Motor Manufacturing)

On — Molly Cost, Texas Department of Motor Vehicles

BACKGROUND: Occupations Code, ch. 2301 regulates the sale and lease of motor vehicles, including the licensing and regulating of manufacturers, distributors, and dealers of motor vehicles.

DIGEST:

(The analysis is of SB 529 by Huffman, the Senate-passed companion bill, which will be considered in lieu of HB 2293:)

SB 529 would amend Occupations Code, ch. 2301 regulating the relationship between motor vehicle dealers and motor vehicle manufacturers, distributors, and representatives.

The bill would define “property use agreement” as a contract, other than a franchise, between a manufacturer, distributor, or representative and a franchised dealer that granted the former the right to regulate the dealer’s use of the dealership and other facilities covered by the franchise. The bill would regulate property use agreements between a manufacturer, distributor, or representative and a dealer. A manufacturer could not require a dealer to enter into a property use agreement but would allow a dealer to choose to enter into a property use agreement for cash consideration.

The bill would require additional payments to a dealer from a manufacturer, distributor, or representative that terminated or discontinued a franchise under certain circumstances. Such payments would include certain construction costs or rent, recent upgrade costs, and the value of goodwill, and they would be based on the percentage of the dealership’s square footage that was attributable to sales, service, and parts suggested by the manufacturer or distributor and allocated to the franchise. A manufacturer, distributor, or representative, after the termination of a franchise, would have to pay the dealer the depreciated value of computer software that the manufacturer, distributor, or representative had recommended or required in writing.

A manufacturer, distributor, or representative could not require a dealer to construct or make substantial changes to dealership facilities more frequently than every 10 years, except as necessary to comply with health or safety laws or technology requirements needed to sell or service a line-make. The bill would set limits on the restrictions a franchise contract could place on a dealer’s use of the dealership. The bill would provide conditions under which a dealer could protest the relocation of a dealership.

The bill would provide additional criteria by which a manufacturer or distributor could decide to accept or reject a dealer’s application to transfer franchise ownership to another person. A manufacturer, distributor, or representative could not treat similar dealers inequitably as a result of

performance measurements. The bill would regulate payment to a dealer for a claim filed under a manufacturer or distributor's incentive program.

Manufacturers, distributors, or representatives could not require a dealer to disclose customer information other than certain information necessary for sales and delivery, reasonable marketing, incentive program payments, warranty claim reimbursement, or product recalls or safety obligations.

The bill would take effect September 1, 2011, and apply only to an agreement entered into or renewed under ch. 2301 on or after the effective date.

**SUPPORTERS
SAY:**

SB 529 would update the laws governing the relationship between motor vehicle manufacturers and distributors and their franchised dealers to address certain practices that threaten the viability of franchised dealerships and the industry. The bill would preserve dealer property rights, protect customer information, and ensure fair and equitable treatment of franchised dealers by a manufacturer or distributor. At the same time, the bill would provide reasonable exceptions and conditions on the regulations to protect the business interests of manufacturers and distributors.

The bill was amended on the floor of the Senate to make the bill acceptable to both manufacturers and dealers. In its current form, the bill embodies a carefully negotiated agreement among the stakeholders involved, including those who had testified against the bill in committee. Among the issues addressed in this compromise bill are the scaling of payments to terminated dealers based on dealership square footage, allowing early requirement of substantial facility upgrades for health, safety, or technology purposes, and permitting voluntary property use agreements.

The bill would have no fiscal implication to the state or local government. The Department of Motor Vehicles (DMV) could absorb any new costs or duties resulting from the bill within its existing resources.

**OPPONENTS
SAY:**

The provisions of SB 529 would intrude on the business relationship between manufacturers and dealers to the detriment of the manufacturers. The bill would hinder business operations of manufacturers and impose new fees upon them when the industry already is suffering under a struggling economy.

OTHER
OPPONENTS
SAY:

While SB 529 would help protect dealer property rights, the bill would provide too many exceptions to its regulations, allowing manufacturers to continue wielding monopolistic power over dealers. Since dealers have less contractual bargaining power than manufacturers, state statutory protections are the primary means for dealers to address their grievances regarding their relationships with manufacturers and, therefore, need to be as protective as possible.

NOTES:

The companion bill, SB 529 by Huffman, passed the Senate by 29-0 on April 28 and was reported favorably, without amendment, by the House Licensing and Administrative Procedures, on May 4.