

BILL ANALYSIS

Senate Research Center
81R22640 NC-F

H.B. 2640
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Transportation & Homeland Security
5/7/2009
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The relationship between motor vehicle manufacturers/distributors and their franchised dealers is governed by the franchise agreement between the parties and state law. The Texas law, which, by its terms, preempts the franchise agreement, is found in Chapter 2301 (Sale or Lease of Motor Vehicle), Occupations Code. Given current economic conditions and contraction in the market for new motor vehicles, the law needs to be updated to address certain practices and introduce marketplace considerations in certain situations.

H.B. 2640 provides for the consideration of economic conditions, financial expectations, and the market for new motor vehicles as elements to review when the Motor Vehicle Division considers applications to establish new dealerships or relocate existing dealerships, the appropriateness of a denial by a manufacturer or distributor of a dealer's application to add another line-make at an existing dealership, and the reasonableness of a manufacturer's or distributor's facility requirements on a dealer.

The bill also responds to certain manufacturer or distributor practices. The bill prevents manufacturers and distributors from arbitrarily altering model years to avoid the obligations imposed by current law to repurchase new motor vehicles from a franchised dealer upon termination of the franchise. The bill establishes standards for a manufacturer or distributor to take adverse action against a franchised dealer for the sale or lease of a vehicle that is subsequently exported to a location outside the United States. In addition, the bill clarifies that any manufacturer or distributor incentive program payments cannot be paid to a dealer's employees.

H.B. 2640 amends current law relating to the regulation of motor vehicle manufacturers and distributors.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2301.257, Occupations Code, by adding Subsection (d), to provide that the act of filing an application under this section or a form prescribed under this section does not establish the applicant as a franchised dealer.

SECTION 2. Amends Section 2301.359, Occupations Code, by amending Subsection (e) and adding Subsections (g), (h), and (i), as follows:

(e) Prohibits a manufacturer or distributor from unreasonably withholding approval of an application filed under Subsection (a). Deletes existing text providing that 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) Authorizes a manufacturer or distributor, in determining whether to approve an application filed under Subsection (a), to consider:

(1) whether a prospective transferee has been a franchised dealer in this state;

(2) the moral character of the prospective transferee; and

(3) the extent to which a prospective transferee meets the criteria, if any, developed by the manufacturer or distributor and made available to the prospective transferee, specifically to determine the business experience and financial qualifications of a prospective transferee.

(h) Authorizes the criteria described by Subsection (g)(3) to be applied by a manufacturer or distributor only if the criteria are written, reasonable, and uniformly applied in similar situations.

(i) Provides that it is unreasonable for a manufacturer or distributor to withhold approval of a prospective transferee who is of good moral character and who meets the criteria described by Subsection (g)(3).

SECTION 3. Amends Section 2301.360(b), Occupations Code, to require the director of the Motor Vehicle Division of the Texas Department of Transportation (director), in a protest under this section, to determine whether the rejection was reasonable under the criteria described by Section 2301.359(g)(3), rather than whether the prospective transferee is qualified. Provides that the burden is on the manufacturer or distributor to prove that the prospective transferee is not qualified under the criteria.

SECTION 4. Amends Section 2301.464(a), Occupations Code, to require the dealer, not later than the 60th day before the date a franchised dealer proposes to begin the relocation of a dealership, to provide written notice of the dealer's intent to relocate to the dealer's manufacturer, distributor, or representative. Requires that the notice be sent by certified mail, return receipt requested.

SECTION 5. Amends Section 2301.465, Occupations Code, by amending Subsections (a) and (b) and adding Subsections (h) and (i), as follows:

(a) Defines "net discount value" and redefines "net cost."

(b) Requires a manufacturer, distributor, or representative, notwithstanding the terms of any franchise, after the termination of a franchise, to pay to a franchised dealer or any lienholder, in accordance with the interest of each, certain amounts including the dealer cost of each new motor vehicle in the dealer's inventory with mileage of 5,000, rather than 6,000, miles or less, exclusive of mileage placed on the vehicle before it was delivered to the dealer, reduced by the net discount value of each vehicle, except that if a vehicle cannot be reduced by the net discount value, the manufacturer or distributor is required to pay the dealer the net cost of the vehicle.

(h) Provides that notwithstanding any other law, this section does not require a manufacturer, distributor, or representative to repurchase a motor vehicle that:

(1) at the time of termination of the franchise had been in the dealer's inventory for at least 24 months after the date the dealer took delivery of the vehicle; or

(2) the dealer purchased not more than 30 days before the date of termination of the franchise solely in anticipation of the termination and, in the ordinary course of business, would not have purchased.

(i) Provides that for purposes of this section, a sale of the assets or stock of a dealership to a buyer who continues the operation of the dealership is not a termination of a franchise.

SECTION 6. Amends Section 2301.467, Occupations Code, as follows:

Sec. 2301.467. PROHIBITIONS: SALES STANDARDS, RELOCATIONS, FACILITY CHANGES, PURCHASE OF EQUIPMENT. (a) Creates this subsection from existing text.

(b) Prohibits a manufacturer, distributor, or representative, notwithstanding the terms of any franchise, from unreasonably requiring a franchised dealer to relocate, or to replace or substantially change, alter, or remodel the dealer's facilities. Provides that for purposes of this subsection, an act is reasonable if it is justifiable in light of current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area.

(c) Provides that the prohibitions under this section apply to the relationship between a manufacturer and a current franchisee of the manufacturer, or a franchised dealer who is seeking to become a franchisee of the manufacturer.

SECTION 7. Amends Section 2301.472(d), Occupations Code, to require the director, in determining whether a manufacturer or distributor has established that the denial or withholding of approval is reasonable, to consider all existing circumstances, including any harm to the manufacturer or distributor if the denial or withholding of approval is not upheld; the manufacturer's or distributor's investment and obligations; and whether the denial or withholding of approval is justified in light of current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area. Makes nonsubstantive changes.

SECTION 8. Amends Section 2301.457, Occupations Code, by adding Subsection (c), to authorize money paid by a manufacturer or distributor under an incentive program to only be paid to a dealer, unless the dealer agrees to the payment of the money to another person, including an employee of the dealer, before the payment is made.

SECTION 9. Amends Subchapter J, Chapter 2301, Occupations Code, by adding Section 2301.479, as follows:

Sec. 2301.479. ADVERSE ACTION IN CONNECTION WITH EXPORT OF VEHICLE. (a) Prohibits a manufacturer, distributor, or representative, except as otherwise provided by this section, from taking an adverse action against a franchised dealer because the franchised dealer sells or leases a vehicle that is later exported to a location outside the United States.

(b) Provides that a franchise provision that allows a manufacturer, distributor, or representative to take adverse action against a franchised dealer because the franchised dealer sells or leases a vehicle that is later exported to a location outside the United States is enforceable only if, at the time of the original sale or lease, the dealer knew or reasonably should have known that the vehicle would be exported to a location outside the United States.

(c) Provides that a franchised dealer is presumed to have no actual knowledge that a vehicle the dealer sells or leases will be exported to a location outside the United States if, under the laws of a state of the United States, the vehicle is titled, the vehicle is registered, and applicable state and local taxes are paid for the vehicle.

(d) Authorizes the presumption under Subsection (c) to be rebutted by direct, clear, and convincing evidence that the franchised dealer had actual knowledge or reasonably should have known at the time of the original sale or lease that the vehicle would be exported to a location outside the United States.

(e) Provides that a franchise provision that allows a manufacturer, distributor, or representative to take adverse action against a franchised dealer because the franchised dealer sells or leases a vehicle that is later exported to a location

outside the United States is void and unenforceable, except as otherwise permitted by this section.

SECTION 10. Amends Sections 2301.652(a) and (c), Occupations Code, as follows:

(a) Requires the director, in determining good cause, to consider any harm to the applicant, and current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area. Makes nonsubstantive changes.

(c) Prohibits a franchised dealer from protesting an application to relocate a dealership under this section if the proposed relocation site is not more than two miles, rather than one mile, from the site where the dealership is currently located.

SECTION 11. Makes application of this Act prospective.

SECTION 12. Effective date: September 1, 2009.