

BILL ANALYSIS

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S.B. 529
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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. Given the economic and financial conditions the retail automobile industry has experienced in the past two years, including the bankruptcy of major automobile manufacturers and the loss of over 100 franchised dealerships in the state, the law needs to be updated to address certain practices which continue to threaten the viability of Texas's franchised dealerships and the industry.

S.B. 529 protects customer information at the dealership by prohibiting the forced disclosure of the information to a manufacturer or distributor. The bill also preserves dealer property rights by prohibiting a motor vehicle manufacturer or distributor from forcing a franchised dealer to sign a property use agreement that gives the manufacturer exclusive control over dealership facilities and terminates any property use agreement when the franchise terminates.

The bill ensures that a manufacturer or distributor cannot constantly mandate facility changes at a dealership, at a dealer's expense, to meet new facility image programs by providing that a dealership is not required to comply with a program within 15 years of completing compliance with a previous program. The bill also allows a dealer to recover facility investments when a manufacturer or distributor eliminates a vehicle line-make within two years of construction or upgrade of a dealership facility.

S.B. 529 clarifies current law to ensure that the manufacturer or distributor treats all its franchised dealers in the state consistently with respect to the products and services it offers and the methods by which they are offered. It also allows the manufacturer or distributor to consider a prospective new owner's prior dealership performance when evaluating the prospective owner's qualifications to purchase an existing dealership and provides that any standards used to evaluate a prospective owner must be in writing, uniformly applied, and reasonable.

Additionally, S.B. 529 protects Texas law by preserving the manufacturer/distributor/franchised dealer relationship unless specifically addressed by the United States Bankruptcy Court when a manufacturer or distributor is in bankruptcy.

As proposed, S.B. 529 amends current law relating to the regulation of motor vehicle dealers, 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 2301.002, Occupations Code, by adding Subdivision (27-a) to define "property use agreement."

SECTION 2. Amends Subchapter A, Chapter 2301, Occupations Code, by adding Section 2301.008, as follows:

Sec. 2301.008. APPLICABILITY OF CHAPTER TO BANKRUPTCY OF MANUFACTURER, DISTRIBUTOR, OR REPRESENTATIVE. Provides that, 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. Amends Section 2301.359, Occupations Code, by amending Subsection (e) and by adding Subsections (g), (h), and (i), as follows:

(e) 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 whether a prospective transferee is or has been a franchised dealer in this state, the moral character of the prospective transferee, or the extent to which a prospective transferee satisfies any criteria 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 a manufacturer or distributor to consider the criteria developed under Subsection (g)(3) only if the criteria are in writing, are reasonable, and are uniformly applied in similar situations.

(i) Provides that it is unreasonable for a manufacturer or distributor to reject a prospective transferee who is of good moral character and who satisfied the criteria developed under Subsection (g)(3).

SECTION 4. Amends Section 2301.465(b), Occupations Code, as follows:

(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, the fair market value of all special tools, data processing equipment, computer software, and automotive service equipment owned by the dealer that were recommended in writing and designated as special tools, computer software, or equipment

SECTION 5. Amends Subchapter J, Chapter 2301, Occupations Code, by adding Section 2301.4651, as follows:

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

(1) terminates or discontinues a franchise by any means without complying with Section 2301.453 (Termination or Discontinuance of Franchise); or

(2) regardless of whether the manufacturer, distributor, or representative complies with Section 2301.453, terminates or discontinues a franchise by discontinuing a line-make, ceasing to do business in this state, or changing the distributor or method of distribution of its products in this state.

(b) Requires a manufacturer, distributor, or representative to whom this section applies, in addition to the duties placed on a manufacturer, distributor, or representative by Section 2301.465, to pay the franchised dealer the following amounts as applicable:

(1) either:

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

(B) if the dealer does not have any costs described by Paragraph (A), the fair monthly rental value of the dealership payable in cash each month beginning on the first day of the first month following the date of the termination or discontinuance described by Subsection (a) and ending on the earlier of the first anniversary of the termination or discontinuance date, or the date on which the dealer no longer owns the dealership.

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

(3) an amount equal to the value of the goodwill associated with the franchise as it existed on the day before the earlier of the date of the termination or discontinuance described by Subsection (a), or the date on which the intention of the manufacturer, distributor, or representative to terminate or discontinue the franchise in a manner described by Subsection (a) became publicly known in the area in which the dealership is located.

(c) Requires a franchised dealer receiving money under Subsection (b)(1)(B) to make a reasonable effort to earn income from a dealership after a termination or discontinuance described by Subsection (a), and inform the manufacturer, distributor, or representative of the dealer's efforts under Subdivision (1) and of any income earned from the dealership.

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

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

(f) Provides that an amount payable under Subsection (b)(1)(A) or (2) does not include any amount previously paid to the franchised dealer by the manufacturer, distributor, or representative to subsidize the costs incurred by the dealer in performing the activities described by Subsection (b)(1)(A) or (2).

SECTION 6. Amends Section 2301.467, Occupations Code, by amending Subsections (b) and (c) and adding Subsection (b-1), as follows:

(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, except as provided by Subsection (b-1), 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.

(b-1) Provides that it is unreasonable for a manufacturer, distributor, or representative to require a franchised dealer to construct a new dealership or to

substantially change, alter or remodel an existing dealership before the 15th anniversary of the date the dealership at that location was constructed or substantially changed, altered, or remodeled if the construction, change, alteration, or remodel was in substantial compliance with standards or plans provided by a manufacturer, distributor, or representative, or through a subsidiary or agent of the manufacturer, distributor, or representative.

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

SECTION 7. Amends Subchapter J, Chapter 2301, Occupations Code, by adding Section 2301.4671, as follows:

Sec. 2301.4671. RESTRICTION ON DEALER'S USE OF DEALERSHIP PROPERTY.

(a) Prohibits a manufacturer, distributor, or representative, notwithstanding the terms of any franchise, from:

(1) unreasonably limiting or impairing the ability of a franchised dealer to use the dealership property as the dealer considers appropriate;

(2) controlling the use of the dealership property after the franchise is terminated or discontinued; or

(3) at any time, exercising exclusive control over the use of the dealership property.

(b) Provides that to the extent of any conflict between this section and another section of this chapter, the other section controls over this section.

SECTION 8. Amends Section 2301.468, Occupations Code, as follows:

Sec. 2301.468. New heading: INEQUITABLE TREATMENT OF DEALERS OR FRANCHISEES. Prohibits a manufacturer, distributor, or representative, notwithstanding the terms of a franchise, from treating franchised dealers differently as a result of the application of a formula or other computation or process intended to gauge the performance of a dealership or otherwise enforce standards or guidelines applicable to its franchised dealers in the sale of motor vehicles if, in the application of the standards or guidelines, the franchised dealers are unreasonably treated differently in the sale of a motor vehicle owned by the manufacturer or distributor, rather than, prohibiting a manufacturer, distributor or representative, notwithstanding the terms of any franchise directly or indirectly, from discriminating against a franchised dealer or otherwise treating franchised dealers differently as a result of a formula or other computation or process intended to gauge the performance of a dealership in the sale of a motor vehicle owned by the manufacturer or distributor. Makes a nonsubstantive change.

SECTION 9. Amends Section 2301.475(a), Occupations Code, as follows:

(a) Prohibits a manufacturer or distributor, except as provided by Subsection (b), from taking certain actions after the first anniversary of the date a franchised dealer submits a claim under a manufacturer or distributor incentive program, rather than after the first anniversary of the ending date of a manufacturer or distributor incentive program.

SECTION 10. Amends Subchapter J, Chapter 2301, Occupations Code, by adding Sections 2301.480 and 2301.481, as follows:

Sec. 2301.480. DISCLOSURE OF CERTAIN INFORMATION. Prohibits a manufacturer, distributor, or representative from requiring that a franchised dealer provide to the manufacturer, distributor, or representative information regarding a customer, except to the extent that a specific item of information is necessary:

- (1) for the sale or delivery of a new motor vehicle to a customer;
- (2) to validate a claim and make payment under an incentive program;
- (3) to support a dealer's claim for reimbursement for repairs performed under a manufacturer's warranty; or
- (4) to satisfy a product recall or safety obligation.

Sec. 2301.481. PROPERTY USE AGREEMENT. (a) Provides that a provision in a property use agreement that unreasonable limits or impairs the ability of a franchised dealer to use the dealership as the dealer considered appropriate is void and unenforceable.

(b) Prohibits a manufacturer, distributor, or representative from requiring that a dealer enter into a property use agreement as a condition of the manufacturer, distributor, or representative:

- (1) entering into a franchise;
- (2) approving a franchised dealer's application to add a line-make;
- (3) approving a franchised dealer's application to relocate a franchise; or
- (4) approving a sale or transfer of a dealer, dealership, or franchise.

(c) Provides that the following provisions in a property use agreement are void and unenforceable:

- (1) a limitation on the franchised dealer's ability to add a line-make; or
- (2) a provision that binds a franchised dealer's successor.

(d) Provides that a property use agreement expires on the earlier of the date provided by the property use agreement, or the termination of the franchise between the parties to the property use agreement.

(e) Provides that this section applies to a subsidiary of, a person owned or controlled by, or a person whose business decisions are substantially influenced by a manufacturer, distributor, or representative.

SECTION 11. Amends Section 2301.522(a), Occupations Code, as follows:

(a) Requires the board of the Texas Department of Motor Vehicles, in an action brought against a manufacturer or distributor under Subchapter J (Manufacturers, Distributors, and Representatives) by a franchised dealer whose franchise provides for arbitration in compliance with this chapter, to order the parties to submit the dispute to mediation in the manner provided by this subchapter.

SECTION 12. Amends Section 2301.805(a), Occupations Code, to make a conforming change.

SECTION 13. Makes application of this Act prospective.

SECTION 14. Effective date: September 1, 2011.