

HOUSE BILL REPORT

ESSB 5595

As Passed House:

March 18, 2009

Title: An act relating to the termination, cancellation, or nonrenewal of franchises between new motor vehicle dealers and manufacturers.

Brief Description: Addressing the termination, cancellation, or nonrenewal of franchises between new motor vehicle dealers and manufacturers.

Sponsors: Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Keiser, King, Marr, Honeyford and Kohl-Welles).

Brief History:

Committee Activity:

Commerce & Labor: 3/13/09 [DP].

Floor Activity

Passed House: 3/18/09, 97-0.

Brief Summary of Engrossed Substitute Bill

- Requires a motor vehicle manufacturer to pay specified sums to a motor vehicle dealer upon the termination, cancellation, or nonrenewal of a franchise.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 6 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Crouse and Green.

Staff: Alison Hellberg (786-7152)

Background:

Many aspects of the franchise relationship between motor vehicle manufacturers and motor vehicle dealers are regulated by the Department of Licensing (Department). Prior to the termination, cancellation, or nonrenewal of a franchise, a manufacturer must give written notice to the Department and the dealer. The notice must state the intention to terminate,

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cancel, or not renew the franchise; the reasons for the termination, cancellation, or nonrenewal; and the effective date of the termination, cancellation, or nonrenewal. The notice must be given within a specified time period.

If the manufacturer terminates, cancels, or fails to renew a franchise, the manufacturer must pay the dealer:

- dealer cost of unused, undamaged, and unsold new motor vehicles;
- dealer cost for all unused, undamaged, and unsold supplies, parts, and accessories in original packaging;
- dealer cost for unused, undamaged, and unsold inventory;
- the fair market value of each undamaged sign owned by the new motor vehicle dealer that bears a common name, trade name, or trademark of the manufacturer;
- the fair market value of all equipment, furnishings, and special tools; and
- the cost of transporting, handling, packing, and loading of new motor vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings.

The manufacturer must pay the specified sums within 90 days after the tender of the property, if the dealer has clear title to the property and is in a position to convey that title to the manufacturer. To the extent the franchise agreement provides for payment or reimbursement to the dealer in excess of that specified in this section, the provisions of the franchise agreement will control.

Summary of Engrossed Substitute Bill:

The manufacturer is required to pay the specified sums, including repurchasing unused inventory, to the dealer upon the termination, cancellation, or nonrenewal of a franchise regardless of who initiated it. Motor home manufacturers, however, are only required to pay specified sums to dealers when the manufacturer initiates the termination, cancellation, or nonrenewal of the franchise.

The manufacturer must pay the dealer the specified sums within 90 days after the termination, cancellation, or nonrenewal of the franchise if the dealer has clear title to the property, or can provide clear title to the property upon payment by the manufacturer, and is in a position to convey that title to the manufacturer.

Manufacturers are only required to repurchase vehicles that were acquired by the dealer in the ordinary course of business.

In the event of a termination that is implemented as a result of a sale of a franchise, the purchaser may negotiate for the transfer of some or all of the seller's inventory. A manufacturer is not prohibited from negotiating with the purchaser of the franchise for the purchase of inventory. A manufacturer is only required to repurchase vehicles that were not transferred to the purchaser of the franchise.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) This is a critical time for auto dealers. Since the companion to this bill was heard, at least three more dealerships have closed. Dealerships are closing and this bill would create an orderly way to leave the business. There is too much inventory and manufacturers should share the risk. The auto dealers are comfortable with the motor home amendment and agree that this bill is really focused on motor vehicle dealers and manufacturers.

(Neutral) This bill is really about the motor vehicle industry. The amendment related to motor homes was included because of the extreme differences between the two industries. Manufacturers are smaller and would not be able to absorb the costs of repurchasing the vehicles. Recreational vehicle dealerships are also structured in a different way. Dealers tend to sell several different lines at one dealership. This amendment would not change what is required of motor home manufacturers under current law.

(Opposed) Motor vehicle dealers and manufacturers are struggling for their existence. They should be working together and not putting burdens on a struggling industry. This bill is a significant risk shift to the manufacturers. The bill goes too far and requires manufacturers to buy inventory back from dealers who are choosing to sell their dealerships. The bill should be amended so it does not apply to buy-sell agreements.

Persons Testifying: (In support) Scott Hazlegrove, Washington State Auto Dealers Association.

(Neutral) Stu Halsan, Recreation Vehicle Industry Association.

(Opposed) Sandi Swarthout, Alliance of Automobile Manufacturers.

Persons Signed In To Testify But Not Testifying: None.