

HOUSE BILL REPORT

ESSB 6220

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to a prohibition on unfair competition by motor vehicle dealers and manufacturers.

Brief Description: Prohibiting unfair competition by motor vehicle dealers and manufacturers.

Sponsors: Senate Committee on Commerce, Trade, Housing & Financial Institutions (originally sponsored by Senators Prentice, Winsley, Deccio and Rasmussen).

Brief History:

Committee Activity:

Commerce & Labor: 2/22/00, 2/23/00 [DPA].

Brief Summary of Engrossed Substitute Bill
(As Amended by House Committee)

- Prohibits manufacturers or their agents from discriminating between auto dealerships with some exceptions.
- Prohibits the ownership, operation, or control of auto dealerships and service facilities by manufacturers, or their agents with some exceptions.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 7 members: Representatives Clements, Republican Co-Chair; Conway, Democratic Co-Chair; B. Chandler, Republican Vice Chair; Wood, Democratic Vice Chair; Hurst; McIntire and McMorris.

Staff: Pam Madson (786-7166).

Background:

Changes in The Auto Industry

Late last year, press articles reported that the General Motors Corporation planned to buy 5-10 percent of its dealerships and operate them itself. Other reports described Ford's experimentation with buying stakes in dealerships in several cities.

Relevant Law

Auto manufacturers maintain a franchise relationship with their dealers. This relationship is governed by state law in several respects. Generally, the law dictates when a manufacturer may add or relocate a franchise within an area, and when it may properly terminate, cancel, or not renew a dealer's franchise.

More specifically, a manufacturer must provide notice to other area dealers whenever it intends to relocate or add a new franchise to the area. If an area franchise protests the action, the manufacturer has the burden of proof to show to an administrative judge or arbitrator that the relocation or expansion is for good cause.

Similarly, a manufacturer may not terminate, cancel, or not renew a franchise without providing notice. If the dealer requests, the action may be reviewed by an administrative judge to determine if the manufacturer had good cause and acted in good faith.

Auto manufacturers and dealers must also be licensed to operate in Washington.

Federal law requires auto manufacturers to act in good faith in performing or complying with any of the terms of a franchise agreement with a dealer. All businesses are prohibited from discriminating in price between different purchasers and selling at unreasonably low prices for the purpose of eliminating competitors.

Summary of Amended Bill:

The ability of manufacturers, distributors, factory branches, factory representatives, or agents of these entities to conduct retail sales of new vehicles in Washington is restricted.

These entities may not discriminate between new motor vehicle dealers by the following means:

- Selling like vehicles at a lower actual price than sold or offered to another dealer.
- Selling parts or accessories at a lower actual price than sold or offered to another dealer.
- Using a promotional or marketing plan that results in one dealer being charged a lower actual price for vehicles, parts, or accessories than another dealer.
- Unfairly delivering, scheduling, or allocating vehicles.
- Failing or refusing to deliver new vehicles, parts, or accessories in a reasonable time and reasonable quantity relative to other dealers.
- Requiring a dealer to purchase unreasonable advertising displays or other material.

- Requiring a dealer to remodel or renovate facilities in order to receive vehicle models.

These entities may discriminate as to price, however, when vehicles are being resold to a government or a driver's education program, through a bona fide promotional program or through a fleet discount, or when parts and accessories are being sold through a bona fide quantity discount program.

Manufacturers are also prohibited from competing with dealers by owning, operating, controlling, or acting in the capacity of a dealer or operating a service facility for repair of motor vehicles under a new car warranty or extended warranty.

Exceptions are made for the following ownership or operating relationships:

- Truck manufacturers owning or operating truck dealerships only of the manufacturer's line with a gross vehicle weight rating of 12,500 pounds or more and they have been continuously selling trucks since 1993.
- Temporary ownership of a dealership for two years with the option to extend for an additional year, while the dealership is being offered for sale to any qualified independent buyer at a reasonable price.
- Bona fide business relationships that allow an independent person to make initial capital outlays and then slowly acquire the dealership, according to reasonable terms, over a reasonable period of time. The number of these business relationships are limited. These relationships also include attempts to broaden the diversity of the dealer base for persons who have historically been under represented or who lack the resources to purchase a dealership outright.
- Manufacturer ownership of less than 45 percent of a dealership that sells only vehicles of the manufacturer's line. As of January 1, 2000, the manufacturer had no more than four dealers of that line in the state.
- Ownership or control of a service facility providing maintenance or service work on vehicles owned by the manufacturer, distributor, factory branch, or factory representative.

Manufacturers may not use confidential or proprietary information obtained from dealers in a way that creates unfair competition.

"Control" is generally defined as having title or control of at least 10 percent of the voting stock, or the power to direct the management or policies of a dealership.

"Ownership" is generally defined as holding at least 1 percent of any class of stock of a dealership.

Violations of these prohibitions are violations of the Consumer Protection Act. Disputes may be resolved under the Administrative Procedures Act

Amended Bill Compared to Engrossed Substitute Bill: The striking amendment makes the following changes: (1) Clarifies that a manufacturer may not discriminate between dealers using a marketing plan in addition to other similar devices; (2) Clarifies conditions under which a manufacturer may own or operate a dealership that trades exclusively in the manufacturer's line; (3) Prohibits a manufacturer from using proprietary information obtained from the dealer to unfairly compete with the dealer and further defines confidential and proprietary information; (4) Clarifies that disputes that arise under this act may be resolved through an adjudicative proceeding under the Administrative Procedures Act by petitioning the Department of Licensing; and (5) Prohibits manufacturers from competing with new motor vehicle dealers by owning or operating a service facility for repair of motor vehicles under a manufacturer's new car warranty or extended warranty, but does not prohibit competition with respect to post-warranty work.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: There are still issues to work out among interested parties for the future but the parties have come a long way. There is concern about competition between dealers and manufacturers with post warranty maintenance work but a problem doesn't currently exist.

Testimony Against: None.

Testified: Jim Boldt, Washington Auto Dealers; Steve Buckner, Alliance of Automobile Manufacturers; and Ed Wilder, Washington Independent Auto Agents.