

HOUSE BILL REPORT

HB 2529

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: Representatives Clements, Hurst, B. Chandler, Wood, Lisk, G. Chandler, Wensman, Mastin, Delvin, Conway, Carlson, Ogden, Mulliken, Huff, Campbell, Mitchell, Schoesler and Cox.

Brief History:

Committee Activity:

Commerce & Labor: 1/27/00, 2/3/00 [DPS].

Brief Summary of Substitute Bill

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

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Clements, Republican Co-Chair; Conway, Democratic Co-Chair; B. Chandler, Republican Vice Chair; Wood, Democratic Vice Chair; Hurst; Lisk and McMorris.

Minority Report: Do not pass. Signed by 1 member: Representative McIntire.

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.

At the same time, the press has reported that some auto manufacturers are linking with Internet companies to direct buyers to dealerships, or even to allow cars to be sold directly on-line. Reverse relationships are also occurring. Internet companies are buying dealerships to use as distribution centers for cars that can be sold on-line.

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 refuse to sell a franchise, when it 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 Substitute 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 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 when they are delivered 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 regional promotional program or through a fleet discount.

Manufacturers are also prohibited from competing with dealers by owning, operating, controlling, or acting in the capacity of a retail dealership or a service facility. Manufacturers may not use information regarding sales of new motor vehicles obtained from dealers to market products or services in the dealer's relevant market area in a way that creates unfair competition.

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 less than a year, while the dealership is being offered for sale to any qualified independent buyer at a reasonable price.
- Dealer development programs. These programs 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. These programs 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 and has been continuously engaged in selling vehicles through the dealership since 1993.
- Ownership or control of a service facility providing maintenance or service work on vehicles owned by the manufacturer, distributor, factory branch, or factory representative.

"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.

Upon the request of a dealer, these entities must disclose their method for allocating, delivering, or scheduling vehicles, parts, and accessories to dealers handling the same line or make.

Violations of these prohibitions subject the violator to the Consumer Protection Act.

Substitute Bill Compared to Original Bill: The substitute bill expands the exception of dealer development programs, and changes the acquisition time under these programs in which a person will acquire the dealership from five years to a reasonable period of time; removes the prohibition on manufacturers selling directly to consumers; adds fleet discounts and bona fide promotional programs to those circumstances where a manufacturer may discriminate as to the price of a vehicle; and exempts recreational vehicles from the definition of motor vehicle for purposes of this act.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: (Original bill) Manufacturers have declared their interest in coming into the state and buying out vehicle dealers. The relationship between manufacturers and dealers is unique. Manufacturers have a great deal of information about the dealer's business. They control the products a dealer gets and the timing of vehicle and parts delivery. They control the "hot" products. They may require a dealer to take fewer popular products to get the hot products. They can compete unfairly with dealers because of the information they have. If manufacturers own the dealerships, consumers will pay higher prices and may receive less accessible servicing of vehicles. If dealership competition is limited, there may not be the same concern for the customer as under the current system. Smaller communities would not be served as manufacturers concentrate dealerships in large markets. Dealers have used franchise financing to help establish dealerships. Many new vehicle dealers are represented on the Internet. The success is mixed so far. There is a future in e-commerce. However, if the manufacturer becomes involved in this form of commerce, because of the price advantage and the information advantage, they will

control the market. Consolidation of businesses means communities lose locally owned businesses that support their communities both with donations and with jobs.

Testimony Against: (Original bill) There is concern with setting a precedent of directly or indirectly prohibiting sales over the Internet by manufacturers directly to the consumer. The policy of setting aside certain portions of new e-commerce markets and prohibiting consumers from dealing directly over the Internet with the manufacturers must be carefully considered. The bill affects consumer choice. Consumers will ultimately dictate the marketplace. The bill denies the manufacturer the ability to react to the marketplace. Dealers are partners with manufacturers. We don't want to restrict their ability to operate in the marketplace. In 1994 dealers asked for changes in the franchise law. Changes were made that included establishing relevant market areas and parameters for manufacturers to act as dealers. How much farther is it necessary to go? This bill actually tilts away from manufacturers being able to work with the dealer and respond to consumers. There are concerns about the Internet provisions of the bill. Manufacturers have joint ventures with Internet providers, but can't give pricing information to anyone who comes into that system. Customers can be told where to locate a vehicle but they cannot receive any price information. They may go to Oregon or other states where they can get that information. It's not clear where companies will go with the concept of manufacturers owning or entering joint ventures with dealers. There are some circumstances where manufacturers need to have an ownership interest in a dealer. The time allowed to transfer a dealership is too limited. Dealer development programs need to include minority or women who, through manufacturer financing can become dealership owners. The bill does not allow manufacturers to offer fleet discounts and promotional incentive packages. The parties will continue working together. Recreational dealers and manufacturers are significantly different from auto dealers and manufacturers. They should be exempted from this bill and allowed to work out their own solution. There are concerns about the impact of this bill on auto brokers.

Testified: (In favor) Jim Boldt, Rod Park, Bob Hall, Chris Olson, and Steve Boone, Washington State Auto Dealers Association.

(Opposed) Gary Gardner, Washington Association of Internet Service Providers; and Steve Buckner and Steve Blankenship, Alliance of Automobile Manufacturers.

(With concerns) Stu Halsan, Recreational Vehicle Industry Association; Tony Meinhard, Recreational Vehicle Dealers of Washington; and Terry Kohl, Independent Auto Dealers of Washington.