

FINAL BILL REPORT

ESHB 2547

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Synopsis as Enacted

Brief Description: Concerning franchise agreements between new motor vehicle dealers and manufacturers.

Sponsors: House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Condotta, Maxwell, Sullivan, Roach, Kessler, Sells, Kenney, Appleton, Hunter, Pedersen, Upthegrove, Hinkle, Ormsby, Herrera, Kretz, Hasegawa, Campbell, Takko, Springer, Dammeier and Haler).

House Committee on Commerce & Labor
Senate Committee on Labor, Commerce & Consumer Protection

Background:

Motor vehicle manufacturers maintain a franchise relationship with their dealers. State law and the franchise agreement outline the responsibilities of each party. The law generally dictates when a manufacturer may own a franchise or terminate a dealer's franchise, and establishes prohibited practices for manufacturers.

Termination, Cancellation, or Nonrenewal of a Franchise.

A manufacturer's ability to terminate a franchise is restricted. A manufacturer must comply with notice requirements. A dealer may also request a hearing by an administrative law judge to determine that there is good cause for the termination of the franchise and that the manufacturer has acted in good faith.

Except in certain cases that constitute good cause for termination, cancellation, or nonrenewal of a franchise, a manufacturer must pay the dealer:

- the unexpired term of the lease or one year, whichever is less, if the dealer is leasing the dealership facilities from someone other than the manufacturer; or
- the reasonable rental value of the dealership facilities for one year or until the facilities are leased or sold, whichever is less, if the dealer owns the new motor dealership facilities.

Warranty Work.

Manufacturers must specify the dealer's obligation to perform warranty work or service on the manufacturer's products in franchise agreements. Manufacturers must provide dealers

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with a schedule of compensation to be paid to the dealer for warranty work or service required of the dealer by the manufacturer in connection with the manufacturer's products.

Designated Successor to Franchise Ownership.

An owner may appoint a designated successor to ownership of the franchise upon the owner's death or incapacity if the designated successor meets certain requirements.

Sale, Transfer, or Exchange of Franchise.

A manufacturer may not unreasonably withhold consent to the sale of a franchise to a qualified buyer who meets the normal, reasonable, and uniformly applied standards established by the manufacturer for the appointment of a new dealer. In determining whether a manufacturer unreasonably withheld its approval, the manufacturer has the burden of proof that it acted reasonably. A manufacturer's refusal to accept or approve a proposed buyer who otherwise meets the normal, reasonable, and uniformly applied standards established by the manufacturer for the appointment of a new dealer, or who otherwise is capable of being licensed as a new motor vehicle dealer, is presumed to be unreasonable.

Summary:

Termination, Cancellation, or Nonrenewal of a Franchise.

During a legal dispute concerning the termination of a franchise, a dealer's franchise is maintained. For purposes of the notice requirements of the termination of a franchise, a discontinuance of the sale and distribution of a motor vehicle line, or the constructive discontinuance by material reduction in selection offered such that continuing to retail the line is no longer economically viable for a dealer, is considered a termination of a franchise.

In addition to the other required sums that the manufacturer is required to pay in certain terminations of a franchise, a manufacturer must also pay the dealer for the costs of any relocation, substantial alteration, or remodeling of a dealer's facilities required by a manufacturer that was completed within three years of the termination. A manufacturer is not required to pay the sums if the dealer voluntarily terminates the franchise. The manufacturer must also pay the dealer the fair market value of the dealer's goodwill within 90 days of the termination.

Warranty Work.

The schedule of compensation for warranty work must not be less than the rates charged by the dealer for similar service to retail customers for nonwarranty service and repairs and the schedule of compensation for any existing dealer. For parts, the rates charged by the dealer is the price paid by the dealer increased by the dealer's average percentage markup. For labor, the manufacturer must pay the dealer rates charged to retail customers.

Designated Successor to Franchise Ownership.

If an owner has owned the dealership for more than five consecutive years, the owner may appoint a designated successor to be effective on a date of the owner's choosing that is prior to the owner's death or disability. A dealer must notify the manufacturer at least 30 days before a designated successor's proposed succession.

Unfair Practices.

Several unfair practices by manufacturers are added. A manufacturer may not:

- discriminate against a dealer by preventing, offsetting, or otherwise impairing the dealer's right to request a documentary service fee on affinity or similar program purchases;
- terminate a franchise because the dealer relocates the manufacturer's or distributor's make or line of vehicles to an existing dealership facility that is within the relevant market area, except that, in any non-emergency circumstance, the dealer must give the manufacturer at least 60 days notice;
- terminate a franchise based on the failure of a franchisee to change the location of the dealership or to make substantial alterations to the use or number of franchises on the dealership premises or facilities;
- require a dealer to make a material alteration, expansion, or addition to any dealership facility, unless the required alteration, expansion, or addition is uniformly required of similarly situated dealers and is reasonable in light of all existing circumstances, including economic conditions;
- prevent any dealer from changing the executive management of a dealer unless the manufacturer can show that a proposed change will result in executive management by a person who is not of good moral character or who does not meet reasonable, preexisting, and equitably applied standards of the manufacturer; or
- condition the sale, transfer, relocation, or renewal of a franchise agreement or condition sales, services, parts, or incentives upon site control or an agreement to make improvements or substantial renovations to a facility. A "substantial renovation" is anything that costs a dealer more than \$5,000.

A waiver of franchise law is prohibited, except that certain manufacturer obligations and dealer rights may be waived if the waiver is set forth in a written contract and separate consideration is given.

Sale, Transfer, or Exchange of Franchise.

A manufacturer may not withhold consent to the sale, transfer, or exchange of a franchise to a qualified buyer who meets the normal, reasonable, and uniformly applied standards established by the manufacturer for the appointment of a new dealer who does not already hold a franchise with the manufacturer or is capable of being licensed as a dealer.

Vehicle Export.

A manufacturer may not take or threaten to take any adverse action against a dealer because the dealer sold or leased a vehicle to a customer who exported the vehicle or who resold the vehicle, unless the manufacturer definitively proves that the dealer knew or should have known of the customer's intentions. A manufacturer must indemnify, hold harmless, and defend dealers from claims against the franchisee for any policy or program of the manufacturer for sales of vehicles to parties that intend to export a vehicle purchased from the franchisee.

Manufacturer Liability.

Manufacturers are liable for claims against the dealer if the claim results from:

- the condition, characteristics, manufacture, assembly, or design of any vehicle, parts, accessories, tools, or equipment manufactured by the manufacturer;

- service systems, procedures, or methods required or recommended by the manufacturer;
- improper use by the manufacturer of nonpublic personal information obtained from a dealer; or
- any act or omission of the manufacturer for which the dealer would have a claim for contribution or indemnity.

Attorneys' Fees.

A dealer injured by a violation of the franchise provisions may bring a civil action to recover damages, together with the costs of the suit, including reasonable attorneys' fees if the dealer prevails.

Votes on Final Passage:

House	95	0	
Senate	46	0	(Senate amended)
House	97	0	(House concurred)

Effective: June 10, 2010