

SENATE BILL REPORT

SB 6272

As Reported by Senate Committee On:
Commerce & Labor, February 7, 2014

Title: An act relating to manufacturer and new motor vehicle dealer franchise agreements.

Brief Description: Concerning manufacturer and new motor vehicle dealer franchise agreements.

Sponsors: Senators Hewitt, Conway, Holmquist Newbry, King, Fain, Hobbs, Hasegawa, Cleveland, Rolfes, Hill, Rivers, Dammeier, Keiser, Kohl-Welles and Angel.

Brief History:

Committee Activity: Commerce & Labor: 1/29/14, 2/07/14 [DPS, w/oRec].

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: That Substitute Senate Bill No. 6272 be substituted therefor, and the substitute bill do pass.

Signed by Senators Holmquist Newbry, Chair; Conway, Ranking Member; Hasegawa, Hewitt, King and Kohl-Welles.

Minority Report: That it be referred without recommendation.

Signed by Senator Braun, Vice Chair.

Staff: Edith Rice (786-7444)

Background: The Legislature has recognized that the distribution and sale of motor vehicles vitally affect the economy of the state and that the maintenance of fair competition among dealers is in the public interest. The Legislature has also recognized that there is a substantial disparity in bargaining power between automobile manufacturers and their dealers. As a result it is necessary to regulate the relationship between manufacturers and dealers doing business in the state, fairly and efficiently.

The director of the Department of Licensing (DOL) may deny a vehicle dealer license if the application is a subterfuge concealing the real person in interest who's license is not in good standing or the director finds that the application was not filed in good faith.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A good cause standard is set in statute for a manufacturer to terminate a franchise agreement. This can be a failure of the new motor vehicle dealer to comply with reasonable performance standards determined by the manufacturer in accordance with uniformly applied criteria and other stated factors. Failure to substantially comply with a manufacturer's performance standards, not due to economic factors beyond the dealer's control, is one such factor.

The manufacturer's obligation to pay certain costs to the dealer upon termination or nonrenewal of a franchise are listed in statute. These must be paid within 90 days after termination if the dealer has clear title to the property.

Manufacturers must specify the dealer's obligation to do warranty work on the manufacturer's products, and provide a schedule of compensation to be paid to the dealer. The manner by which a dealer must establish rates for nonwarranty service including the average percentage markup requires documentation, is described in statute, and must be submitted to the manufacturer. A manufacturer cannot require a dealer to use another methodology to establish the average percentage markup. A manufacturer must compensate a dealer for labor and diagnostic work at the same rates charged by the dealer to retail customers. The manufacturer has the right to audit claims for warranty work and to charge the dealer for incorrect claims for one year following payment.

Manufacturers cannot discriminate between new motor vehicle dealers in pricing or allocation of vehicles, parts, or accessories. Manufacturers cannot terminate a franchise with a dealer without good cause. A manufacturer cannot require a dealer to make modifications to a dealership facility it does not require of other dealers.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Substitute): The director of DOL may deny a vehicle dealer license if the issuance of a new license would cause a manufacturer to be in violation of state law regarding manufacturers and dealers franchise agreements.

New terms are defined.

A manufacturer does not have good cause for termination of a franchise unless the manufacturer can show they provided a dealer with the sufficient number and appropriate mix of vehicles to meet performance standards, and the manufacturer provides documentation to the dealer sufficient to develop a market analysis.

Costs payable to the dealer upon the termination of the franchise must be paid within 90 days after termination or on the date of delivery of the assets to the manufacturer, whichever is earlier.

A manufacturer must pay dealer costs for relocation or remodeling required by the manufacturer for the granting of a franchise completed within three years of a termination or cancellation.

A manufacturer cannot approve relocation of a dealership into the market area of another dealer of the same line. It cannot require a dealer to relocate or remodel its facilities more

than once every 15 years unless it is to comply with health or safety laws or to comply with technology requirements.

A manufacturer cannot prevent a dealer from purchasing like-kind materials from a vendor the dealer chooses, nor can a manufacturer require a dealer to accept services, parts, or accessories the dealer has not ordered. A final stage manufacturer is permitted to own a dealership. Changes made in this law take effect for agreements entered into after this law takes effect.

Neither manufacturers nor dealer management computer system vendors may require a new motor vehicle dealer to provide direct access to its management computer system. However, a new motor vehicle dealer may elect to provide information through other means.

EFFECT OF CHANGES MADE BY COMMERCE & LABOR COMMITTEE (Recommended Substitute as Passed Committee): The definition of second stage is removed. Other definitions are added. The provisions that require manufacturers to reimburse dealers if a dealer voluntarily terminates a franchise are removed. A final stage manufacturer is permitted to own a dealership and changes made in this law take effect for agreements entered into after this law takes effect.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Proposed Substitute as Heard in Committee:

PRO: There needs to be a better balance between dealerships and auto manufacturers. Dealerships provide a stable network of jobs and services to the state. Many dealerships have direct experience with issues underscored by this bill. This includes conflicting market areas, dealership remodels, and signage. We need fair compensation for our warranty work. We are getting increased pressure from manufacturers. Poor performance is not at issue here, but day-to-day operations are. Allocation of cars affects all dealers.

CON: We still have many issues to resolve. The provisions in this bill seem to be an effort to protect dealers who are performing poorly. We are required to use the same criteria for all dealers. Manufacturers would be responsible for dealer costs, even for voluntary termination of the franchise. Poor performance and inadequate allocation are not necessarily tied together. Let us bargain with dealers. We need to keep the 12-month timeframe for audits. We are okay with local sourcing, but brand identification is important.

Persons Testifying: PRO: Bryan Imai, Scott Hazlegrove, WA State Auto Dealers Assn.; Gary Gilchrist, Gilchrist Chevrolet; Jon Creedon, Vancouver Ford; Bill McCurley, McCurley Integrity Dealerships.

CON: Amy Brink, Curt Augustine, Alliance of Automobile Manufacturers; Hal Lennox, General Motors; Matthew Erwin, Mazda North American Operations; Ross Good, Chrysler Group, LLC; Trent House, Global Automakers.