

HOUSE BILL REPORT

HB 2028

As Reported by House Committee On:
Consumer Protection & Business

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

Brief Description: Concerning manufacturer and new dealer franchise agreements.

Sponsors: Representatives Santos, Robertson, Ryu, Reeves, Chapman, Orwall and Sandlin.

Brief History:

Committee Activity:

Consumer Protection & Business: 1/17/24, 1/31/24 [DP].

Brief Summary of Bill

- Modifies the definition of "manufacturer" and establishes unlawful acts or practices applicable to manufacturers and dealers.
- Provides new requirements for manufacturers and dealers relating to warranty work, unfair practices, relevant market areas, and manufacturer incentive programs.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: Do pass. Signed by 12 members: Representatives Walen, Chair; Reeves, Vice Chair; Robertson, Ranking Minority Member; McClintock, Assistant Ranking Minority Member; Chapman, Connors, Donaghy, Hackney, Ryu, Sandlin, Santos and Volz.

Staff: Michelle Rusk (786-7153).

Background:

Motor Vehicle Dealers and Manufacturers.

The Department of Licensing (Department) regulates persons who engage in business as

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new motor vehicle dealers and motor vehicle manufacturers under the Dealers and Manufacturers Act (Act) and the Department Director has the authority to issue and deny licenses. For the purposes of the Act:

- "Manufacturers" are persons, firms, associations, corporations, or trusts who manufacture new and unused vehicles or who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under the common direction, and possesses direct or indirect power to direct or cause the direction of the management and policies of such persons, firms, associations, corporations, or trusts.
- "New motor vehicle dealers" are those dealers buying, selling, or otherwise dealing in new motor vehicles or new and used motor vehicles at an established place of business, under a franchise agreement with the manufacturer of the new motor vehicles.

Certain practices are deemed unlawful under the Act, including, for example, advertising or broadcasting false, deceptive, or misleading representations with regard to the sale or lease of a vehicle.

Manufacturers' and Dealers' Franchise Agreements.

Manufacturers and new motor vehicle dealers must maintain a franchise relationship, and the responsibilities of each party are delineated in state law and the franchise agreement of the parties. Franchises are agreements between a manufacturer and new motor vehicle dealer under which the new motor vehicle dealer may sell, service, and repair new motor vehicles, parts, and accessories under a common name, trademark, or service mark of the manufacturer. State statutes generally dictate when and how a manufacturer may terminate, cancel, or not renew a dealer's franchise and the compensation a manufacturer must pay a dealer for warranty work and customer-paid service repairs.

Warranty Work.

Manufacturers must specify in their franchise agreements a dealer's obligation to perform warranty work or service on the manufacturer's products, including providing dealers with a compensation schedule for any warranty work or service required of the dealer in connection with the manufacturer's products. The schedule of compensation must not be less than the dealer's rates for similar service to its retail customers for nonwarranty service and repairs.

Relevant Market Areas.

Manufacturers must also provide specified notices to the Department and new motor vehicle dealers if the manufacturer intends to enter into a franchise to establish an additional motor vehicle dealer, or relocate an existing motor vehicle dealer within a relevant market area. Relevant market areas are determined by a specified radius based on the population of the proposed county.

Unfair Practices.

Notwithstanding the terms of a franchise agreement, manufacturers, distributors, and other

factory representatives are prohibited from certain unfair practices. Prohibited practices include discriminating between new motor vehicle dealers by selling a like vehicle to one dealer at a lower actual price than the actual price offered to another dealer, or using confidential or proprietary information obtained from a dealer to unfairly compete with the dealer.

Summary of Bill:

Manufacturers.

The definition of "manufacturer" in the Dealers and Manufacturers statute is modified to include any person, firm, association, corporation, or trust, whether resident or nonresident, who directly or indirectly through one or more intermediaries, controls, is controlled by, or is under the common direction, and possesses direct or indirect power to direct or cause the direction of the management and policies of such person, firm, association, corporation, or trust, whether resident or nonresident.

The following acts or practices are deemed unlawful under the Dealers and Manufacturers statute:

- It is unlawful for a manufacturer to offer a subscription service to a consumer for any motor vehicle feature utilizing components and hardware already installed at the time of purchase or lease, which would function after activation without ongoing cost to or support by the dealer, manufacturer, distributor, or a third-party service provider. This prohibition does not apply to navigation system updates, satellite radio, roadside assistance, software-dependent driver assistance or driver automation, or vehicle-connected services that rely on cellular or other data networks for continued operation.
- It is unlawful to take reservations, dictate the selling price, or negotiate binding terms of sale or leasing of a new motor vehicle directly between the manufacturer, factory branch, distributor, or distributor branch and retail buyers or lessees.

Manufacturers' and Dealers' Franchise Agreements.

Warranty Work.

As part of warranty work required pursuant to a franchise agreement, if a manufacturer furnishes a part or component to a new motor vehicle dealer at no or reduced cost for repairs, the manufacturer must compensate the dealer at the retail parts' rate of the wholesale cost for the part as listed in the manufacturer's price schedule, minus the wholesale cost for the part. A manufacturer may not establish a special part or component number for parts used in predelivery, dealer preparation, warranty, service contract, certified preowned warranty, recall, campaign services, authorized goodwill, or maintenance-only applications if it results in lower compensation to the dealer than as calculated under the foregoing requirement.

Additionally, a manufacturer must compensate a dealer for labor and diagnostic work at a

rate determined by dividing the total customer labor charges for qualifying nonwarranty repairs in the repair orders submitted by the total number of hours that would be allowed for the repairs if the repairs were made under the manufacturer's time allowances used in compensating the dealer for warranty work.

Relevant Market Area.

Relevant market areas for counties with a population of 400,000 or more include the geographic area within a radius of 10 miles around a proposed new or relocated dealership site.

Unfair Practices.

Notwithstanding the terms of a franchise agreement, manufacturers, distributors, and factory branches and representatives may not implement a program or policy encouraging or requiring franchisees to install direct current fast charging stations (charging stations), unless all of the following are satisfied:

- If public access to the charging station is required, the franchisor must reimburse a dealer for one-half of the cost to install and maintain the charging stations if the dealer pays the franchisor half of the net income generated from charging station use.
- Franchisees can obtain access to charging stations within a minimum of 5 miles of the franchisee's dealership location that satisfy the program or policy.
- The program or policy is reasonable in light of all existing circumstances, including local conditions, supply constraints, time constraints, advancements in vehicular technology, and electric grid integration.
- A new motor vehicle dealer has the right to purchase or lease goods or services of like kind and quality from an alternate vendor the dealer selects if the goods or services would otherwise be supplied by a vendor selected, identified, or designated by the manufacturer or distributor.

While manufacturers, distributors, and factory branches and representatives may not compete with a new motor vehicle dealer by acting as a new motor vehicle dealer, or owning, operating or controlling a motor vehicle dealership in Washington, it is not prohibited for a manufacturer, distributor or factory branch or representative to own or operate a dealership in conjunction with an independent person in a bona fide business relationship to enhance opportunities for qualified persons who represent overburdened communities

Manufacturer Incentive Programs.

A manufacturer may not implement an incentive program that: (1) does not provide an equal opportunity for all motor vehicle dealers to qualify based on consideration of dealership location and sales volume; (2) predetermines the price of a vehicle; (3) limits eligibility based on nonvehicle product penetration; or (4) requires use of specific software or service vendors to qualify.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is about the health of our communities now and in the future. Auto dealerships are woven into the fabric of our communities. Many dealerships in Washington are multigenerational businesses serving families in our communities for generations. The issue that this bill addresses is the hard squeeze faced by dealers from manufacturers. Dealers are already challenged to retain skilled technicians to work on our vehicles, and are paying for exacting showroom specifications that might not make sense for our region. Hundreds of jobs in our communities depend on auto dealers for their livelihoods, and it is likely that there is not a single manufacturer in any of the districts represented by members on the committee.

The entire purpose of the franchise laws is to set sideboards on the unequal bargaining relationship between manufacturers and dealers, so that dealers can remain in business, provide sales tax, create jobs, and provide community support. It is appropriate that dealers resolving manufacturer defects should be paid fairly, but manufacturers have cut the hours that dealers are allowed for repairs and attempted to give themselves discounts that dealers cannot offer their customers.

Dealers are committed to electric vehicle sales and have been at the forefront of the state's electric vehicle policies, including allowing for test driving.

(Opposed) This bill continues to prohibit all zero-emission manufacturers from selling directly to customers, which is strongly opposed. The focus should be on policies maximizing production and sales of zero-emission vehicles, which will result in more charging infrastructure. More electric vehicles is critical to meeting decarbonization goals. The bill should be amended to allow direct to consumer electric vehicle sales. Another concerning aspect of the bill is the limit on innovation in the subscription service space. We do not know what the future and technology holds in the subscription space and this prohibition may stifle that.

The warranty provisions also present concerns because they create an artificial method to determine the actual amount of time and cost for certain work. These provisions will increase costs for consumers and create unintended consequences. Last year, 10 states addressed similar issues in bills and all 10 states rejected those policies.

(Other) The Department of Commerce is concerned that the prohibition on reservations of

vehicles will limit the way automakers have been able to roll out vehicles that are still going through production, and are also concerned about how the limitations on charging stations may impact their growth.

Tesla is concerned that, as written, this would prohibit their current business practices. An amendment would be necessary to carve out existing provisions of law permitting Tesla to continue operating in Washington.

Persons Testifying: (In support) Representative Sharon Tomiko Santos, prime sponsor; Adam Reich; Scott Hazlegrove, Washington State Auto Dealers Association; Miles Richardson, University Volkswagen and Audi; and Arun Vaidyanathan, Brotherton Cadillac.

(Opposed) Curt Augustine, Alliance for Automotive Innovation; Jeff Perry, General Motors; Thomas Lawson, Ford; Hannah Steinweg and Beau Whiteman, Rivian; Leah Missik, Climate Solutions; Paula Sardinas, Washington Build Back Black Alliance and FMS Global Solutions; and Matthew Hepner, International Brotherhood of Electrical Workers.

(Other) Jeff Gombosky, Tesla; Steven Hershkowitz, Washington Department of Commerce; and Isaac Kastama, Clean and Prosperous Washington.

Persons Signed In To Testify But Not Testifying: Stephen Moore; Jen Moran, Carter Motors; Tom Trisdale, Toyota Motor North America; Mark Prentice; Terrence Yip; and David Schripsema.