

H.B. No. 2640

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 2301.257, Occupations Code, is amended
6 by adding Subsection (d) to read as follows:

7 (d) The act of filing an application under this section or a
8 form prescribed under this section does not establish the applicant
9 as a franchised dealer.

10 SECTION 2. Section 2301.360(b), Occupations Code, is
11 amended to read as follows:

12 (b) In a protest under this section, the board must
13 determine whether the rejection was reasonable under the criteria
14 described by Section 2301.359 [prospective transferee is
15 qualified]. The burden is on the manufacturer or distributor to
16 prove that the prospective transferee is not qualified under the
17 criteria. The board shall enter an order holding that the
18 prospective transferee either is qualified or is not qualified.

19 SECTION 3. Section 2301.464(a), Occupations Code, is
20 amended to read as follows:

21 (a) Not later than the 60th day before the date a franchised
22 dealer proposes to begin the relocation of a dealership, the dealer
23 must provide written notice of the dealer's intent to relocate to
24 the dealer's manufacturer, distributor, or representative. The

1 notice must be sent by certified mail, return receipt requested.

2 Notwithstanding the terms of any franchise, a manufacturer,
3 distributor, or representative may not deny or withhold approval of
4 a written application to relocate a franchise unless:

5 (1) the applicant receives written notice of the
6 denial or withholding of approval not later than the 60th day after
7 the date the application is received; and

8 (2) if the applicant files a protest with the board,
9 the board makes a determination of reasonable grounds under this
10 section.

11 SECTION 4. Section 2301.465, Occupations Code, is amended
12 by amending Subsections (a) and (b) and adding Subsections (h) and
13 (i) to read as follows:

14 (a) In this section:

15 (1) "Net cost" means the franchised dealer cost for a
16 new, unsold, undamaged, and complete motor vehicle [~~of the current~~
17 ~~model year or the previous model year~~] in a dealer's inventory:

18 (A) plus any charges by the manufacturer,
19 distributor, or representative for distribution, delivery, and
20 taxes; and

21 (B) less all allowances paid to the franchised
22 dealer by the manufacturer, distributor, or representative.

23 (2) "Net discount value" is the net cost multiplied by
24 the total mileage, exclusive of mileage placed on the motor vehicle
25 before it was delivered to the dealer, divided by 100,000.

26 (b) Notwithstanding the terms of any franchise, after the
27 termination of a franchise, a manufacturer, distributor, or

1 representative shall pay to a franchised dealer or any lienholder,
2 in accordance with the interest of each, the following amounts:

3 (1) the dealer cost of each new motor vehicle in the
4 dealer's inventory with mileage of 5,000 [~~6,000~~] miles or less,
5 exclusive of mileage placed on the vehicle before it was delivered
6 to the dealer, reduced by the net discount value of each vehicle,
7 except that if a vehicle cannot be reduced by the net discount
8 value, the manufacturer or distributor shall pay the dealer the net
9 cost of the vehicle;

10 (2) the dealer cost of each new, unused, undamaged,
11 and unsold part or accessory that:

12 (A) is in the current parts catalogue and is
13 still in the original, resalable merchandising package and in an
14 unbroken lot, except in the case of sheet metal, a comparable
15 substitute for the original package may be used; and

16 (B) was purchased by the dealer either directly
17 from the manufacturer or distributor or from an outgoing authorized
18 dealer as a part of the dealer's initial inventory;

19 (3) the fair market value of each undamaged sign owned
20 by the dealer that bears a trademark or tradename used or claimed by
21 the manufacturer, distributor, or representative and that was
22 purchased from or at the request of the manufacturer, distributor,
23 or representative;

24 (4) the fair market value of all special tools, data
25 processing equipment, and automotive service equipment owned by the
26 dealer that:

27 (A) were recommended in writing and designated as

1 special tools and equipment;

2 (B) were purchased from or at the request of the
3 manufacturer, distributor, or representative; and

4 (C) are in usable and good condition except for
5 reasonable wear and tear; and

6 (5) the cost of transporting, handling, packing,
7 storing, and loading any property subject to repurchase under this
8 section.

9 (h) Notwithstanding any other law, this section does not
10 require a manufacturer, distributor, or representative to
11 repurchase a motor vehicle that:

12 (1) at the time of termination of the franchise had
13 been in the dealer's inventory for at least 24 months after the date
14 the dealer took delivery of the vehicle; or

15 (2) the dealer purchased not more than 30 days before
16 the date of termination of the franchise solely in anticipation of
17 the termination and, in the ordinary course of business, would not
18 have purchased.

19 (i) For purposes of this section, a sale of the assets or
20 stock of a dealership to a buyer who continues the operation of the
21 dealership is not a termination of a franchise.

22 SECTION 5. Section 2301.467, Occupations Code, is amended
23 to read as follows:

24 Sec. 2301.467. PROHIBITIONS: SALES STANDARDS, RELOCATIONS,
25 FACILITY CHANGES, PURCHASE OF EQUIPMENT. (a) Notwithstanding the
26 terms of any franchise, a manufacturer, distributor, or
27 representative may not:

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1 (1) require adherence to unreasonable sales or service
2 standards; or

13 (c) The prohibitions under this section apply to the
14 relationship between a manufacturer and:

18 SECTION 6. Section 2301.472(d), Occupations Code, is
19 amended to read as follows:

20 (d) In determining whether a manufacturer or distributor
21 has established that the denial or withholding of approval is
22 reasonable, the board shall consider all existing circumstances,
23 including:

24 (1) the dealer's sales in relation to the sales in the
25 market;

26 (2) the dealer's investment and obligations;

27 (3) injury or benefit to the public;

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4 (5) whether warranties are being honored by the dealer
5 agreement;

6 (6) the parties' compliance with the franchise, except
7 to the extent that the franchise conflicts with this chapter;

8 (7) the enforceability of the franchise from a public
9 policy standpoint, including issues of the reasonableness of the
10 franchise's terms, oppression, adhesion, and the parties' relative
11 bargaining power;

12 (8) whether the dealer complies with reasonable
13 capitalization requirements or will be able to comply with
14 reasonable capitalization requirements within a reasonable time;

15 (9) any harm to the manufacturer or distributor if the
16 denial or withholding of approval is not upheld; [and]

17 (10) any harm to the dealer if the denial or
18 withholding of approval is upheld;

25 SECTION 7. Section 2301.475, Occupations Code, is amended
26 by adding Subsection (c) to read as follows:

27 (c) Money paid by a manufacturer or distributor under an

1 incentive program may only be paid to a dealer, unless the dealer
2 agrees to the payment of the money to another person, including an
3 employee of the dealer, before the payment is made.

4 SECTION 8. Subchapter J, Chapter 2301, Occupations Code, is
5 amended by adding Section 2301.479 to read as follows:

6 Sec. 2301.479. ADVERSE ACTION IN CONNECTION WITH EXPORT OF
7 VEHICLE. (a) Except as otherwise provided by this section, a
8 manufacturer, distributor, or representative may not take an
9 adverse action against a franchised dealer because the franchised
10 dealer sells or leases a vehicle that is later exported to a
11 location outside the United States.

12 (b) A franchise provision that allows a manufacturer,
13 distributor, or representative to take adverse action against a
14 franchised dealer because the franchised dealer sells or leases a
15 vehicle that is later exported to a location outside the United
16 States is enforceable only if, at the time of the original sale or
17 lease, the dealer knew or reasonably should have known that the
18 vehicle would be exported to a location outside the United States.

19 (c) A franchised dealer is presumed to have no actual
20 knowledge that a vehicle the dealer sells or leases will be exported
21 to a location outside the United States if, under the laws of a
22 state of the United States:

23 (1) the vehicle is titled;
24 (2) the vehicle is registered; and
25 (3) applicable state and local taxes are paid for the
26 vehicle.

27 (d) The presumption under Subsection (c) may be rebutted by

1 direct, clear, and convincing evidence that the franchised dealer
2 had actual knowledge or reasonably should have known at the time of
3 the original sale or lease that the vehicle would be exported to a
4 location outside the United States.

5 (e) Except as otherwise permitted by this section, a
6 franchise provision that allows a manufacturer, distributor, or
7 representative to take adverse action against a franchised dealer
8 because the franchised dealer sells or leases a vehicle that is
9 later exported to a location outside the United States is void and
10 unenforceable.

11 SECTION 9. Sections 2301.652(a) and (c), Occupations Code,
12 are amended to read as follows:

13 (a) The board may deny an application for a license to
14 establish a dealership if, following a protest, the applicant fails
15 to establish good cause for establishing the dealership. In
16 determining good cause, the board shall consider:

17 (1) whether the manufacturer or distributor of the
18 same line-make of new motor vehicle is being adequately represented
19 as to sales and service;

20 (2) whether the protesting franchised dealer
21 representing the same line-make of new motor vehicle is in
22 substantial compliance with the dealer's franchise, to the extent
23 that the franchise is not in conflict with this chapter;

24 (3) the desirability of a competitive marketplace;

25 (4) any harm to the protesting franchised dealer;

26 [and]

27 (5) the public interest;

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(6) any harm to the applicant; and

(7) current and reasonably foreseeable projections of conditions, financial expectations, and the market for new sales in the relevant market area.

(c) A franchised dealer may not protest an application to locate a dealership under this section if the proposed relocation is not:

(1) more than two miles [~~one mile~~] from the site where
membership is currently located: or

(2) closer to the franchised dealer than the site from which the dealership is being relocated.

12 SECTION 10. (a) The change in law made by this Act applies
13 only to an agreement entered into or renewed under Chapter 2301,
14 Occupations Code, on or after the effective date of this Act. An
15 agreement entered into or renewed before the effective date of this
16 Act is governed by the law in effect on the date the agreement was
17 entered into or renewed, and the former law is continued in effect
18 for that purpose.

25 SECTION 11. This Act takes effect September 1, 2009.

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President of the Senate

Speaker of the House

I certify that H.B. No. 2640 was passed by the House on April 30, 2009, by the following vote: Yeas 143, Nays 1, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2640 on May 20, 2009, by the following vote: Yeas 134, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2640 was passed by the Senate, with amendments, on May 18, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor