

HCS HB 2198 -- MOTOR VEHICLE FRANCHISE PRACTICES ACT

SPONSOR: Wasson (Parson)

COMMITTEE ACTION: Voted "do pass" by the Special Committee on Professional Registration and Licensing by a vote of 13 to 0.

This substitute changes the laws regarding the Motor Vehicle Franchise Practices Act. In its main provisions, the substitute:

(1) Specifies that the public policy of the state is to provide for fair and impartial regulation of individuals engaged in the manufacturing, distribution, importation, or selling of motor vehicles and to protect the public interest in the purchase and trade of motor vehicles;

(2) Requires all franchise licenses and license renewals after August 28, 2010, to be bound by the provisions of the act and prohibits any franchise agreement made, entered, modified, or renewed after that date from avoiding or violating the requirements of the act;

(3) Requires the provisions of the act to apply to each franchise that a franchisor, manufacturer, importer, or distributor has with a franchisee and all agreements between a franchisee and a common entity or any person controlled by a franchisor;

(4) Increases the distance requirements of a relevant market area when locating or relocating dealerships. Franchisors must give written notice to a franchisee of the opening of any new dealership in the relevant market area selling vehicles of the same line-make. Franchisees may bring an action before the Administrative Hearing Commission within 30 days of the notice to determine if there is good cause to allow the competition. The substitute revises the circumstances that the commission will take into consideration when determining good cause;

(5) Requires a reopened or replaced franchise to be offered to the former owner if a dealership reopens within two miles of its former location;

(6) Requires a franchisor to be licensed and to annually renew his or her license with the Department of Revenue;

(7) Regulates the offering of franchises by successor manufacturers and specifies certain criteria that must be met before a new franchise may be offered or sold if a manufacturer previously canceled or otherwise ended a franchise agreement;

(8) Allows for the filing of a complaint instead of an application for a hearing before the commission regarding a violation of the act. When a proceeding is pending before the commission, a demand for mediation must be filed which will stay further action by the commission. If mediation is unsuccessful, the commission must issue its order terminating the stay;

(9) Specifies that the actions listed in Section 407.825, RSMo, whether committed directly or indirectly through an agent, employee, affiliate, common entity, representative, or franchisor-controlled entity will be considered an unlawful practice;

(10) Revises existing unlawful practices and establishes additional unlawful practice violations including:

(a) Engaging in certain specified restraint of trade actions such as conditioning the offer of a franchise on a site control agreement or agreement for exclusive use;

(b) Terminating a franchise agreement without specified notice regarding unsatisfactory sales or service performance;

(c) Conditioning the retention of a franchise agreement on certain specified control requirements over the franchisee's business;

(d) Causing warranties to fail to be performed;

(e) Interfering with or withholding contracted services;

(f) Requiring installment financing with a particular financial institution;

(g) Requiring changes in a franchisee's location without good cause;

(h) Allowing an unauthorized person to perform warranty service with certain exceptions;

(i) Discriminating in the models of the same line-make offered to franchisees;

(j) Failing to make available the offering of bonuses or rebates;

(k) Conditioning a franchise agreement on facility improvements unless reasonably required by the technology of a motor vehicle;

(l) Entering into site control agreements unless voluntarily

accepted by the franchisee;

(m) Failing to offer rebates, dealer incentives, interest rate reductions, finance terms for the same line-make, and various cash incentives and promotional items;

(n) Discriminating unreasonably between franchisees in any program providing assistance including sales and marketing help;

(o) Failing to provide notice of a choice of law provision specified in the act;

(p) Interfering with the delivery of motor vehicle parts;

(q) Using data concerning franchisees to discriminate against them in various specified ways;

(r) Refusing to sell or deliver motor vehicles;

(s) Requiring the use of customer information obtained from the franchisee and requiring a franchisee to make a customer purchase additional products from the franchisor;

(t) Establishing unfair performance standards for franchisees;

(u) Implementing any plan for delivery of parts that is inequitable; and

(v) Violating any other provision of the act that adversely impacts a franchisee;

(11) Establishes deadlines and other rules for submitting claims concerning products purchased by the franchisee under Section 407.828;

(12) Requires franchisors to indemnify and hold harmless a franchisee for damage to a vehicle occurring prior to delivery that was not disclosed in writing to the franchisee prior to the delivery of the vehicle;

(13) Requires franchisors to give 90 days' notice of any modification that substantially and adversely affects the franchisee's rights, obligations, investments, or return on investments; and

(14) Specifies the right to appeal judgments of the commission in court and allows actual damages, court costs, and punitive damages to be recovered for a violation of the provisions of the act. Mediation is non-binding, and Missouri law will govern all disputes brought pursuant to the act.

PROPONENTS: Supporters say that the bill will give a dealer an avenue to address a grievance with a manufacturer. Dealers feel with the changes in the business environment, certain rules of practice need to be revised. The bill allows dealers to make certain decisions which will help them through tough economic times. In many cases, a dealer feels that a manufacturer is trying to control how a dealer operates his or her business.

Testifying for the bill were Representative Parson; Missouri Automobile Dealers Association; and Mike Kehoe.

OPPONENTS: Those who oppose the bill say there are many issues that need to be addressed and the manufacturer's opposition is based on the termination process. The circumstances relating to a dealer termination are based on certain actions and are different for each manufacturer. Manufacturers believe the bill is an attempt to micro manage the manufacturer/dealer contracts. There is no other industry in the country receiving this type of treatment. Manufacturers realize there are problems facing the automobile dealers at this time but rewriting the franchise act is not the answer.

Testifying against the bill were Ford Motor Company; General Motors Company LLC; and Alliance of Automobile Manufacturers.