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SFA



BILL ANALYSIS

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House Bill 4738 (Substitute H-1 as passed by the House)
House Bill 4740 (Substitute S-1)
Sponsor: Representative Kim Rhead (H.B. 4738)
Representative Tom Alley (H.B. 4740)
House Committee: Commerce
Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 5-11-98

CONTENT

House Bill 4738 (H-1) would amend the Michigan Vehicle Code to prohibit a person from acting as a motor vehicle broker except through an auction dealer, and **House Bill 4740 (S-1)** would amend Public Act 118 of 1981 (which regulates automobile dealer franchises) to exempt new motor vehicle dealers and importers from paying manufacturers' refunds or rebates. The bill also would prohibit manufacturers or distributors from adopting or changing arbitrary and capricious vehicle allocations, failing to disclose the allocation or distribution, refusing to deliver vehicles within a reasonable time, and preventing executive management change under certain conditions.

The bills are tie-barred to each other. The following is a detailed description of the bills.

House Bill 4738 (H-1)

Currently, the Code requires an automobile dealer license to carry on or conduct the business of buying, selling, brokering, or dealing in vehicles that must be titled under the Code.

The bill, instead, would prohibit the buying, selling, exchanging, auctioning, or dealing in vehicles that had to be titled under the Code unless a person obtained from the Secretary of State a dealer license authorizing the activity, or the person was a licensed dealer employee or was involved in wholesale transactions with two licensed dealers. The bill would allow the brokering of motor vehicles only through auction dealers.

The bill also would prohibit a person from buying, selling, exchanging, auctioning, or dealing in distressed late model vehicles or salvageable parts unless a used or secondhand vehicle parts dealer license, automobile recycler license, or a salvage pool license was obtained from the Secretary of State, or the person was an authorized insurance company. A person, including a dealer, however, would not be allowed to purchase or acquire a distressed, late model vehicle or a salvageable part through a salvage pool, auction, or broker without a salvage vehicle agent license.

Under the bill, "auction dealer" would mean a person who conducted a private or public auction for a fee or other valuable consideration from either the buyer or the seller, or both, of motor vehicles in which that person did not have title or other legal interest. "Broker" would mean a person, other than a dealer or an employee or agent of a dealer, who for a fee or valuable consideration, would

bring a buyer and a seller of a motor vehicle together. It would not include a motor club or its authorized representative that, as a referral service for prospective purchasers, would make referrals to franchised new motor vehicle dealers, where the motor club did not receive consideration for the referral and all sales were made by the franchised motor vehicle dealers. "Auction" would mean the sale of a motor vehicle by a dealer at wholesale for the highest bid, but would not include the sale of vehicles titled in the name of a manufacturer by the manufacturer or its subsidiary to a dealer.

House Bill 4740 (S-1)

Definitions/Importers

"Dealer agreement" would mean the agreement or contract in writing between a distributor and a new motor vehicle dealer, between a manufacturer and a distributor or a new motor vehicle dealer, or between an importer and a distributor or a new motor vehicle dealer, that purported to establish the legal rights and obligations of the parties to the agreement or contract to the purchase and sale of new motor vehicles and accessories for motor vehicles. The current definition only refers to an agreement or contract between a manufacturer, distributor, and a new motor vehicle dealer.

"New motor vehicle dealer" would mean a person, including a distributor, who held a dealer agreement granted by a manufacturer, distributor, or importer for the sale or distribution of its motor vehicles, who was engaged in the business of purchasing, selling, exchanging, or dealing in new motor vehicles, and who had an established place of business in the State. The bill would include an importer in the definition of "distributor".

The Act prohibits a manufacturer or distributor from requiring a new motor vehicle dealer to do a number of specified things. Under the bill, an importer also would be subject to this prohibition.

Refunds

Currently, a manufacturer or distributor must not require a dealer to participate monetarily, at the dealer's expense, in any advertising campaign or contest, or purchase any promotional materials, display devices, or display decorations or materials.

The bill also would prohibit manufacturers, importers, or distributors from requiring new motor vehicle dealers to pay or assume any cost of a manufacturer's or distributor's refund, rebate, or discount to a consumer in connection with the sale of a new vehicle unless the dealer voluntarily agreed to do so.

Controversies

Currently, a manufacturer or distributor must not require a dealer to assent prospectively to a release, assignment, novation, waiver, or estoppel that would relieve any person from liability imposed by the Act, or require any controversy between a dealer and a manufacturer or distributor to be referred to a person other than the duly constituted U.S. or State courts.

The bill would prohibit manufacturers, importers, or distributors from requiring new motor vehicle dealers to assent to a release, assignment, etc. that would require any dealer agreement to be governed by the laws of a state other than Michigan; or, absent a contractual agreement, require any controversy between a dealer and a manufacturer, importer, or distributor to be arbitrated or litigated outside the State. This provision in a dealer agreement would be void and unenforceable. The bill's provision, however, would not preclude the parties to an agreement from agreeing to conduct arbitration of a dispute at a location outside of the State.

Prohibitions

Currently, the auto manufacturers and distributors are prohibited from failing to deliver new motor vehicles, parts, or accessories within a reasonable time and in reasonable amounts; refusing to disclose to dealers the method and manner of distribution of new motor vehicles by the manufacturer or distributor; or refusing to disclose to dealers the total number of new motor vehicles of a given model sold by the manufacturer or distributor in the dealer's marketing district, zone, or region, whichever geographical area is the smallest. The bill would replace these provisions.

The bill would prohibit a manufacturer or distributor from adopting, changing, establishing, or implementing a plan or system for allocating and distributing new motor vehicles to dealers that was arbitrary or capricious.

The bill also would prohibit a manufacturer from failing or refusing to advise or disclose to any dealer having a dealer agreement, upon written request from the dealer, which new motor vehicles of the same line make were allocated or distributed to dealers in the State, and the basis upon which the current allocation or distribution was being or would be made to that dealer.

Under the bill, manufacturers and distributors would be prohibited from refusing to deliver, in reasonable time and amounts after receiving a dealer's order, vehicles that were covered in the agreement between the dealer and the manufacturer and that were specifically publicly advertised in the State by the manufacturer or distributor to be available for immediate delivery. The failure to deliver a motor vehicle, however, would not be considered a violation of the bill if the failure were due to an act of God, a work stoppage or delay due to a strike or labor difficulty, a shortage of materials, a lack of manufacturing capacity, a freight embargo, or any other cause over which the manufacturer or distributor had no control. Furthermore, if a manufacturer or distributor required a dealer to purchase essential service tools, costing more than \$7,500 in order to receive a specific model vehicle, the manufacturer or distributor would have to provide to the dealer, upon written request, a written good faith estimate of the number of vehicles of that specific model the dealer would be allocated during the model year in which the tool was required to be purchased.

Management Change

The bill would prohibit manufacturers or distributors from preventing or attempting to prevent by contract or otherwise any dealer from changing its executive management unless the manufacturer or distributor, who would have the burden of proof, could show that the change would result in executive management by a person or persons who were not of good moral character or who did not meet reasonable, preexisting, and equitably applied manufacturer or distributor standards. If a manufacturer or distributor rejected a proposed executive management change, it would have to give written notice to the dealer within 60 days after having received written notice by the dealer of the proposed change and all related information reasonably requested by the manufacturer or distributor, or the executive management change would be considered approved.

Application of Bill

The bill's provisions would apply to agreements that existed on the bill's effective date, or were entered into or renewed after the bill's effective date.

MCL 257.1d et al. (H.B. 4738)
445.1562 et al. (H.B. 4740)

Legislative Analyst: N. Nagata

FISCAL IMPACT

House Bill 4738 (H-1)

The fiscal impact of this bill would be minimal. The State would lose approximately \$1,000 in annual revenue collected from the \$10 fee for automobile brokers' licenses eliminated under this proposal.

House Bill 4740 (H-2)

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: P. Alderfer

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.