

Legislative Analysis



AUTO DEALERS: CONSUMER FEES

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House Bill 5606 as enacted
Public Act 354 of 2014
Sponsor: Rep. Aric Nesbitt
House Committee: Commerce
Senate Committee: Regulatory Reform

Complete to 2-5-15

A SUMMARY OF HOUSE BILL 5606 AS ENACTED

The bill would amend the state's automobile franchise law to prohibit a motor vehicle manufacturer from preventing, prohibiting, or coercing a new motor vehicle dealer from charging any consumer any documentary preparation fee that state law allows the dealer to charge. This prohibition also applies to attempts by the manufacturer to engage in such conduct.

The bill also added language specifying that Section 14 "applies to a manufacturer that sells, services, displays, or advertises its new motor vehicles in this state." It also modifies language regarding the sale of new vehicles by vehicle manufacturers. Currently, a provision says that the act does not prohibit a manufacturer "from establishing a program to sell or offer to sell new motor vehicles through the manufacturer's new motor vehicle dealers." The new language would say instead that the act does not prohibit a manufacturer "from establishing a program to sell or offer to sell new motor vehicles through franchised new motor vehicle dealers that sell and service new motor vehicles produced by the manufacturer." The underlined language is new. (See *Background Information.*)

The bill is an amendment to Section 14 of Public Act 118 of 1981, an act that, generally speaking, regulates dealings between manufacturers, distributors, wholesalers, dealers, and consumers of new motor vehicles. Section 14 contains a long list of prohibited conduct for manufacturers. "Manufacturers" are entities that manufacture or assemble new motor vehicles or a distributor, factory branch, or factory representative.

MCL 445.1574

BACKGROUND INFORMATION:

Michigan law requires an indirect sales model for new car sales where the manufacturer signs contracts with outside parties to establish franchises which then sell the cars to consumers. The act governs the terms of these agreements and prohibits direct sales to would-be buyers, other than nonprofit organizations and government agencies. While auto manufacturers that want to sell directly to consumers cannot do so in Michigan, they are not prohibited from providing information to the customer on how to purchase a

vehicle or from "establishing a program to sell or offer to sell new motor vehicles through the manufacturer's new motor vehicle dealers."

The part of the act regarding the sales program was amended by the bill so that the subsection now reads, in part, "establish a program to sell...through franchised new motor vehicle dealers that sell and service new motor vehicles produced by the manufacturer." This means that while a direct-sales model manufacturer can showcase its products in Michigan, it cannot create a program to sell or offer to sell the vehicles.

DISCUSSION:

According to testimony from automobile dealers, the prohibition on a manufacturer coercing or preventing a new motor vehicle dealer from charging a customer any document preparation fees arose from attempts by manufacturers to have those fees waived as part of employee pricing discounts; this harms dealers' profitability.

The document preparation fee provision in the bill was the emphasis of the bill when it passed the House. However, a Senate amendment regarding the use of franchised new motor vehicle dealers drew opposition from the auto maker Tesla, which claims the additional changes targeted the manufacturer and will effectively prevent it from doing business in Michigan.

Tesla eschews the franchise model mandated by Michigan law, opting instead for a direct sales model. In states which have franchise laws similar to Michigan's, Tesla has established galleries staffed by Tesla employees who are on hand to answer questions regarding the models. If a consumer wants to purchase a Tesla car, they do so online and not at the gallery.

Critics of Tesla's business model say this violates franchise laws, as Tesla is still facilitating the sale of their vehicles through Tesla itself, rather than through a franchised dealer. In a letter explaining his decision to sign the bill, Gov. Rick Snyder said the changes in and of themselves would not affect Tesla or any other automaker, as current law already requires an auto manufacturer to use franchises to sell their vehicles.

FISCAL IMPACT:

The bill does not appear to have any fiscal impact on the state.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.