

Revised
SESSION OF 2010

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2547

As Amended by Senate Committee on
Transportation

Brief*

HB 2547 would amend the Vehicle Dealers and Manufacturers Licensing Act in provisions having to do with contractual agreements between vehicle dealers and vehicle manufacturers and distributors (“manufacturers” below). It also would extend the time a truck with temporary registration could be operated while laden. The bill would become effective upon publication in the *Kansas Register*.

Vehicle Dealers and Manufacturers

The bill would make these changes to the Vehicle Dealers and Manufacturers Licensing Act:

- Prohibit a manufacturer from preventing a dealer from acquiring, adding, or maintaining another franchise under certain circumstances;
- Prohibit a manufacturer from making certain requirements regarding facilities if doing so would be unreasonable in light of financial and economic conditions and considerations:
 - Establish or maintain exclusive facilities, personnel, or display space;
 - Build, relocate, or make major changes to facilities;
 - Remove operations related to a current franchise; or
 - Condition the awarding of a franchise on a dealer’s willingness to enter into a site-control agreement;

- Add a rebuttable presumption that a dealer's decision to add a franchise is reasonable, and add a procedure for a hearing before the Director of Vehicles if there is a protest to the addition;
- Make it a violation of the Act to require any performance standard that is not fair, reasonable, equitable, based on accurate information, and applied uniformly to other similarly situated dealers;
- Prohibit a manufacturer or distributor from requiring a dealer to pay the manufacturer's or distributor's legal fees related to a dispute between the parties;
- Require the parties to participate in mediation if either party so requests it; the mediation would be nonbinding unless the parties reach agreement;
- Require proof to be by a preponderance of the evidence that a manufacturer or distributor did not act arbitrarily or unreasonably in cancelling, terminating, or not renewing a franchise agreement;
- Add voluntary termination of a franchise agreement to current termination, cancellation, and buy-back provisions;
- Add that when a franchise agreement is ended, the manufacturer or distributor must pay the dealer certain costs related to computers and data processing;
- Add that provisions relating to costs for which manufacturers or distributors must pay dealers when a franchise agreement is ended will not apply to certain voluntary franchise terminations;
- Prohibit a manufacturer or distributor from refusing to pay for warranty work or make certain other payments as long as the dealer presents reasonable evidence to substantiate the claim;

- Reduce from two years to one year the time during which a manufacturer or distributor may audit and charge back any amounts paid for promotional allowances or other incentive payments, unless there is evidence of fraud, and require a claim be presented to the dealer within 90 days following an audit;
- Prohibit a manufacturer from withdrawing money from an account under a dealer's control while an audit or other claim is on appeal;
- Require a manufacturer or distributor to either approve or reject an entire agreement, as opposed to part of an agreement, to transfer or sell a franchise or interest in a dealership, and a manufacturer or distributor could not reject such an agreement merely because it provides provisions that operate in the future, *e.g.*, an installment agreement;
- Prohibit a manufacturer from requiring a dealer to waive rights or consent to the jurisdiction of another state or to forego any right to trial by jury;
- Require manufacturers and distributors to indemnify a dealer from claims made by a third party in relation to any:
 - Vehicle, part, or accessory manufactured or distributed by the manufacturer or distributor;
 - Any service system or procedure the manufacturer required or recommended the use of, if the dealer used the system or procedure properly;
 - Any improper use of nonpublic personal information obtained from the dealer regarding consumers or employees.

Operation of Trucks with Temporary Registration

The bill would change from 48 hours to 30 days the time during which a newly purchased truck, truck tractor, or any

combination of truck, truck tractor, and trailer or semitrailer could be operated under laden conditions with temporary registration.

Background

Representatives of the Kansas Automobile Dealers Association (KADA), which requested the original bill, spoke as proponents. A representative of the Alliance of Automobile Manufacturers (AAM) testified in opposition to the bill.

The representatives of the KADA and the AAM together requested amendments to the bill. The House Committee on Transportation so amended the bill. Those amendments added a reference to a manufacturer's business plan in relationship to requiring changes to facilities, changed the burden of proof in certain provisions from "clear and convincing evidence" to "a preponderance of the evidence," added provisions relating to mediation, adjusted costs for which a dealer would be reimbursed when a franchise agreement ends, added a provision that payment for warranty work could not be reduced or disallowed if submitted more than 60 days after the work was completed, and made other changes more technical in nature.

A representative of the KADA stated in the House committee hearing that contracts between dealers and manufacturers contain language to the effect that Kansas law is deemed to be part of the agreement, so that contracts would not have to be redrawn to reflect the changes in the bill.

The Senate Committee on Transportation further amended the bill at the request of the KADA and the AAM to a provision having to do with the addition of other line-make of vehicles at a dealer's location. The Senate Committee also added the contents of HB 2510, the provisions dealing with temporary registration for trucks.

Representative Bob Bethel and the president of a fuel and lubricant distributing company testified in support of HB 2510 before the House and Senate Transportation Committees.

They said that, under current law, a newly purchased truck could not be used in company operations beyond the first 48 hours after purchase if full registration was not completed and that, in many instances, full registration could not be completed in that period of time because documents needed from other parties could not be obtained that quickly. No testimony was presented in opposition to HB 2510.

According to the fiscal note on the original bill, the provisions dealing with amendments to the Vehicle Dealers and Manufacturers Licensing Act have the potential to require the Director of Motor Vehicles to spend significant time on arbitrating disputes. It also has the potential to increase litigation in the courts, but because it is not possible to predict the number or complexity of additional cases, a precise fiscal effect on the court system cannot be determined. According to the fiscal note on HB 2510, the provisions having to do with temporary truck registration would have no fiscal effect on Department of Revenue operations.