Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 260*

130th General Assembly
(As Reported by H. Policy and Legislative Oversight)

Sens. Patton, Balderson, Hite, Coley, Hughes, Jones

BILL SUMMARY

- Prohibits the Registrar of Motor Vehicles from issuing a motor vehicle dealer's license or motor vehicle leasing dealer's license to a motor vehicle manufacturer for the retail sale or lease of new or used motor vehicles.
- Does not prohibit a motor vehicle manufacturer from owning, operating, or controlling not more than three licensed motor vehicle dealerships in Ohio if, as of January 1, 2014, the manufacturer was selling or otherwise distributing all-electric motor vehicles at an established place of business in Ohio.
- Terminates the foregoing exception if the manufacturer's motor vehicle operations are sold or acquired or if the manufacturer produces any motor vehicles other than all-electric motor vehicles.

BACKGROUND AND SUMMARY

It is unlawful to engage in the business of selling at retail new or used motor vehicles, or leasing such vehicles, without being licensed by the Registrar of Motor Vehicles as a motor vehicle dealer, or motor vehicle leasing dealer. In Ohio and across the country motor vehicle manufacturers generally do not sell their vehicles directly to consumers. Rather, they contract with dealers who operate retail sales locations that also offer vehicle maintenance and repair services. These dealers must obtain the appropriate license to operate lawfully in Ohio.

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* This analysis was prepared before the report of the House Policy and Legislative Oversight Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

Tesla Motors, a manufacturer of electric powered motor vehicles based in Palo Alto, California, sells its vehicles from company-owned stores rather than through a network of automotive dealerships. The company currently operates sales locations within Ohio and has been issued new motor vehicle dealer licenses by the Ohio Registrar of Motor Vehicles. The Ohio Automobile Dealers Association and others have objected to the issuance of these licenses and have sought redress in court. (See **COMMENT**.)

The bill prohibits the Registrar from issuing additional motor vehicle dealers licenses to manufacturers who sell their vehicles directly to consumers. But the bill creates a narrow exception to this prohibition for currently licensed manufacturers of all-electric motor vehicles. The exception allows such a manufacturer to operate not more than three motor vehicle dealerships. This exception appears to be intended to permit Tesla Motors to operate its existing sales locations while prohibiting Tesla from opening additional sales locations in Ohio.

CONTENT AND OPERATION

Under the bill, if a manufacturer, or a parent company, subsidiary, or affiliated entity of a manufacturer, applies to the Registrar of Motor Vehicles for a license to sell or lease new or used motor vehicles at retail, the Registrar must deny the application and refuse to issue the license. This provision is not, however, to serve as the basis for the termination, revocation, or nonrenewal of a license granted *prior* to the bill's effective date.

The bill does not prohibit a manufacturer from owning, operating, or controlling not more than three licensed motor vehicle dealerships if, as of January 1, 2014, the manufacturer was selling or otherwise distributing its motor vehicles at an established place of business in Ohio, or from disposing of motor vehicles at wholesale at the termination of a consumer lease through a motor vehicle auction. A manufacturer's ownership, operation, or control of the dealerships may continue unless the manufacturer's motor vehicle operations are sold or acquired or the manufacturer produces any motor vehicles other than all-electric motor vehicles.[1]

COMMENT

The Ohio Automobile Dealers Association, joined with others, has petitioned the Tenth District Court of Appeals for a writ of mandamus to require the Bureau of Motor Vehicles to "perform their ministerial acts" and revoke or cancel the new motor vehicle

[1] R.C. 4517.12(A)(11).

license that has been issued to Tesla, and also for a writ of prohibition to prohibit the Bureau from issuing more such licenses. The court of appeals has not yet ruled in this case.[2]

The Ohio Automobile Dealers Association also brought a complaint in the Franklin County Court of Common Pleas, asserting that the Bureau had failed to correctly apply the motor vehicle dealers licensing law.[3] In this case, the court sustained a motion by Tesla to dismiss the case. In its opinion, the court determined that third parties, such as the Ohio Automobile Dealers Association, have no standing to appeal motor vehicle dealer law licenses that are either approved or denied by the Registrar. The court relied on *Ohio Ass'n of Life Underwriters v. Duryee*,[4] a case in which a trade association and single member of the association filed an action for declaratory judgment and injunctive relief in response to an unaffiliated insurance agency's application for a life insurance agency license. The court of appeals determined that the General Assembly did not intend for third parties to challenge license submissions by other corporate life insurance agencies. The court in the recent Tesla case concluded that the reasoning contained in *Duryee* "appears to likewise apply to the dealer Plaintiffs in this case . . . [since] No rights or legally protected interests for third party dealers are identified in the statutory scheme concerning motor vehicle dealer licensing."

HISTORY

ACTION	DATE
Introduced	12-23-13
Reported, S. Finance	03-26-14
Passed Senate (32-0)	04-01-14
Reported, H. Policy and Legislative Oversight	---

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[2] Case number 13AP-1055.

[3] Case number 13CV-13334.

[4] 95 Ohio App. 3d 532 (Ohio Ct. App., Franklin County 1994).