



House of Representatives

General Assembly

File No. 399

January Session, 2009

Substitute House Bill No. 6648

House of Representatives, April 1, 2009

The Committee on Transportation reported through REP. GUERRERA of the 29th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT MAKING REVISIONS TO CHAPTER 739 OF THE GENERAL STATUTES WITH RESPECT TO AUTOMOBILE MANUFACTURERS, DISTRIBUTORS, FRANCHISES AND DEALERSHIPS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 42-133s of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 (a) Each manufacturer or distributor shall specify in writing to each
4 of its dealers licensed in this state, the dealer's obligations for
5 predelivery preparation and warranty service on its products, and
6 shall compensate the dealer for such preparation and service, [, and
7 shall provide the dealer with a schedule of compensation to be paid
8 the dealer for parts and labor in connection with such preparation and
9 service, and the time allowance for the labor.] Compensation for parts

10 used in warranty service shall be fair and reasonable, as determined by
11 methods described in subsection (b) of this section. Compensation for
12 labor used in warranty service shall be fair and reasonable, as
13 determined by methods described in subsection (c) of this section.

14 (b) The retail rate customarily charged by the dealer for parts shall
15 be established by the dealer submitting to the manufacturer or
16 distributor one hundred sequential nonwarranty customer-paid
17 service repair orders which contain warranty-like parts, or sixty
18 consecutive days of nonwarranty customer-paid service repair orders
19 which contain warranty-like parts, whichever is less, covering repairs
20 made no more than one hundred eighty days before the submission
21 and declaring the average percentage markup. The average of the
22 markup rates shall be presumed to be fair and reasonable, however, a
23 manufacturer or distributor may, within thirty days from submission,
24 rebut that presumption by reasonably substantiating that the rate is
25 unfair and unreasonable in light of the practices of all other franchised
26 motor vehicle dealers in the vicinity offering the same line-make
27 vehicles. The retail rate shall go into effect thirty days following the
28 declaration, subject to audit of the submitted repair orders by the
29 franchisor and a rebuttal of the declared rate as described above. If the
30 declared rate is rebutted, the manufacturer or distributor shall propose
31 an adjustment of the average percentage markup based on that
32 rebuttal within thirty days of submission. If the dealer does not agree
33 with the proposed average percentage markup, the dealer may file a
34 protest with the commissioner within thirty days of receipt of that
35 proposal by the manufacturer or distributor. If such a protest is filed,
36 the commissioner shall inform the manufacturer or distributor that a
37 timely protest has been filed and that a hearing will be held on such
38 protest. In any hearing held pursuant to this subsection, the
39 manufacturer or distributor shall have the burden of proving that the
40 rate declared by the dealer was unfair and unreasonable as described
41 in this subsection and that the proposed adjustment of the average
42 percentage markup is fair and reasonable pursuant to the provisions of
43 this subsection.

44 (c) The retail rate customarily charged by the dealer for labor may
45 be established by submitting to the manufacturer or distributor all
46 nonwarranty customer-paid service repair orders covering repairs
47 made during the month prior to the submission and dividing the
48 amount of the dealer's total labor sales by the number of total labor

49 hours that generated those sales. The average labor rate shall be
50 presumed to be fair and reasonable, provided a manufacturer or
51 distributor may, within thirty days from submission, rebut such
52 presumption by reasonably substantiating that such rate is unfair and
53 unreasonable in light of the practices of all other franchised motor
54 vehicle dealers in the vicinity offering the same line-make vehicles. The
55 average labor rate shall go into effect thirty days following the
56 declaration, subject to audit of the submitted repair orders by the
57 franchisor and a rebuttal of such declared rate. If the declared rate is
58 rebutted, the manufacturer or distributor shall propose an adjustment
59 of the average labor rate based on such rebuttal within thirty days of
60 submission. If the dealer does not agree with the proposed average
61 labor rate, the dealer may file a protest with the commissioner within
62 thirty days of receipt of that proposal by the manufacturer or
63 distributor. If such a protest is filed, the commissioner shall inform the
64 manufacturer or distributor that a timely protest has been filed and
65 that a hearing will be held on such protest. In any hearing held
66 pursuant to this subsection, the manufacturer or distributor shall have
67 the burden of proving that the rate declared by the dealer was unfair
68 and unreasonable as described in this subsection and that the
69 proposed adjustment of the average labor rate is fair and reasonable
70 pursuant to the provisions of this subsection.

71 (d) In calculating the retail rate customarily charged by the dealer
72 for parts and labor, the following work shall not be included in the
73 calculation: (1) Repairs for manufacturer or distributor special events,
74 specials or promotional discounts for retail customer repairs; (2) parts
75 sold at wholesale; (3) engine assemblies and transmission assemblies;
76 (4) routine maintenance not covered under any retail customer
77 warranty, such as fluids, filters and belts not provided in the course of
78 repairs; (5) nuts, bolts, fasteners, and similar items that do not have an
79 individual part number; (6) tires; and (7) vehicle reconditioning.

80 (e) If a manufacturer or distributor furnishes a part or component to
81 a dealer, at no cost, to use in performing repairs under a recall,
82 campaign service action or warranty repair, the manufacturer or

83 distributor shall compensate the dealer for the part or component in
84 the same manner as warranty parts compensation under this section
85 by compensating the dealer the average markup on the cost for the
86 part or component as listed in the manufacturer's or distributor's price
87 schedule less the cost for the part or component.

88 (f) A manufacturer or distributor may not require a dealer to
89 establish the retail rate customarily charged by the dealer for parts and
90 labor by an unduly burdensome or time consuming method or by
91 requiring information that is unduly burdensome or time consuming
92 to provide, including, but not limited to, part-by-part or transaction-
93 by-transaction calculations. A dealer may not declare an average
94 percentage markup or average labor rate more than twice in one
95 calendar year.

96 (g) A manufacturer or distributor may not otherwise recover its
97 costs from dealers within this state, including an increase in the
98 wholesale price of a vehicle or surcharge imposed on a dealer solely
99 intended to recover the cost of reimbursing a dealer for parts and labor
100 pursuant to this section, provided a manufacturer or distributor shall
101 not be prohibited from increasing prices for vehicles or parts in the
102 normal course of business.

103 [(b)] (h) [Such schedule of compensation shall include reasonable
104 compensation for diagnostic work, as well as repair service and labor.]
105 Time allowances for the diagnosis and performance of warranty work
106 and service shall be reasonable and adequate for the work to be
107 performed. [In the determination of what constitutes reasonable
108 compensation under this section, the principal factor considered shall
109 be the prevailing wage rates being paid by dealers in the community in
110 which the dealer is doing business. In no event shall the hourly labor
111 rate paid to a dealer for warranty service be less than the rate charged
112 by such dealer for like service to nonwarranty customers, provided
113 that the rate charged to nonwarranty customers is reasonable.]

114 [(c)] (i) Each manufacturer or distributor shall perform all warranty
115 obligations, include in written notices of factory recalls to owners and

116 dealers the expected date by which necessary parts and equipment will
117 be available to dealers for the correction of such defects and
118 compensate dealers for repairs necessitated by such recall.

119 [(d)] (j) All claims by dealers under this section for such labor and
120 parts and all claims for compensation relative to any sales incentive
121 programs shall be paid within thirty days following approval by the
122 manufacturer or distributor, provided that manufacturers or
123 distributors retain the right to audit such claims and to charge-back the
124 dealer for false or unsubstantiated claims for a period of two years
125 following payment. If there is evidence of fraud, the provisions of this
126 subsection shall not limit the right of a manufacturer or distributor to
127 audit a dealer for longer periods of time and charge-back the dealer for
128 any fraudulent claim. Dealers shall be required to maintain defective
129 parts for a period of not longer than ninety days following submission
130 of claims. All such claims shall be either approved or disapproved
131 within thirty days after their receipt on forms, and in the manner
132 specified by, the manufacturer or distributor. Any claim not
133 disapproved in writing or by means of electronic transmission within
134 thirty days after receipt shall be deemed approved and payment shall
135 be made within thirty days.

136 Sec. 2. Section 42-133v of the general statutes is repealed and the
137 following is substituted in lieu thereof (*Effective October 1, 2009*):

138 (a) Notwithstanding the terms, provisions or conditions of any
139 franchise agreement and notwithstanding the terms or provisions of
140 any waiver or other agreement between the manufacturer or
141 distributor and the dealer, no manufacturer or distributor shall cancel,
142 terminate or fail to renew any franchise with a licensed dealer unless
143 the manufacturer or distributor has satisfied the notice requirement of
144 subsection (d) of this section, has good cause for cancellation,
145 termination or nonrenewal and has acted in good faith.

146 (b) Notwithstanding the terms, provisions or conditions of any
147 franchise or the terms or provisions of any waiver or other agreement
148 between the manufacturer or distributor and the dealer, good cause

149 exists for the purposes of a termination, cancellation or nonrenewal if:

150 (1) There is a failure by the dealer to comply with a provision of the
151 franchise which is both reasonable and of material significance to the
152 franchise relationship, provided that the dealer has been notified in
153 writing of the failure within one hundred eighty days after the
154 manufacturer or distributor first acquired knowledge of such failure;

155 (2) If the failure by the dealer, defined in subdivision (1) of this
156 subsection, relates to the performance of the dealer in sales or service,
157 then good cause shall be defined as the failure of the dealer to comply
158 with reasonable performance criteria established by the manufacturer
159 or distributor if the dealer was apprised by the manufacturer or
160 distributor in writing of such failure; and: (A) The notification stated
161 that notice was provided of failure of performance under this section;
162 (B) the dealer was afforded a reasonable opportunity, for a period of
163 not less than six months, to comply with such criteria; and (C) the
164 dealer did not demonstrate substantial progress towards compliance
165 with the manufacturer's or distributor's performance criteria during
166 such period.

167 (c) The manufacturer or distributor shall have the burden of proof
168 under this section.

169 (d) Notwithstanding the terms, provisions or conditions of any
170 franchise or other agreement between the manufacturer or distributor
171 and the dealer, prior to the termination, cancellation or nonrenewal of
172 any franchise, the manufacturer or distributor shall furnish notification
173 of such termination, cancellation or nonrenewal to the dealer as
174 follows: (1) In the manner described in subsection (e) of this section;
175 and (2) not less than ninety days prior to the effective date of such
176 termination, cancellation or nonrenewal; or (3) not less than fifteen
177 days prior to the effective date of such termination, cancellation or
178 nonrenewal with respect to: (A) Insolvency of the dealer, or filing of
179 any petition by or against the dealer under any bankruptcy or
180 receivership law; (B) failure of the dealer to conduct customary sales
181 and service operations during business hours for seven consecutive

182 business days, except in circumstances beyond the direct control of the
183 dealer; (C) conviction of the dealer, or any owner thereof, of any felony
184 which is punishable by imprisonment; (D) suspension or revocation of
185 any license which the new motor vehicle dealer is required to have to
186 operate a dealership; or (E) a fraudulent misrepresentation by the
187 dealer to the manufacturer or distributor which is material to the
188 franchise; (4) not less than one hundred eighty days prior to the
189 effective date of such termination or cancellation if the manufacturer or
190 distributor is discontinuing the sale of the product line.

191 (e) Notice under this section shall be in writing, sent by certified
192 mail or personally delivered to the dealer; and shall contain: (1) A
193 statement of intention to terminate, cancel or not to renew the
194 franchise; (2) a statement of the reasons for the termination,
195 cancellation or nonrenewal; and (3) the date on which such
196 termination, cancellation or nonrenewal takes effect.

197 (f) No manufacturer or distributor shall terminate, cancel or fail to
198 renew a dealer's franchise for the failure or refusal of the dealer to do
199 any of the following: (1) Failure to meet sales quotas suggested by the
200 manufacturer or distributor; (2) refusal to sell any product at a price
201 suggested by the manufacturer or distributor; (3) refusal to keep the
202 premises open and operating during those hours which are
203 documented by the dealer to be unprofitable to the dealer or to
204 preclude the dealer from establishing his own hours of operation
205 beyond the hour of 10:00 p.m. and prior to 6:00 a.m.; (4) refusal to meet
206 unreasonable minimum standards and marketing guides, which
207 include, but are not limited to, capital, inventory, facility and
208 personnel requirements; (5) refusal to give the manufacturer or
209 distributor financial records of the operation of the franchise which are
210 not related or necessary to the dealer's obligations under the franchise
211 agreement. Subdivisions (1) to (5), inclusive, of this subsection shall
212 not be deemed good cause under subsection (b) of this section.

213 (g) If a franchisee brings an action in a court of competent
214 jurisdiction to challenge the cancellation, termination or nonrenewal of

215 a franchise agreement by a manufacturer or distributor under this
216 section, such franchise agreement shall remain in full force and effect
217 and such franchisee shall retain all rights and remedies pursuant to the
218 terms and conditions of such franchise agreement, including, but not
219 limited to, the right to sell or transfer such franchisee's ownership
220 interest, [for a period of six months following] until a final
221 determination by the court of competent jurisdiction and any appeal
222 from such determination, unless extended by the court of competent
223 jurisdiction for good cause. This subsection shall not apply to a
224 cancellation, termination or nonrenewal of a franchise agreement
225 based upon any of the reasons set forth in subdivision (3) of subsection
226 (d) of this section.

227 Sec. 3. Section 42-133w of the general statutes is repealed and the
228 following is substituted in lieu thereof (*Effective October 1, 2009*):

229 (a) Upon the termination, nonrenewal or cancellation of any
230 franchise under sections 42-133r to 42-133ee, inclusive, as amended by
231 this act, initiated by the manufacturer, distributor or dealer, the dealer
232 shall be allowed fair and reasonable compensation by the
233 manufacturer or distributor for: (1) The new current model year motor
234 vehicles and [one] the prior model year motor [vehicle inventory
235 acquired from the manufacturer or distributor] vehicles acquired
236 within twelve months preceding such termination, with fewer than
237 three hundred miles registered on the odometer, acquired from the
238 manufacturer, distributor or a same line-make dealer, in the ordinary
239 course of business, limited to vehicles in such inventory that are (A)
240 unaltered, except for the addition of customary manufacturer-
241 approved accessories, and (B) undamaged; (2) all new, unused and
242 undamaged parts listed in the current parts catalog acquired from a
243 manufacturer or distributor or its approved or recommended sources
244 at the dealer price listed in such catalog, less applicable allowances
245 plus five per cent of the catalog price of the part for the cost of packing
246 and returning the parts to the manufacturer or distributor; (3) supplies
247 and furnishings if purchased from the manufacturer or distributor or
248 its approved sources; and (4) any special tools or equipment offered

249 for sale during the three years preceding termination, nonrenewal or
250 cancellation and each trademark or trade name bearing sign which
251 was [recommended or] required by the manufacturer or distributor at
252 fair market value at the time of notice of termination.

253 (b) Compensation under subsection (a) of this section shall be paid
254 by the manufacturer or distributor within ninety days of the effective
255 date of termination, cancellation or nonrenewal if the dealer has title to
256 the vehicle inventory and other items and is able to convey title to the
257 manufacturer or distributor.

258 (c) The provisions of this section shall not apply in the event of a
259 sale of the assets or stock of a motor vehicle dealership.

260 Sec. 4. Section 42-133x of the general statutes is repealed and the
261 following is substituted in lieu thereof (*Effective October 1, 2009*):

262 (a) In the event of a termination, cancellation or nonrenewal under
263 subdivision (2) of subsection (b) of section 42-133v, as amended by this
264 act, by the manufacturer, distributor or dealer under subsection (b) of
265 this section:

266 (1) If the dealer is leasing the dealership facilities from a lessor other
267 than the manufacturer or distributor, or owns the dealership facilities,
268 the manufacturer or distributor shall pay a reasonable rent to the
269 dealer in accordance with and subject to subdivision (2) of this
270 subsection.

271 (2) Such reasonable rent shall be paid only to the extent that the
272 dealership premises are recognized in the franchise and only if they
273 are [:(A) Used solely for performance in accordance with the franchise,
274 and (B)] not substantially in excess of those facilities recommended by
275 the manufacturer or distributor. If the facility is used for the operations
276 of more than one franchise, the reasonable rent shall be paid based
277 upon the portion of the facility utilized by the franchise being
278 terminated, cancelled or nonrenewed.

279 (3) If the facilities are owned by the dealer, the manufacturer or

280 distributor will either: (A) Locate a purchaser who will offer to
281 purchase the dealership facilities at a reasonable price, or (B) locate a
282 lessee who will offer to lease the premises for a reasonable term at a
283 reasonable rent, or (C) failing the foregoing, lease the dealership
284 facilities at a reasonable rent for [two years] one year.

285 (4) If the facilities are leased by the dealer, the manufacturer or
286 distributor will either: (A) Locate a tenant satisfactory to the lessor,
287 who will sublet or assume the balance of the lease, or (B) arrange with
288 the lessor for the cancellation of the lease without penalty to the dealer,
289 or (C) failing the foregoing, lease the dealership facilities at a
290 reasonable rate for [two years] one year.

291 (5) The manufacturer or distributor shall not be obligated to provide
292 assistance under this section if the dealer: (A) Fails to accept a bona
293 fide offer from a prospective purchaser, sublessee or assignee, or (B)
294 refuses to execute a settlement agreement with the lessor if such
295 agreement would be without cost to the dealer, or (C) fails to make a
296 written request for assistance under this section within one month of
297 the termination, cancellation or nonrenewal.

298 (b) In the event of a termination, cancellation or nonrenewal due to
299 the discontinuation of a line make, and in addition to all other
300 compensation and repurchase obligations contained in section 42-
301 133w, as amended by this act, and this section, the manufacturer or
302 distributor shall pay the fair market value of the goodwill of the
303 franchise as of the date immediately preceding the manufacturer's
304 announcement of the action resulting in a brand being presently, or in
305 the future, discontinued. The dealer may immediately request
306 payment under this subsection following the announcement in
307 exchange for canceling any further franchise rights, except payments
308 owed to the dealer in the ordinary course of business, or may request
309 payment under this subsection upon the final termination, cancellation
310 or nonrenewal of the franchise. In either case, payment under this
311 subsection shall be made within ninety days of the request by the
312 dealer.

313 [(b)] (c) If, in any action for damages under this section, the
314 manufacturer or distributor fails to prove that the manufacturer or
315 distributor has acted in good faith or that there was good cause for the
316 franchise termination, cancellation or nonrenewal, then the
317 manufacturer or distributor may terminate, cancel or fail to renew the
318 franchise upon payment to the motor vehicle dealer of an amount
319 equal to the value of the dealership as an ongoing business location as
320 agreed by the parties or, lacking agreement, as determined by the
321 court.

322 Sec. 5. Section 42-133bb of the general statutes is repealed and the
323 following is substituted in lieu thereof (*Effective October 1, 2009*):

324 [No] Notwithstanding the terms, provisions or conditions of any
325 franchise agreement or other agreement between a manufacturer or
326 distributor and a dealer, no manufacturer or distributor shall require
327 that a dealer:

328 (1) Order or accept delivery of any new motor vehicle, part or
329 accessory, equipment or any other commodity not required by law in
330 connection with warranty service or a recall campaign or voluntarily
331 ordered by the dealer, except that the provisions of this subdivision
332 shall not affect terms or provisions of a franchise requiring dealers to
333 market a representative line of motor vehicles which the manufacturer
334 or distributor is publicly advertising;

335 (2) Order or accept delivery of any new motor vehicle with special
336 features, accessories or equipment not included in the list price of such
337 motor vehicles as publicly advertised by the manufacturer or
338 distributor;

339 (3) Pay all or part of the cost of an advertising campaign or contest,
340 or purchase any promotional materials, training material, showroom
341 or other display decorations or materials at the expense of the new
342 motor vehicle dealer without the consent of the new motor vehicle
343 dealer;

344 (4) Enter into any agreement with the manufacturer or distributor or
345 do any other act prejudicial to the dealer under threat of termination or
346 cancellation of a franchise or agreement between the dealer and the
347 manufacturer or distributor, except that this subdivision shall not
348 preclude the manufacturer or distributor from insisting on compliance
349 with the reasonable terms or provisions of the franchise or agreement,
350 and notice in good faith to any dealer of the dealer's violation of such
351 terms or provisions shall not constitute a violation of sections 42-133r
352 to 42-133ee, inclusive, as amended by this act;

353 (5) Change the capital structure of the dealer or the means by which
354 the dealer finances the operation of the dealership provided that the
355 dealer meets reasonable capital standards established by the
356 manufacturer or distributor in accordance with uniformly applied
357 criteria, and provided further that no change in the capital structure
358 shall cause a change in the principal management or have the effect of
359 a sale of the franchise without the consent of the manufacturer or
360 distributor and such consent shall not be unreasonably withheld;

361 (6) Refrain from participation in the management of, investment in,
362 or acquisition of any other line of new motor vehicles or related
363 products, provided that this subdivision shall not apply unless the
364 dealer maintains a reasonable line of credit for each line make of new
365 motor vehicle, the dealer remains in compliance with any reasonable
366 facilities requirements of the manufacturer or distributor, and no
367 change is made in the principal management of the dealer;

368 (7) Prospectively assent to a release, assignment, novation, waiver
369 or estoppel which would relieve any person from liability to be
370 imposed by sections 42-133r to 42-133ee, inclusive, as amended by this
371 act, or require any controversy between a dealer and a manufacturer or
372 distributor, to be referred to any forum other than the Superior Court
373 or the United States District Court;

374 (8) Construct, renovate or make substantial alterations to the
375 dealer's facilities unless the manufacturer or distributor can
376 demonstrate that such construction, renovation or alteration

377 requirements are reasonable and justifiable in light of current and
378 reasonably foreseeable projections of economic conditions, financial
379 expectations, availability of additional vehicle allocation and such
380 dealer's market for the sale of vehicles.

381 Sec. 6. Section 42-133cc of the general statutes is repealed and the
382 following is substituted in lieu thereof (*Effective October 1, 2009*):

383 [No] Notwithstanding the terms, provisions or conditions of any
384 franchise agreement or other agreement between a manufacturer or
385 distributor and a dealer, no manufacturer or distributor shall:

386 (1) (A) Delay, refuse or fail to deliver new motor vehicles or parts or
387 accessories in a reasonable time, and in reasonable quantity relative to
388 the dealer's facilities and sales potential in the dealer's relevant market
389 area, after acceptance of an order from a dealer having a franchise for
390 the retail sale of any new motor vehicle sold or distributed by the
391 manufacturer or distributor, any new motor vehicle, parts or
392 accessories for new vehicles as are covered by such franchise, if such
393 vehicle, parts or accessories are publicly advertised as being available
394 for delivery or actually being delivered; (B) withhold any new motor
395 vehicle from distribution except a vehicle which is part of a
396 demonstration fleet or withhold or delay distribution of new motor
397 vehicles to induce dealers to order additional parts or accessories, to
398 order new motor vehicles that are difficult to sell, to relocate the
399 dealer's place of business or to [build] construct a new building. This
400 subdivision shall not apply to a failure caused by acts or causes
401 beyond the control of the manufacturer or distributor;

402 (2) (A) Refuse to disclose to any dealer, handling the same line
403 make, the manner and mode of distribution of that line make within
404 the relevant market area or (B) if a line make is allocated among
405 dealers, refuse to disclose to any dealer, handling the same line make,
406 the system of allocation, including but not limited to, a complete
407 breakdown by model, color, equipment and other items or terms, a
408 concise listing of dealerships and an explanation of the derivation of
409 the allocation system, including its mathematical formula in a clear

410 and comprehensible form;

411 (3) Obtain money, goods, service or any other benefit from any
412 other person with whom the dealer does business, on account of, or in
413 relation to, the transaction between the dealer and such other person,
414 other than for compensation for services rendered, unless such benefit
415 is promptly accounted for, and transmitted to, the dealer;

416 (4) Increase prices of new motor vehicles which the dealer had
417 ordered for private retail consumers prior to the dealer's receipt of the
418 written official price increase notification. A sales contract signed by a
419 private retail consumer shall constitute evidence of each such order,
420 provided [that the] such vehicle is in fact delivered to [that customer]
421 such private retail consumer. In the event of manufacturer or
422 distributor price reductions or cash rebates paid to the dealer, the
423 amount of any such reduction or rebate received by a dealer shall be
424 passed on to the private retail consumer by the dealer. Price reductions
425 shall apply to all vehicles in the dealer's inventory which were subject
426 to the price reduction. Price differences applicable to new models or
427 series shall not be considered a price increase or price decrease. Price
428 changes caused by (A) the addition to a motor vehicle of required or
429 optional equipment, [or] (B) revaluation of the dollar, in the case of
430 foreign-make vehicles or components, or (C) an increase in
431 transportation charges due to increased rates imposed by common
432 carriers or transporters shall not be subject to the provisions of this
433 subdivision;

434 (5) Offer refunds or other types of inducements to any person for
435 the purchase of new motor vehicles of a certain line make to be sold to
436 the state or any political subdivision thereof without making the same
437 offer available upon request to all other dealers in the same line make
438 within the relevant market area;

439 (6) Release to any outside party, except under subpoena or as
440 otherwise required by law or in an administrative, judicial or
441 arbitration proceeding involving the manufacturer or distributor or
442 dealer, any business, financial or personal information which may be

443 from time to time provided by the dealer to the manufacturer or
444 distributor, without the express written consent of the dealer;

445 (7) Deny any dealer the right of free association with any other
446 dealer for any lawful purpose;

447 (8) Unfairly compete with a dealer in the same line make operating
448 under an agreement or franchise from such manufacturer or
449 distributor in the relevant market area. A manufacturer or distributor
450 shall not, however, be deemed to be competing when operating a
451 dealership for a temporary period not to exceed one year, or such
452 additional period of time as may be permitted by the Commissioner of
453 Motor Vehicles, in accordance with the provisions of section 14-52b, or
454 in a bona fide retail operation which is for sale to any qualified person
455 at a fair and reasonable price, or in a bona fide relationship in which an
456 independent person has made a significant investment subject to loss
457 in the dealership and can reasonably expect to acquire full ownership
458 of such dealership on reasonable terms and conditions;

459 (9) Unfairly discriminate among its new motor vehicle dealers with
460 respect to warranty reimbursement;

461 (10) Unreasonably withhold consent to the sale, transfer or exchange
462 of the franchise to a qualified buyer capable of being licensed as a
463 dealer;

464 (11) Fail to respond in writing to a request for consent under
465 subdivision (10) of this section within sixty days of receipt of all
466 information reasonably and customarily required by the manufacturer
467 or distributor. Such failure to respond shall be deemed to be consent to
468 the request;

469 (12) Unfairly prevent a dealer from receiving fair and reasonable
470 compensation for the value of its dealership;

471 (13) Engage in any predatory practice against a dealer;

472 (14) Terminate any franchise solely because of the death or

473 incapacity of an owner who is not listed in the franchise as one on
474 whose expertise and abilities the manufacturer or distributor relied in
475 the granting of the franchise;

476 (15) Withhold payment of money which the franchisor owes to a
477 dealer for more than thirty days after the date of approval of the
478 request for reimbursement;

479 (16) Own, operate or control, either directly or indirectly, a facility
480 for the performance of motor vehicle warranty service work. Nothing
481 contained in this subsection shall prohibit a motor vehicle
482 manufacturer, factory branch, distributor or distributor branch from
483 performing service for reasons of compliance with an order of a court
484 of competent jurisdiction;

485 (17) Provide in any franchise agreement that in any administrative
486 or judicial proceeding arising from any dispute with respect to such
487 agreement, the prevailing party shall be entitled to recover its costs,
488 reasonable attorney's fees and other expenses of litigation from the
489 other party;

490 (18) Unreasonably prevent or refuse to approve the relocation of a
491 dealership to another site within the dealership's relevant market area,
492 including a refusal by either the manufacturer or distributor for the
493 relocation of the dealership or a refusal by the manufacturer or
494 distributor for any franchise currently located at such proposed new
495 location. The dealer shall provide written notice to the manufacturer or
496 distributor that shall include the address of the proposed new location
497 and a reasonable site plan of the proposed facility. The manufacturer
498 or distributor shall, within sixty days of receipt of such reasonably
499 requested information, grant or deny the dealer's relocation request.
500 Failure to deny such request within such sixty-day period shall be
501 deemed consent to the relocation;

502 (19) Sell or offer to sell any new motor vehicle to a dealer at a lower
503 actual price than the actual price offered to any other franchised motor
504 vehicle dealer for the same model vehicle similarly equipped, or to

505 utilize any device, including, but not limited to, sales promotion plans,
 506 funds or financing to upgrade facilities, discounts or programs that
 507 result in such lesser actual price, provided the provisions of this
 508 subdivision shall not apply to sales to a dealer for: (A) Resale to any
 509 unit of government; or (B) donation or use by said dealer in a driver
 510 education or other special events program. This subdivision shall not
 511 be construed to prevent the offering of sales incentives or discount
 512 programs, provided such incentives or discounts are reasonably and
 513 practically available to all dealers in this state on a proportionally
 514 equal basis;

515 (20) Withhold directly, or through the loss of, any benefit made
 516 available to other same line-make dealers in this state because of a
 517 dealer's refusal to engage in conduct or take action unrelated to the
 518 benefit;

519 (21) Fail to begin the accrual of any express warranty for a new
 520 motor vehicle by the date of the original delivery to the consumer,
 521 provided, if the warranty is expressed in terms of time, such timeframe
 522 shall begin on such original delivery date, or, if expressed in terms of
 523 number of miles, the mileage, not exceeding five hundred miles, shall
 524 be the mileage on the vehicle's odometer on such original delivery
 525 date.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2009	42-133s
Sec. 2	October 1, 2009	42-133v
Sec. 3	October 1, 2009	42-133w
Sec. 4	October 1, 2009	42-133x
Sec. 5	October 1, 2009	42-133bb
Sec. 6	October 1, 2009	42-133cc

TRA *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sHB 6648*****AN ACT MAKING REVISIONS TO CHAPTER 739 OF THE GENERAL STATUTES WITH RESPECT TO AUTOMOBILE MANUFACTURERS, DISTRIBUTORS, FRANCHISES AND DEALERSHIPS.*****SUMMARY:**

This bill revises portions of the law governing motor vehicle manufacturers, distributors, dealers, and the franchise agreements between them. It substantially revises provisions governing the way in which dealers are compensated for parts and labor in connection with pre-delivery preparation and warranty service. It also (1) revises provisions that govern compensation, termination, nonrenewal, or cancellation of a franchise agreement; (2) establishes new requirements when termination is due to discontinuation of a vehicle line-make; and (3) adds to the list of prohibited acts by manufacturers or distributors.

Finally, the bill (1) prohibits any agreement between the manufacturer or distributor and a dealer, rather than only the franchise agreement or a waiver, from superseding the statutory provisions for notice and setting standards for determining when good cause exists for terminating, canceling, or not renewing a franchise agreement and (2) if a franchisee has brought a court action challenging the termination, cancellation, or non-renewal, requires the franchise agreement to remain in full force and the franchisee to retain all rights and remedies under the agreement, including the right to sell or transfer ownership interest until a final court determination and any appeal of that decision. Current law limits this latter requirement to not more than six months following the final court determination.

EFFECTIVE DATE: October 1, 2009

PRE-DELIVERY PREPARATION AND WARRANTY SERVICE***Compensation Requirements***

Current law requires a motor vehicle manufacturer or distributor to provide a dealer with a schedule of compensation to be paid to the dealer for parts and labor in connection with preparation and service, and the time allowance for the labor. The schedule must include reasonable compensation for diagnostic work, as well as repair service and labor. Current law specifies that the principal factor considered in what constitutes reasonable compensation must be the prevailing wage rates paid by dealers in the community in which the dealer does business. Also, the hourly labor rate paid to a dealer for warranty service cannot be less than the rate the dealer charges for like service to non-warranty customers, provided this rate is reasonable.

The bill, instead, requires that compensation for parts and labor used in warranty service be fair and reasonable and establishes a specific set of statutory requirements for how this must be determined. It also eliminates the requirement for a specific compensation schedule for pre-delivery vehicle preparation, although dealer compensation is still required.

Rates for Parts

The bill requires the retail rate customarily charged by the dealer for parts to be established by the dealer submitting to the manufacturer or distributor (1) 100 sequential non-warranty customer-paid service repair orders that contain warranty-like parts or (2) 60 consecutive days of non-warranty customer-paid service repair orders that contain warranty-like parts, whichever is less, covering repairs made no more than 180 days before the submission and declaring the average percentage markup. The average markup rates must be presumed as fair and reasonable, but the manufacturer or distributor may rebut the presumption within 30 days by reasonably substantiating that the rate is unfair and unreasonable in light of the practices of all other franchised dealers in the vicinity offering the same line-make vehicles.

The bill requires the retail rate to go into effect 30 days after the

declaration, subject to audit of the submitted repair orders by the franchisor and a rebuttal of the declared rate. If the rate is rebutted, the manufacturer or distributor must propose an adjustment of the average percentage markup based on the rebuttal within 30 days of the submission. If the dealer does not agree with the proposed markup, it may file a protest with the motor vehicle commissioner within 30 days of receiving the manufacturer's or distributor's proposal.

The commissioner must inform the manufacturer or distributor that a timely protest has been filed and that a hearing will be held. In the hearing, the manufacturer or distributor has the burden of proving that the dealer's declared rate was unfair and unreasonable and that the proposed adjustment is fair and reasonable pursuant to the law.

Rates for Labor

The bill permits the retail rate customarily charged by the dealer for labor to be established by submitting to the manufacturer or distributor all non-warranty customer-paid service repair orders covering repairs during the month prior to the submission and dividing the amount of the dealer's total labor sales by the number of total labor hours that generated those sales. The average labor rate must be presumed fair and reasonable subject to the manufacturer's or distributor's right to rebut within 30 days. The rest of the process for resolving the rate is the same as described above for parts.

Exclusions from the Retail Rate Calculation

The bill requires the following work to be excluded from the calculation of the retail rate customarily charged by the dealer for parts and labor:

1. repairs for manufacturer or distributor special events, specials, or promotional discounts for retail customer repairs;
2. parts sold at wholesale;
3. engine assemblies and transmission assemblies;

4. routine maintenance not covered under any retail customer warranty, such as fluids, filters, and belts not provided in the course of repairs;
5. nuts, bolts, fasteners, and similar items that do not have an individual part number;
6. tires; and
7. vehicle reconditioning.

Other Considerations

If a manufacturer or distributor furnishes a part or component to a dealer at no cost to use in performing repairs under a recall, campaign service action, or warranty repair, it must compensate the dealer in the same manner as warranty parts compensation under the bill by giving the dealer the average markup on the cost as listed in its price schedule less the cost for the part or component.

A manufacturer or distributor may not require a dealer to establish a retail rate customarily charged by the dealer for parts or labor by an unduly burdensome or time consuming method or by requiring information that is unduly burdensome or time consuming to provide, including through part-by-part or transaction-by-transaction calculations. The bill prohibits a dealer from declaring an average percentage markup or average labor rate more than twice in a calendar year.

A manufacturer or distributor may not otherwise recover its costs from dealers in Connecticut, including an increase in the wholesale price of a vehicle or an imposed surcharge solely intended to recover the cost of reimbursing a dealer for parts and labor pursuant to the bill's requirements. However, the manufacturer or distributor is not prohibited from increasing prices for vehicles or parts in the normal course of business.

TERMINATION, CANCELLATION, OR NONRENEWAL OF AGREEMENTS

Compensation

The law establishes requirements for fair and reasonable dealer compensation upon termination, cancellation, on non-renewal of a franchise agreement. The bill limits the application of these requirements only to situations where the termination, cancellation, or non-renewal is initiated by the manufacturer, distributor, or dealer. The bill also specifies that the compensation requirement does not apply in the event of a sale of the assets or stock of a dealership.

Compensation for Vehicle Inventory

Currently, when a franchise agreement is terminated, canceled, or not renewed, the dealer must receive fair and reasonable compensation for several things, including the current and one prior model year vehicle inventory. The bill modifies the provision with respect to non-current model year inventory to cover vehicles (1) from the prior model year, acquired within the 12 months preceding the termination; (2) with fewer than 300 miles registered on the odometer; (3) acquired from the manufacturer, distributor, or a same line-make dealer; and (4) in the ordinary course of business. It also modifies the provision that the vehicles be unaltered to exempt the addition of customary manufacturer-approved accessories. As under current law, they must be undamaged.

Rent

If a dealer leases space from someone other than the manufacturer or distributor or owns the dealership facilities, it must be compensated for a reasonable rent. Currently, reasonable rent must be paid only to the extent that the dealership premises are recognized in the franchise and are (1) used solely for performance in accordance with the franchise and (2) not substantially more than that recommended by the manufacturer or distributor. The bill expands the requirement to compensate a dealer in the case of a facility used by more than one franchise to include that portion of the facility used by the franchise.

Currently, one possibility if the facility is either owned or leased by the dealer is for the manufacturer or distributor to lease the dealership

facility for two years. The bill reduces this to one year.

The bill similarly limits applicability of the statutory requirements governing rent only to situations where the termination, cancellation, or non-renewal of an agreement is by the manufacturer, distributor, or dealer as it does for compensation for inventory.

Termination Due to Discontinuation of a Line-Make

The bill establishes new requirements when termination, cancellation, or non-renewal of a franchise agreement is due to discontinuation of a line-make. In this case, in addition to all other compensation and repurchase requirements, the bill requires a manufacturer or distributor to pay the fair market value of the goodwill of the franchise as of the date immediately preceding the manufacturer's announcement of the discontinuation action. The dealer may request immediate payment following the announcement in exchange for any further franchise rights, except payments owed the dealer in the ordinary course of business, or the dealer may request payment upon final termination, cancellation, or nonrenewal of the franchise. In either case, payment must be made within 90 days of the dealer's request.

Prohibited Acts by Manufacturer or Distributor

By law, a manufacturer or distributor is prohibited from performing certain acts. The bill specifies that the terms, provisions, or conditions of any franchise or other agreement between a manufacturer or distributor cannot supersede the law's requirements.

The bill prohibits a manufacturer or distributor from requiring a dealer to construct or make substantial alterations to its facilities unless the manufacturer or distributor can show that such requirements are reasonable and justifiable in light of current and reasonably foreseeable economic conditions, financial expectations, availability of additional vehicle allocation, and the dealer's market for vehicle sales.

In addition, the bill prohibits a manufacturer or distributor from:

1. unreasonably preventing or refusing to approve the relocation of a dealership to another site within the dealership's relevant market area, including a refusal of a relocation of the dealership or for any franchise currently located at the proposed new location;
2. selling or offering to sell any new motor vehicle to a dealer at a lower actual price than that offered to any other franchised dealer of the same, similarly-equipped model, or to use any device, including sale promotion plans, funds, or financing to upgrade facilities, discounts, or programs that result in a lesser actual price, except for sales to a dealer for (a) resale to a governmental unit or (b) donation or use by the dealer in a driver education or other special events program (The bill prohibits this provision from being read to prevent the offering of sales incentives or discount programs as long as they are reasonably and practically available to all Connecticut dealers on a proportionally equal basis.);
3. withholding directly, or through the loss of any benefit made available to other same line-make dealers in Connecticut because of a dealer's refusal to engage in conduct or take action unrelated to the benefit; and
4. failing to begin the accrual of any express warranty for a new motor vehicle by the date of the original delivery to the consumer, provided (a) if the warranty is expressed in terms of time, such timeframe must begin on the original delivery date or (b) if expressed in terms of miles, the mileage, not exceeding 500 miles, must be the mileage on the vehicle's odometer on the original delivery date to the consumer.

With respect to dealership relocations, the bill requires the dealer to provide written notice to the manufacturer or distributor that includes the address of the proposed new location and a reasonable site plan for the proposed facility. The manufacturer or distributor must grant or deny the dealer's request within 60 days of such reasonably requested

information. Failure to do so within the 60-day period is deemed consent to the relocation.

Finally, the bill modifies the current prohibition on a manufacturer or distributor failing to respond in writing within 60 days of a dealer's request for consent to the sale, transfer, or exchange of the franchise to a qualified buyer capable of being licensed as a dealer to specify that the 60-day period applies once the dealer provides all the information reasonable and customarily required by the manufacturer or distributor.

COMMITTEE ACTION

Transportation Committee

Joint Favorable Substitute

Yea 35 Nay 1 (03/16/2009)