



House of Representatives

General Assembly

File No. 806

January Session, 2009

Substitute House Bill No. 6648

House of Representatives, April 22, 2009

The Committee on General Law reported through REP. SHAPIRO of the 144th 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 Section 42-133s of the general statutes is repealed and the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 from passage*):

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, not later than thirty days after
24 submission, rebut that presumption by reasonably substantiating that
25 the rate is unfair and unreasonable in light of the practices of all other
26 franchised motor vehicle dealers in the vicinity offering the same line-
27 make vehicles. The retail rate shall go into effect thirty days following
28 the 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 not later than thirty days after submission. If the dealer does
33 not agree with the proposed average percentage markup, the dealer
34 may file a protest with the commissioner not later than thirty days
35 after receipt of that proposal by the manufacturer or distributor. If
36 such a protest is filed, the commissioner shall inform the manufacturer
37 or distributor that a timely protest has been filed and that a hearing
38 will be held on such protest. In any hearing held pursuant to this
39 subsection, the manufacturer or distributor shall have the burden of
40 proving that the rate declared by the dealer was unfair and
41 unreasonable as described in this subsection and that the proposed
42 adjustment of the average percentage markup is fair and reasonable
43 pursuant to the provisions of 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, not later than thirty days after 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 not later than thirty
60 days after submission. If the dealer does not agree with the proposed
61 average labor rate, the dealer may file a protest with the commissioner
62 not later than thirty days after receipt of that proposal by the
63 manufacturer or distributor. If such a protest is filed, the commissioner
64 shall inform the manufacturer or distributor that a timely protest has
65 been filed and that a hearing will be held on such protest. In any
66 hearing held pursuant to this subsection, the manufacturer or
67 distributor shall have the burden of proving that the rate declared by
68 the dealer was unfair and unreasonable as described in this subsection
69 and that the proposed adjustment of the average labor rate is fair and
70 reasonable 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] not later than thirty days [following]
122 after approval by the manufacturer or distributor, provided [that]
123 manufacturers or distributors retain the right to audit such claims and
124 to charge-back the dealer for false or unsubstantiated claims for a
125 period of two years following payment. If there is evidence of fraud,
126 the provisions of this subsection shall not limit the right of a
127 manufacturer or distributor to audit a dealer for longer periods of time
128 and charge-back the dealer for any fraudulent claim. Dealers shall be
129 required to maintain defective parts for a period of not longer than
130 ninety days following submission of claims. All such claims shall be
131 either approved or disapproved [within] not later than thirty days
132 after their receipt on forms, and in the manner specified by, the
133 manufacturer or distributor. Any claim not disapproved in writing or
134 by means of electronic transmission [within] not later than thirty days
135 after receipt shall be deemed approved and payment shall be made
136 within thirty days.

137 Sec. 2. Section 42-133v of the general statutes is repealed and the
138 following is substituted in lieu thereof (*Effective from passage*):

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

147 (b) Notwithstanding the terms, provisions or conditions of any
148 franchise or the terms or provisions of any waiver or other agreement

149 between the manufacturer or distributor and the dealer, good cause
150 exists for the purposes of a termination, cancellation or nonrenewal if:

151 (1) There is a failure by the dealer to comply with a provision of the
152 franchise which is both reasonable and of material significance to the
153 franchise relationship, provided that the dealer has been notified in
154 writing of the failure [within] not later than one hundred eighty days
155 after the manufacturer or distributor first acquired knowledge of such
156 failure;

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

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

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

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

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

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

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

229 Sec. 3. Section 42-133w of the general statutes is repealed and the
230 following is substituted in lieu thereof (*Effective from passage*):

231 (a) Upon the termination, nonrenewal or cancellation of any
232 franchise under sections 42-133r to 42-133ee, inclusive, as amended by
233 this act, initiated by the manufacturer, distributor or dealer, the dealer
234 shall be allowed fair and reasonable compensation by the
235 manufacturer or distributor for: (1) The new current model year motor
236 vehicles and [one] the prior model year motor [vehicle inventory
237 acquired from the manufacturer or distributor] vehicles acquired not
238 later than twelve months preceding such termination, with fewer than
239 three hundred miles registered on the odometer, acquired from the
240 manufacturer, distributor or a same line-make dealer, in the ordinary
241 course of business, limited to vehicles in such inventory that are (A)
242 unaltered, except for the addition of customary manufacturer-
243 approved accessories, and (B) undamaged; (2) all new, unused and
244 undamaged parts listed in the current parts catalog acquired from a
245 manufacturer or distributor or its approved or recommended sources
246 at the dealer price listed in such catalog, less applicable allowances
247 plus five per cent of the catalog price of the part for the cost of packing
248 and returning the parts to the manufacturer or distributor; (3) supplies

249 and furnishings if purchased from the manufacturer or distributor or
250 its approved sources; and (4) any special tools or equipment offered
251 for sale during the three years preceding termination, nonrenewal or
252 cancellation and each trademark or trade name bearing sign which
253 was [recommended or] required by the manufacturer or distributor at
254 fair market value at the time of notice of termination.

255 (b) Compensation under subsection (a) of this section shall be paid
256 by the manufacturer or distributor [within] not later than ninety days
257 [of] after the effective date of termination, cancellation or nonrenewal
258 if the dealer has title to the vehicle inventory and other items and is
259 able to convey title to the manufacturer or distributor.

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

262 Sec. 4. Section 42-133x of the general statutes is repealed and the
263 following is substituted in lieu thereof (*Effective from passage*):

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

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

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

280 terminated, cancelled or nonrenewed.

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

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

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

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

313 subsection shall be made not later than ninety days after the request by
314 the dealer.

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

324 Sec. 5. Section 42-133bb of the general statutes is repealed and the
325 following is substituted in lieu thereof (*Effective from passage*):

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

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

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

341 (3) Pay all or part of the cost of an advertising campaign or contest,
342 or purchase any promotional materials, training material, showroom
343 or other display decorations or materials at the expense of the new

344 motor vehicle dealer without the consent of the new motor vehicle
345 dealer;

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

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

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

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

376 (8) Construct, renovate or make substantial alterations to the
377 dealer's facilities unless the manufacturer or distributor can
378 demonstrate that such construction, renovation or alteration
379 requirements are reasonable and justifiable in light of current and
380 reasonably foreseeable projections of economic conditions, financial
381 expectations, availability of additional vehicle allocation and such
382 dealer's market for the sale of vehicles.

383 Sec. 6. Section 42-133cc of the general statutes is repealed and the
384 following is substituted in lieu thereof (*Effective from passage*):

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

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

404 (2) (A) Refuse to disclose to any dealer, handling the same line
405 make, the manner and mode of distribution of that line make within
406 the relevant market area, or (B) if a line make is allocated among
407 dealers, refuse to disclose to any dealer, handling the same line make,
408 the system of allocation, including, but not limited to, a complete

409 breakdown by model, color, equipment and other items or terms, a
410 concise listing of dealerships and an explanation of the derivation of
411 the allocation system, including its mathematical formula in a clear
412 and comprehensible form;

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

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

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

441 (6) Release to any outside party, except under subpoena or as

442 otherwise required by law or in an administrative, judicial or
443 arbitration proceeding involving the manufacturer or distributor or
444 dealer, any business, financial or personal information which may be
445 from time to time provided by the dealer to the manufacturer or
446 distributor, without the express written consent of the dealer;

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

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

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

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

466 (11) Fail to respond in writing to a request for consent under
467 subdivision (10) [within] of this section not later than sixty days [of]
468 after receipt of all information reasonably and customarily required by
469 the manufacturer or distributor. Such failure to respond shall be
470 deemed to be consent to the request;

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

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

474 (14) Terminate any franchise solely because of the death or
475 incapacity of an owner who is not listed in the franchise as one on
476 whose expertise and abilities the manufacturer or distributor relied in
477 the granting of the franchise;

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

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

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

492 (18) Unreasonably prevent or refuse to approve the relocation of a
493 dealership to another site within the dealership's relevant market area,
494 including a refusal by either the manufacturer or distributor for the
495 relocation of the dealership or a refusal by the manufacturer or
496 distributor for any franchise currently located at such proposed new
497 location. The dealer shall provide written notice to the manufacturer or
498 distributor that shall include the address of the proposed new location
499 and a reasonable site plan of the proposed facility. The manufacturer
500 or distributor shall, not later than sixty days after receipt of such
501 reasonably requested information, grant or deny the dealer's relocation
502 request. Failure to deny such request within such sixty-day period
503 shall be deemed consent to the relocation;

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

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

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	42-133s
Sec. 2	<i>from passage</i>	42-133v
Sec. 3	<i>from passage</i>	42-133w
Sec. 4	<i>from passage</i>	42-133x
Sec. 5	<i>from passage</i>	42-133bb
Sec. 6	<i>from passage</i>	42-133cc

GL *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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 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) requires the franchise agreement to remain in full force if a franchisee has brought a court action challenging the termination, cancellation, or non-renewal, and allows 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: Upon passage

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 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, or 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 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 if the warranty (a) 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.

BACKGROUND

Legislative History

The House referred the bill (File 399) to the General Law Committee on April 7. On April 14, the committee favorably reported a substitute that was effective upon passage instead of on October 1, 2009.

COMMITTEE ACTION

Transportation Committee

Joint Favorable Substitute

Yea 35 Nay 1 (03/16/2009)

General Law Committee

Joint Favorable Substitute

Yea 18 Nay 0 (04/14/2009)