



General Assembly

January Session, 2015

Raised Bill No. 6820

LCO No. 3908



Referred to Committee on TRANSPORTATION

Introduced by:
(TRA)

**AN ACT CONCERNING PROVISIONS OF THE FRANCHISE ACT
GOVERNING AGREEMENTS BETWEEN AUTOMOBILE
MANUFACTURERS OR DISTRIBUTORS AND AUTOMOBILE
DEALERS.**

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

1 Section 1. Subsection (j) of section 42-133s of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2015*):

4 (j) All claims by dealers under this section for such labor and parts
5 and all claims for compensation relative to any sales incentive,
6 marketing and advertising programs shall be paid not later than thirty
7 days after approval by the manufacturer or distributor, provided
8 manufacturers or distributors retain the right to audit such claims and
9 to charge-back the dealer for false or unsubstantiated claims for a
10 period of [two years] one year following payment. A manufacturer or
11 distributor shall not deny a claim submitted under this subsection or
12 charge-back such a claim or payment following a timely audit based
13 solely on the dealer's failure to comply with a claim processing
14 procedure, a clerical error or other administrative technicality,

15 provided such failure does not call into question the legitimacy of the
16 claim. The manufacturer or distributor shall allow the dealer to
17 resubmit such claim according to reasonable manufacturer or
18 distributor guidelines not later than thirty days after the initial claim
19 denial or charge-back. If there is evidence of fraud, the provisions of
20 this subsection shall not limit the right of a manufacturer or distributor
21 to audit a dealer for longer periods of time and charge-back the dealer
22 for any fraudulent claim. Dealers shall be required to maintain
23 defective parts for a period of not longer than ninety days following
24 submission of claims. All such claims shall be either approved or
25 disapproved not later than thirty days after their receipt on forms, and
26 in the manner specified by, the manufacturer or distributor. Any claim
27 not disapproved in writing or by means of electronic transmission not
28 later than thirty days after receipt shall be deemed approved and
29 payment shall be made within thirty days.

30 Sec. 2. Section 42-133w of the general statutes is repealed and the
31 following is substituted in lieu thereof (*Effective October 1, 2015*):

32 (a) Upon the termination, nonrenewal or cancellation of any
33 franchise under sections 42-133r to 42-133ee, inclusive, initiated by the
34 manufacturer, distributor or dealer, the dealer shall be allowed fair
35 and reasonable compensation by the manufacturer or distributor for:
36 (1) The new current model year motor vehicles and the prior model
37 year motor vehicles acquired not later than twelve months preceding
38 such termination, with fewer than three hundred miles registered on
39 the odometer, acquired from the manufacturer, distributor or a same
40 line-make dealer, in the ordinary course of business, limited to vehicles
41 in such inventory that are (A) unaltered, except for the addition of
42 customary manufacturer-approved accessories, and (B) undamaged.
43 The compensation for motor vehicles pursuant to this subdivision shall
44 not be less than the dealer's net acquisition price, including all
45 transportation or destination charges, less all allowances paid by the
46 manufacturer or distributor to the dealer; (2) all new, unused and
47 undamaged parts listed in the current parts catalog acquired from a

48 manufacturer or distributor or its approved or recommended sources
49 at the dealer price listed in such catalog, less applicable allowances
50 plus five per cent of the catalog price of the part for the cost of packing
51 and returning the parts to the manufacturer or distributor; (3) supplies
52 and furnishings if purchased from the manufacturer or distributor or
53 its approved sources; and (4) any special tools or equipment offered
54 for sale during the three years preceding termination, nonrenewal or
55 cancellation and each trademark or trade name bearing sign which
56 was required by the manufacturer or distributor at fair market value at
57 the time of notice of termination. The compensation required pursuant
58 to subdivisions (3) and (4) of this subsection shall be in an amount
59 equal to the dealer's cost less a thirty-three per cent straight-line
60 depreciation for each year following the dealer's purchase of the items
61 listed in said subdivisions.

62 (b) Compensation under subsection (a) of this section shall be paid
63 by the manufacturer or distributor not later than ninety days after the
64 effective date of termination, cancellation or nonrenewal if the dealer
65 has title to the vehicle inventory and other items and is able to convey
66 title to the manufacturer or distributor.

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

69 Sec. 3. Section 42-133x of the general statutes is repealed and the
70 following is substituted in lieu thereof (*Effective October 1, 2015*):

71 (a) In the event of a termination, cancellation or nonrenewal under
72 subdivision (2) of subsection (b) of section 42-133v [by the
73 manufacturer, distributor or dealer under] or subsection (b) of this
74 section:

75 (1) If the dealer is leasing the dealership facilities from a lessor other
76 than the manufacturer or distributor, or owns the dealership facilities,
77 the manufacturer or distributor shall pay a reasonable rent to the
78 dealer in accordance with and subject to subdivision (2) of this

79 subsection.

80 (2) Such reasonable rent shall be paid only to the extent that the
81 dealership premises are recognized in the franchise and only if they
82 are not substantially in excess of those facilities recommended by the
83 manufacturer or distributor. If the facility is used for the operation of
84 more than one franchise, the reasonable rent shall be paid based upon
85 the portion of the facility utilized by the franchise being terminated,
86 cancelled or nonrenewed.

87 (3) If the facilities are owned by the dealer, the manufacturer or
88 distributor will either: (A) Locate a purchaser who will offer to
89 purchase the dealership facilities at a reasonable price, or (B) locate a
90 lessee who will offer to lease the premises for a reasonable term at a
91 reasonable rent, or (C) failing the foregoing, lease the dealership
92 facilities at a reasonable rent for one year.

93 (4) If the facilities are leased by the dealer, the manufacturer or
94 distributor will either: (A) Locate a tenant satisfactory to the lessor,
95 who will sublet or assume the balance of the lease, or (B) arrange with
96 the lessor for the cancellation of the lease without penalty to the dealer,
97 or (C) failing the foregoing, lease the dealership facilities at a
98 reasonable rate for one year.

99 (5) The manufacturer or distributor shall not be obligated to provide
100 assistance under this section if the dealer: (A) Fails to accept a bona
101 fide offer from a prospective purchaser, sublessee or assignee, or (B)
102 refuses to execute a settlement agreement with the lessor if such
103 agreement would be without cost to the dealer, or (C) fails to make a
104 written request for assistance under this section not later than one
105 month after the termination, cancellation or nonrenewal.

106 (b) (1) In the event of a termination, cancellation or nonrenewal due
107 to the discontinuation of a line make, and in addition to all other
108 compensation and repurchase obligations contained in section 42-
109 133w, as amended by this act, and this section, the manufacturer or

110 distributor shall pay the fair market value of the goodwill of the
111 franchise as of the date immediately preceding the manufacturer's
112 announcement of the action resulting in a brand being presently, or in
113 the future, discontinued. The dealer may immediately request
114 payment under this subsection following the announcement in
115 exchange for cancelling any further franchise rights, except payments
116 owed to the dealer in the ordinary course of business, or may request
117 payment under this subsection upon the final termination, cancellation
118 or nonrenewal of the franchise. In either case, payment under this
119 subsection shall be made not later than ninety days after the request by
120 the dealer.

121 (2) In the event of a termination, cancellation or nonrenewal under
122 this subsection, notwithstanding the terms of any franchise, a site-
123 control or exclusivity provision governing any or all of the dealership
124 facilities which operate from the location that is the subject of the site-
125 control or exclusivity provision is void upon a termination of the
126 franchise.

127 (3) In the event of a termination, cancellation or nonrenewal under
128 this subsection, in addition to the compensation and repurchase
129 obligations contained in section 42-133w, as amended by this act, and
130 this section, the manufacturer or distributor shall compensate the
131 terminated dealer in an amount equal to the amount remaining on the
132 dealer management computer system lease or contract, or one year of
133 lease payments, whichever is less, if (A) the dealer management
134 system will no longer be utilized as a result of a line-make termination,
135 and (B) the manufacturer or distributor required the dealer to use the
136 dealer management computer system.

137 (c) If, in any action for damages under this section, the manufacturer
138 or distributor fails to prove that the manufacturer or distributor has
139 acted in good faith or that there was good cause for the franchise
140 termination, cancellation or nonrenewal, then the manufacturer or
141 distributor may terminate, cancel or fail to renew the franchise upon

142 payment to the motor vehicle dealer of an amount equal to the value of
143 the dealership as an ongoing business location as agreed by the parties
144 or, lacking agreement, as determined by the court.

145 Sec. 4. Section 42-133cc of the general statutes is repealed and the
146 following is substituted in lieu thereof (*Effective October 1, 2015*):

147 Notwithstanding the terms, provisions or conditions of any
148 franchise agreement or other agreement between a manufacturer or
149 distributor and a dealer, no manufacturer or distributor shall:

150 (1) (A) Delay, refuse or fail to deliver new motor vehicles or parts or
151 accessories in a reasonable time, and in reasonable quantity relative to
152 the dealer's facilities and sales potential in the dealer's relevant market
153 area, after acceptance of an order from a dealer having a franchise for
154 the retail sale of any new motor vehicle sold or distributed by the
155 manufacturer or distributor, any new motor vehicle, parts or
156 accessories for new vehicles as are covered by such franchise, if such
157 vehicle, parts or accessories are publicly advertised as being available
158 for delivery or actually being delivered; (B) withhold any new motor
159 vehicle from distribution except a vehicle which is part of a
160 demonstration fleet or withhold or delay distribution of new motor
161 vehicles to induce dealers to order additional parts or accessories, to
162 order new motor vehicles that are difficult to sell, to relocate the
163 dealer's place of business or to construct a new building. This
164 subdivision shall not apply to a failure caused by acts or causes
165 beyond the control of the manufacturer or distributor;

166 (2) (A) Refuse to disclose to any dealer, handling the same line
167 make, the manner and mode of distribution of that line make within
168 the relevant market area, or (B) if a line make is allocated among
169 dealers, refuse to disclose to any dealer, handling the same line make,
170 the system of allocation, including, but not limited to, a complete
171 breakdown by model, color, equipment and other items or terms, a
172 concise listing of dealerships and an explanation of the derivation of

173 the allocation system, including its mathematical formula in a clear
174 and comprehensible form;

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

180 (4) Increase prices of new motor vehicles which the dealer had
181 ordered for private retail consumers prior to the dealer's receipt of the
182 written official price increase notification. A sales contract signed by a
183 private retail consumer shall constitute evidence of each such order,
184 provided such vehicle is in fact delivered to such private retail
185 consumer. In the event of manufacturer or distributor price reductions
186 or cash rebates paid to the dealer, the amount of any such reduction or
187 rebate received by a dealer shall be passed on to the private retail
188 consumer by the dealer. Price reductions shall apply to all vehicles in
189 the dealer's inventory which were subject to the price reduction. Price
190 differences applicable to new models or series shall not be considered
191 a price increase or price decrease. Price changes caused by (A) the
192 addition to a motor vehicle of required or optional equipment, (B)
193 revaluation of the dollar, in the case of foreign-make vehicles or
194 components, or (C) an increase in transportation charges due to
195 increased rates imposed by common carriers or transporters shall not
196 be subject to the provisions of this subdivision;

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

202 (6) Release to any outside party, except under subpoena or as
203 otherwise required by law or in an administrative, judicial or

204 arbitration proceeding involving the manufacturer or distributor or
205 dealer, any business, financial or personal information which may be
206 from time to time provided by the dealer to the manufacturer or
207 distributor, without the express written consent of the dealer;

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

210 (8) Unfairly compete with a dealer in the same line make operating
211 under an agreement or franchise from such manufacturer or
212 distributor in the relevant market area. A manufacturer or distributor
213 shall not, however, be deemed to be competing when operating a
214 dealership for a temporary period not to exceed one year, or such
215 additional period of time as may be permitted by the Commissioner of
216 Motor Vehicles, in accordance with the provisions of section 14-52b, or
217 in a bona fide retail operation which is for sale to any qualified person
218 at a fair and reasonable price, or in a bona fide relationship in which an
219 independent person has made a significant investment subject to loss
220 in the dealership and can reasonably expect to acquire full ownership
221 of such dealership on reasonable terms and conditions;

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

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

227 (11) Fail to respond in writing to a request for consent under
228 subdivision (10) of this section not later than sixty days after receipt of
229 all information reasonably and customarily required by the
230 manufacturer or distributor. Such failure to respond shall be deemed
231 to be consent to the request;

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

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

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

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

242 (16) Own, operate or control, either directly or indirectly, a facility
243 for the performance of motor vehicle warranty service work. Nothing
244 contained in this subsection shall prohibit a motor vehicle
245 manufacturer, factory branch, distributor or distributor branch from
246 performing service for reasons of compliance with an order of a court
247 of competent jurisdiction;

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

253 (18) Unreasonably prevent or refuse to approve the relocation of a
254 dealership to another site within the dealership's relevant market area,
255 including a refusal by either the manufacturer or distributor for the
256 relocation of the dealership or a refusal by the manufacturer or
257 distributor for any franchise currently located at such proposed new
258 location. The dealer shall provide written notice to the manufacturer or
259 distributor that shall include the address of the proposed new location
260 and a reasonable site plan of the proposed facility. The manufacturer
261 or distributor shall, not later than sixty days after receipt of such
262 reasonably requested information, grant or deny the dealer's relocation
263 request. Failure to deny such request within such sixty-day period
264 shall be deemed consent to the relocation;

265 (19) Sell or offer to sell any new motor vehicle to a dealer at a lower
266 actual price than the actual price offered to any other franchised motor
267 vehicle dealer for the same model vehicle similarly equipped, or to
268 utilize any device, including, but not limited to, sales promotion plans,
269 funds or financing to upgrade facilities, discounts or programs that
270 result in such lesser actual price, provided the provisions of this
271 subdivision shall not apply to sales to a dealer for: (A) Resale to any
272 unit of government; or (B) donation or use by said dealer in a driver
273 education or other special events program. This subdivision shall not
274 be construed to prevent the offering of sales incentives or discount
275 programs, provided such incentives or discounts are reasonably and
276 practically available to all dealers in this state on a proportionally
277 equal basis;

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

282 (21) Fail to begin the accrual of any express warranty for a new
283 motor vehicle by the date of the original delivery to the consumer,
284 provided, if the warranty is expressed in terms of time, such time
285 frame shall begin on such original delivery date, or, if expressed in
286 terms of number of miles, the mileage, not exceeding five hundred
287 miles, shall be the mileage on the vehicle's odometer on such original
288 delivery date; [.]

289 (22) Exercise a right of first refusal or other right to acquire a
290 franchise from a dealer unless the manufacturer or distributor:

291 (A) Notifies the dealer and the proposed transferee in writing that it
292 intends to exercise its right to acquire the franchise not later than sixty
293 days after the manufacturer or distributor's receipt of a notice of the
294 proposed transfer from the dealer or the proposed transferee and all
295 information and documents reasonably and customarily required by

296 the manufacturer supporting such proposed transfer, as required
297 pursuant to subdivision (11) of this section, and the proposed transfer
298 is not to (i) a child, spouse, grandchild, parent or sibling, (ii) a current
299 owner of the dealership that is the subject of the transfer, (iii) a
300 dealership manager employed continuously by the dealer in the
301 dealership for a period of not less than four years prior to the date of
302 the proposed transfer and who is otherwise qualified as a dealer
303 operator according to the usual standards of the manufacturer or
304 distributor, or (iv) a partnership, trust or corporation controlled by, or
305 for the benefit of, any of the types of individuals described in this
306 subparagraph. For the purpose of this subparagraph, the "proposed
307 transferee" means the person to whom the franchise would have been
308 transferred to, or was proposed to be transferred to, had the right of
309 first refusal or other right to acquire the franchise not been exercised
310 by the manufacturer or distributor;

311 (B) Will pay to the dealer the same or greater consideration as such
312 dealer has contracted to receive in connection with the proposed
313 transfer or sale of all or substantially all of the dealership assets, stock
314 or other ownership interest, including the purchase or lease of all real
315 property, leasehold or improvements related to the transfer or sale of
316 the dealership. Upon exercise of the right of first refusal or such other
317 right, the manufacturer or distributor shall have the right to assign the
318 lease or to convey the real property;

319 (C) Assumes all of the duties, obligations and liabilities contained in
320 the agreements that were to be assumed by the proposed transferee
321 and with respect to which the manufacturer or distributor exercised
322 the right of first refusal or other right to acquire the franchise;

323 (D) Reimburses the proposed transferee for all reasonable expenses
324 incurred in evaluating, investigating, negotiating and pursuing the
325 acquisition of the dealership prior to the manufacturer or distributor's
326 exercise of its right of first refusal or other right to acquire the
327 dealership. For purposes of this subparagraph, reasonable expenses

328 include the usual and customary legal and accounting fees charged for
329 similar work, as well as expenses associated with the evaluation and
330 investigation of any real property on which the dealership is operated.
331 The proposed transferee shall submit an itemized list of its expenses to
332 the manufacturer or distributor not later than thirty days after the
333 manufacturer or distributor's exercise of the right of first refusal or
334 other right to acquire the motor vehicle franchise. The manufacturer or
335 distributor shall reimburse the proposed transferee for its expenses not
336 later than thirty days after receipt of the itemized list.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2015</i>	42-133s(j)
Sec. 2	<i>October 1, 2015</i>	42-133w
Sec. 3	<i>October 1, 2015</i>	42-133x
Sec. 4	<i>October 1, 2015</i>	42-133cc

Statement of Purpose:

To make changes to the Franchise Act as it applies to automobile manufacturers, distributors and dealers.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]