



House Bill No. 6820

Public Act No. 15-191

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:

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 Subsection (j) of section 42-133s of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

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

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resubmit such claim according to reasonable manufacturer or distributor guidelines not later than thirty days after the initial claim denial or charge-back. If there is evidence of fraud, the provisions of this subsection shall not limit the right of a manufacturer or distributor to audit a dealer for longer periods of time and charge-back the dealer for any fraudulent claim. Dealers shall be required to maintain defective parts for a period of not longer than ninety days following submission of claims. All such claims shall be either approved or disapproved not later than thirty days after their receipt on forms, and in the manner specified by, the manufacturer or distributor. Any claim not disapproved in writing or by means of electronic transmission not later than thirty days after receipt shall be deemed approved and payment shall be made within thirty days.

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 Section 42-133w of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(a) Upon the termination, nonrenewal or cancellation of any franchise under sections 42-133r to 42-133ee, inclusive, initiated by the manufacturer, distributor or dealer, the dealer shall be allowed fair and reasonable compensation by the manufacturer or distributor for:

(1) The new current model year motor vehicles and the prior model year motor vehicles acquired not later than twelve months preceding such termination, with fewer than three hundred miles registered on the odometer, acquired from the manufacturer, distributor or a same line-make dealer, in the ordinary course of business, limited to vehicles in such inventory that are (A) unaltered, except for the addition of customary manufacturer-approved accessories, and (B) undamaged. The compensation for motor vehicles pursuant to this subdivision shall not be less than the dealer's net acquisition price, including all transportation or destination charges, less all allowances paid by the manufacturer or distributor to the dealer; (2) all new, unused and undamaged parts listed in the current parts catalog acquired from a

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

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

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

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

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

(1) If the dealer is leasing the dealership facilities from a lessor other than the manufacturer or distributor, or owns the dealership facilities,

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the manufacturer or distributor shall pay a reasonable rent to the dealer in accordance with and subject to subdivision (2) of this subsection.

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

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

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

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

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(b) (1) In the event of a termination, cancellation or nonrenewal due to the discontinuation of a line make, and in addition to all other compensation and repurchase obligations contained in section 42-133w, as amended by this act, and this section, the manufacturer or distributor shall pay the fair market value of the goodwill of the franchise as of the date immediately preceding the manufacturer's announcement of the action resulting in a brand being presently, or in the future, discontinued. The dealer may immediately request payment under this subsection following the announcement in exchange for cancelling any further franchise rights, except payments owed to the dealer in the ordinary course of business, or may request payment under this subsection upon the final termination, cancellation or nonrenewal of the franchise. In either case, payment under this subsection shall be made not later than ninety days after the request by the dealer.

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

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

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

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

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

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

(2) (A) Refuse to disclose to any dealer, handling the same line

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

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

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

(5) Offer refunds or other types of inducements to any person for

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the purchase of new motor vehicles of a certain line make to be sold to the state or any political subdivision thereof without making the same offer available upon request to all other dealers in the same line make within the relevant market area;

(6) Release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or distributor or dealer, any business, financial or personal information which may be from time to time provided by the dealer to the manufacturer or distributor, without the express written consent of the dealer;

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

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

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

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

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

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

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

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

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

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

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

(18) Unreasonably prevent or refuse to approve the relocation of a dealership to another site within the dealership's relevant market area,

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including a refusal by either the manufacturer or distributor for the relocation of the dealership or a refusal by the manufacturer or distributor for any franchise currently located at such proposed new location. The dealer shall provide written notice to the manufacturer or distributor that shall include the address of the proposed new location and a reasonable site plan of the proposed facility. The manufacturer or distributor shall, not later than sixty days after receipt of such reasonably requested information, grant or deny the dealer's relocation request. Failure to deny such request within such sixty-day period shall be deemed consent to the relocation;

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

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

(21) Fail 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 is expressed in terms of time, such time frame shall begin on such original delivery date, or, if expressed in

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terms of number of miles, the mileage, not exceeding five hundred miles, shall be the mileage on the vehicle's odometer on such original delivery date; [.]

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

(A) Notifies the dealer and the proposed transferee in writing that it intends to exercise its right to acquire the franchise not later than sixty days after the manufacturer or distributor's receipt of a notice of the proposed transfer from the dealer or the proposed transferee and all information and documents reasonably and customarily required by the manufacturer supporting such proposed transfer, as required pursuant to subdivision (11) of this section, and the proposed transfer is not to (i) a child, spouse, grandchild, parent or sibling, (ii) a current owner of the dealership that is the subject of the transfer, (iii) a dealership manager employed continuously by the dealer in the dealership for a period of not less than four years prior to the date of the proposed transfer and who is otherwise qualified as a dealer operator according to the usual standards of the manufacturer or distributor, or (iv) a partnership, trust or corporation controlled by, or for the benefit of, any of the types of individuals described in this subparagraph. For the purpose of this subparagraph, the "proposed transferee" means the person to whom the franchise would have been transferred to, or was proposed to be transferred to, had the right of first refusal or other right to acquire the franchise not been exercised by the manufacturer or distributor;

(B) Will pay to the dealer the same or greater consideration as such dealer has contracted to receive in connection with the proposed transfer or sale of all or substantially all of the dealership assets, stock or other ownership interest, including the purchase or lease of all real property, leasehold or improvements related to the transfer or sale of the dealership. Upon exercise of the right of first refusal or such other

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right, the manufacturer or distributor shall have the right to assign the lease or to convey the real property;

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

(D) Reimburses the proposed transferee for all reasonable expenses incurred in evaluating, investigating, negotiating and pursuing the acquisition of the dealership prior to the manufacturer or distributor's exercise of its right of first refusal or other right to acquire the dealership. For purposes of this subparagraph, reasonable expenses include the usual and customary legal and accounting fees charged for similar work, as well as expenses associated with the evaluation and investigation of any real property on which the dealership is operated. The proposed transferee shall submit an itemized list of its expenses to the manufacturer or distributor not later than thirty days after the manufacturer or distributor's exercise of the right of first refusal or other right to acquire the motor vehicle franchise. The manufacturer or distributor shall reimburse the proposed transferee for its expenses not later than thirty days after receipt of the itemized list.

Approved July 2, 2015