



Senate

General Assembly

File No. 253

February Session, 2016

Senate Bill No. 3

Senate, March 29, 2016

The Committee on Transportation reported through SEN. MAYNARD of the 18th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING THE LICENSING OF NEW AND USED CAR DEALERS.

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

1 Section 1. Section 14-52b of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2016*):

3 (a) In the event a manufacturer licensed in accordance with the
4 provisions of section 14-67a, as amended by this act, cancels,
5 terminates or fails to renew any franchise, as defined in section 42-
6 133r, as amended by this act, with a new car dealer, as defined in
7 section 14-51, as amended by this act, the Commissioner of Motor
8 Vehicles, upon receipt of written notice of such action by the
9 manufacturer, shall, unless the dealer holds one or more additional
10 franchises, demand that such new car dealer surrender such license to
11 the commissioner. If such action is contested by such dealer in
12 accordance with the provisions of sections 42-133r to 42-133ee,
13 inclusive, as amended by this act, the commissioner shall not demand
14 surrender of such license, and no replacement motor vehicle dealer

15 shall be named for the dealer's point or location, except in accordance
16 with subdivision (10) of section 42-133cc, until the proceedings to
17 contest such action by the manufacturer are finally determined after all
18 means of administrative, judicial and appellate review have been
19 exhausted and the decision is adverse to the dealer.

20 (b) Except as provided in subsections (c) [and (d)] to (e), inclusive, of
21 this section, no person, firm or corporation licensed as a manufacturer
22 in accordance with the provisions of section 14-67a, as amended by
23 this act, may be the holder of a new or used car dealer's license issued
24 in accordance with the provisions of section 14-52, except a
25 manufacturer may operate as a dealer on a temporary basis in
26 accordance with the provisions of subdivision (8) of section 42-133cc.
27 The provisions of this subsection shall apply to any firm or corporation
28 that is owned or controlled by a manufacturer, as determined by the
29 commissioner. Any applicant for a new or used car dealer license that
30 is denied a license under the provisions of this subsection shall be
31 entitled to a hearing in accordance with the provisions of chapter 54.

32 (c) Notwithstanding the provisions of subsection (b) of this section,
33 the commissioner may issue a used car dealer's license to a person,
34 firm or corporation, owned or controlled by a manufacturer, engaged
35 primarily in the business of rental of motor vehicles and industrial and
36 construction equipment, provided: (1) Motor vehicles offered for sale
37 by any such person, firm or corporation are limited to motor vehicles
38 that have been previously used exclusively and regularly in the
39 conduct of the business or motor vehicles traded in by purchasers of
40 such previously used motor vehicles, (2) any warranty repairs
41 performed by such person, firm or corporation are limited to motor
42 vehicles that such person, firm or corporation owns, has previously
43 owned, or has taken in trade, and (3) any retail financing provided or
44 arranged by such person, firm or corporation is limited to vehicles sold
45 by such person, firm or corporation.

46 (d) The commissioner may extend the period of a license issued to a
47 manufacturer to operate a dealership on a temporary basis, in

48 accordance with the provisions of subsection (b) of this section and
49 subdivision (8) of section 42-133cc, for not more than one additional
50 year, up to a maximum period of two years, if the commissioner is
51 satisfied that such manufacturer has made and is continuing to make
52 bona fide efforts to sell and transfer the dealership to a person, firm or
53 corporation that is qualified to hold a new or used dealer's license.

54 (e) (1) For purposes of this subsection, "manufacturer" means a
55 person, firm or corporation licensed as a manufacturer in accordance
56 with the provisions of section 14-67a, as amended by this act, and any
57 subsidiary, affiliate or entity owned or controlled by such
58 manufacturer.

59 (2) Notwithstanding the provisions of subsection (b) of this section,
60 the commissioner may issue a new or used car dealer's license to a
61 manufacturer, provided such manufacturer (A) does not have any
62 franchise agreement with any new car dealer in the state, (B)
63 manufactures only electric vehicles, (C) sells at retail only motor
64 vehicles manufactured by such manufacturer, (D) does not hold a
65 controlling interest in another manufacturer, or a subsidiary, affiliate
66 or entity owned or controlled by such other manufacturer, that is
67 licensed as a dealer under this subsection, and (E) is not owned or
68 controlled by another manufacturer, or a subsidiary, affiliate or entity
69 owned or controlled by such other manufacturer, that is licensed as a
70 dealer under this subsection.

71 Sec. 2. Subdivisions (1) and (2) of subsection (a) of section 14-51 of
72 the general statutes are repealed and the following is substituted in
73 lieu thereof (*Effective October 1, 2016*):

74 (1) "New car dealer" includes (A) any person, firm or corporation
75 engaged in the business of merchandising new motor vehicles under a
76 manufacturer's or importer's contract for each such make of vehicle,
77 [who may, incidental to such business, sell used motor vehicles and
78 repair motor vehicles. Such person] and (B) any person, firm or
79 corporation licensed as a manufacturer, as defined in subsection (e) of
80 section 14-52b, as amended by this act, that is engaged in the business

81 of merchandising new motor vehicles and licensed as a new car dealer
82 as provided in subsection (e) of section 14-52b, as amended by this act.
83 Such person, firm or corporation may, incidental to such business, sell
84 used motor vehicles and repair motor vehicles, and shall be qualified
85 to conduct such business in accordance with the requirements of
86 section 14-52a.

87 (2) "Used car dealer" includes (A) any person, firm or corporation
88 engaged in the business of merchandising motor vehicles other than
89 new, [who] and (B) any person, firm or corporation licensed as a
90 manufacturer, as defined in subsection (e) of section 14-52b, as
91 amended by this act, that is engaged in the business of merchandising
92 motor vehicles other than new and licensed as a used car dealer as
93 provided in subsection (e) of section 14-52b, as amended by this act.
94 Such person, firm or corporation may, incidental to such business,
95 repair motor vehicles. A used car dealer does not include any person,
96 firm or corporation engaged in the business of leasing or renting motor
97 vehicles that offers for sale or sells used motor vehicles incidental to its
98 primary business, if [(A)] such person, firm or corporation is licensed
99 in accordance with the provisions of section 14-15, and [(B)] the motor
100 vehicles that it offers for sale were formerly the subject of one or more
101 lease agreements to which it was a party and the actual or prospective
102 purchaser is the original lessee pursuant to a purchase option specified
103 in a lease agreement. Such person shall be qualified to conduct such
104 business in accordance with the requirements of section 14-52a.

105 Sec. 3. Section 14-67a of the general statutes is repealed and the
106 following is substituted in lieu thereof (*Effective October 1, 2016*):

107 (a) No person, firm or corporation shall engage in the business of
108 manufacturing motor vehicles for sale in this state without having
109 been issued a manufacturer's license, which license shall expire
110 biennially on the last day of June. Application for such license or
111 renewal thereof may be made to the Commissioner of Motor Vehicles
112 in such form as the commissioner shall require. The commissioner may
113 require with such application all of the following, which [he] the

114 commissioner may consider in determining the fitness of such
115 applicant to engage in business as a manufacturer of motor vehicles for
116 sale in this state:

117 (1) Information relating to the applicant's solvency and his financial
118 standing;

119 (2) A certified copy of any warranty made by the manufacturer or
120 any other party in whom title to such motor vehicle may have been
121 vested prior to possession of such motor vehicle being transferred to a
122 person licensed under the provisions of this section;

123 (3) [A] (A) Except as provided in subparagraph (B) of this
124 subdivision, a copy of the applicant's standard franchise agreement
125 and all supplements thereto, together with a list of the applicant's
126 authorized dealers or distributors in this state and their [address]
127 addresses. Such applicant shall notify the commissioner immediately
128 of the appointment of any additional dealers or distributors or any
129 revisions of or additions to the basic franchise agreement on file with
130 [him] the commissioner, or of any individual dealer or distributor
131 supplements to such agreement, and (B) the provisions of this
132 subdivision shall not apply to any manufacturer licensed as a new or
133 used car dealer pursuant to subsection (e) of section 14-52b, as
134 amended by this act;

135 (4) A certified copy of the delivery and preparation obligations of
136 the applicant's new car dealers, which obligations shall constitute such
137 new car dealers' only responsibility for product liability between the
138 dealer and the manufacturer;

139 (5) An affidavit stating the rates such applicant pays or agrees to
140 pay any authorized new car dealer for parts and labor used and
141 expended by such authorized new car dealer for the manufacturer
142 under delivery and preparation obligations under the new car
143 warranty;

144 (6) A biennial license fee of two thousand three hundred dollars,

145 which fee shall not be subject to refund or proration; and

146 (7) Any other pertinent matter commensurate with the safeguarding
147 of the public interest.

148 (b) An application for renewal of such license filed with the
149 commissioner after the expiration date of such license shall be
150 accompanied by a late fee of two hundred fifty dollars. The
151 commissioner shall not renew any license under this section which has
152 expired for more than forty-five days.

153 Sec. 4. Section 42-133r of the general statutes is repealed and the
154 following is substituted in lieu thereof (*Effective October 1, 2016*):

155 (a) As used in this section and sections [42-133r] 42-133s to 42-133ee,
156 inclusive, unless the context indicates a different meaning:

157 (1) "Manufacturer" means any person who manufactures or
158 assembles new motor vehicles, or imports motor vehicles for
159 distribution to dealers or through distributors, or factory branches.

160 (2) "Distributor" means any person who offers for sale, sells or
161 distributes any new motor vehicle to dealers or who maintains factory
162 representatives or who controls any person, firm, association, joint
163 venture corporation or trust, who offers for sale, sells or distributes
164 any new motor vehicle to dealers.

165 (3) "Factory branch" means a branch office maintained by a
166 manufacturer for the purpose of selling, or offering for sale, motor
167 vehicles to a distributor or dealer, or for directing or supervising
168 factory or distributor representatives.

169 (4) "Owner" means any person holding an ownership interest in a
170 business entity operating as a dealer or under a franchise as defined in
171 this section either as a corporation, partnership or sole proprietorship.
172 To the extent that the rights of any owner under [sections 42-133r] this
173 section and sections 42-133s to 42-133ee, inclusive, conflict with the
174 rights of any other owner, such rights shall accrue in priority order

175 based on the percentage of ownership interest held by each owner
176 with the owner having the greatest ownership interest having first
177 priority and succeeding priority accruing to other owners in the
178 descending order of their percentage of ownership interest.

179 (5) "Dealership facilities" means real estate, buildings, fixtures and
180 improvements which are used in the course of business under a
181 franchise by a new motor vehicle dealer.

182 (6) "Dealer" means any person engaged in the business of selling,
183 offering to sell, soliciting or advertising the sale of new motor vehicles
184 and who holds a valid sales and service agreement, franchise or
185 contract, granted by a manufacturer or distributor for the retail sale of
186 the manufacturer's or distributor's new motor vehicles.

187 (7) "Motor vehicle" means a self-propelled vehicle intended
188 primarily for use and operation on the public highways, other than a
189 farm tractor or other machinery or tools used in the production,
190 harvesting and care of farm products.

191 (8) "New motor vehicle" means a motor vehicle which has been sold
192 to a new motor vehicle dealer and which has not been used for other
193 than demonstration purposes and on which the original title has not
194 been issued from the new motor vehicle dealer.

195 (9) "Established place of business" means a permanent, commercial
196 building easily accessible and open to the public at reasonable times
197 and at which the business of a new motor vehicle dealer, including the
198 display and repair of vehicles, may be lawfully carried on.

199 (10) "Franchise" means a written agreement or contract between a
200 manufacturer or distributor and a dealer which purports to fix the
201 legal rights and liabilities of the parties to such agreement or contract,
202 and pursuant to which the dealer purchases and resells the franchise
203 product or leases or rents the dealership premises.

204 (11) "Good faith" means honesty in fact and the observance of
205 reasonable commercial standards of fair dealing in the trade.

206 (12) "Designated family member" means the spouse, child,
 207 grandchild, parent, brother or sister of an owner who, in the case of the
 208 owner's death, is entitled to inherit the ownership interest in the dealer
 209 under the terms of the owner's will, or who has been nominated in any
 210 other written instrument, or who, in the case of an incapacitated owner
 211 of a dealer, has been appointed by a court as the legal representative of
 212 the dealer's property.

213 (13) "Person" means a natural person, partnership, corporation,
 214 limited liability company, association, trust, estate or any other legal
 215 entity.

216 (14) "Relevant market area" means the area within a radius of
 217 fourteen miles around an existing dealer or the area of responsibility
 218 defined in a franchise, whichever is greater.

219 (15) "Commissioner" means the Commissioner of Motor Vehicles.

220 (b) The provisions of this section and sections 42-133s to 42-133ee,
 221 inclusive, shall not apply to any manufacturer licensed as a new or
 222 used car dealer pursuant to subsection (e) of section 14-52b, as
 223 amended by this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2016	14-52b
Sec. 2	October 1, 2016	14-51(a)(1) and (2)
Sec. 3	October 1, 2016	14-67a
Sec. 4	October 1, 2016	42-133r

TRA *Joint Favorable*

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:

Agency Affected	Fund-Effect	FY 17 \$	FY 18 \$
Resources of the General Fund	GF - Revenue Gain	Potential	Potential
Department of Motor Vehicles	TF - Revenue Gain	up to \$10,000	up to \$10,000

Note: GF=General Fund; TF=Transportation Fund

Municipal Impact: None

Explanation

The bill results in a potential revenue gain of up to \$10,000 to the Special Transportation Fund by expanding car dealer license eligibility to additional manufacturers, which is dependent on the number of licenses issued by the Department of Motor Vehicles.

The bill also increases the potential sales tax revenue to the General Fund. The actual revenue gain in sales tax would be dependent upon any potential shift in consumer purchases from out-of-state to in-state purchases.

Connecticut requires sales tax to be paid on vehicles registered for less than thirty days in another state, upon registration of the vehicle in this state; however, Connecticut does provide credit for sales tax paid out-of-state if the registrant provides supporting documentation.

Of the adjacent states, Massachusetts is the only state that charges

sales tax on the purchase of motor vehicles on nonresidents.¹ Vehicle purchases from Massachusetts are therefore likely to qualify for the sales tax credit for out-of-state purchases. Any potential shift in sales from Massachusetts to Connecticut under this bill, would result in the full sales tax payment in Connecticut, rather than an out-of-state sales tax credit, and therefore may result in a potential revenue gain.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of new or used dealers established in Connecticut.

¹ New York State does not currently tax purchases of motor vehicles by nonresidents. Rhode Island does not charge Connecticut residents on the purchase of motor vehicles.

OLR Bill Analysis**SB 3*****AN ACT CONCERNING THE LICENSING OF NEW AND USED CAR DEALERS.*****SUMMARY:**

This bill allows a licensed motor vehicle manufacturer to sell the vehicles it makes directly to Connecticut consumers under certain conditions. It does so by authorizing the motor vehicles commissioner to issue a new or used car dealer's license to a licensed motor vehicle manufacturer that meets certain requirements.

Current motor vehicle law bars manufacturers from holding a new or used car dealer's license (see BACKGROUND) except that:

1. the motor vehicles commissioner may issue a used car dealer's license to a manufacturer primarily engaged in renting motor vehicles and industrial and construction equipment under certain conditions and
2. a manufacturer may operate a dealership for up to one year (or two years if the commissioner makes certain determinations).

The bill also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2016

CRITERIA A MOTOR VEHICLE MANUFACTURER MUST MEET TO SELL DIRECTLY TO CONNECTICUT RESIDENTS

To qualify for a new or used car dealer's license under the bill, a licensed manufacturer:

1. cannot have a franchise agreement with a new car dealer in Connecticut;

2. must manufacture only electric vehicles and sell at retail only vehicles it makes;
3. cannot hold a controlling interest in another manufacturer or a subsidiary, affiliate, or entity owned or controlled by another manufacturer, licensed as a dealer under the bill; and
4. cannot be owned or controlled by another manufacturer or a subsidiary, affiliate, or entity owned or controlled by another manufacturer, licensed as a dealer under the bill.

The bill exempts a manufacturer who meets these qualifications from motor vehicle franchise laws (see BACKGROUND). One law from which it exempts a manufacturer licensed as a dealer under the bill assigns priority order of dealer ownership rights in cases where such ownership rights conflict.

Under the bill, a manufacturer is any person, firm, or corporation licensed as a motor vehicle manufacturer under state law and any subsidiary, affiliate, or entity it owns or controls. The bill expands the statutory definitions of new and used car dealers to include such a manufacturer and generally subjects the manufacturer to the rules governing these dealers. Under the bill, if a manufacturer is licensed as a new car dealer, it may also repair vehicles and sell used vehicles; if licensed as a used car dealer, it may also repair vehicles.

BACKGROUND

Motor Vehicle Franchises and Dealerships

Under the laws governing motor vehicle franchises, a motor vehicle manufacturer makes or assembles new motor vehicles or imports them for distribution to dealers or through distributors or factory branches. A dealer sells motor vehicles and holds a valid sales and service agreement, franchise, or contract with a manufacturer or distributor for retail sale of the manufacturer's or distributor's new motor vehicles (CGS § 42-133r).

The motor vehicle franchise laws set out, among other things, the

respective obligations of manufacturers and dealerships (CGS §§ 42-133r to 42-133mm). They generally prohibit a manufacturer from unfairly competing with a dealer who (1) sells the manufacturer's "line make" of vehicles (e.g., Toyota or Ford) and (2) is operating under an agreement or franchise with the manufacturer (CGS § 42-133cc (8)).

Motor Vehicle Dealer Laws and Regulations

Motor vehicle dealers are subject to laws governing vehicle licensing, registration, and recordkeeping, among other things.

The Department of Motor Vehicles (DMV) requires new and used car dealers to pay a biennial license fee of \$700 and \$560 respectively. New and used car dealers also must post a \$50,000 cash or surety bond and comply with applicable state and federal laws. The commissioner may refuse to grant or renew a license if the dealer, an officer, or major stockholder has been convicted of violating any criminal laws pertaining to the business or certain other crimes such as fraud (CGS §§ 14-52 & 52a).

Dealers must follow motor vehicle law regulations in such areas as use of dealer plates, record-keeping, motor vehicle guarantees, odometer readings, issuing vehicle registrations, and customer complaints (Conn. Agencies Reg. § 14-63-1 et seq.).

Manufacturer

Under the motor vehicle statutes, a manufacturer generally is (1) a person, whether or not a Connecticut resident, engaged in the business of constructing or assembling new motor vehicles of a type required to be registered by the commissioner, for operation upon any highway, except a utility trailer, which are offered for sale in Connecticut, or (2) a person who distributes new motor vehicles to new car dealers licensed in Connecticut (CGS § 14-1 (48)).

The law prohibits any person, firm, or corporation from engaging in the business of manufacturing motor vehicles without receiving a manufacturer's license, which expires biennially on June 30. Applicants for a manufacturer license must apply to DMV and pay a biennial

license fee of \$2,300 (CGS § 14-67a).

COMMITTEE ACTION

Transportation Committee

Joint Favorable

Yea 29 Nay 4 (03/15/2016)