

# MAINE STATE LEGISLATURE

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# ONE HUNDRED AND SEVENTH LEGISLATURE

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**Legislative Document**

**No. 1766**

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H. P. 1137

House of Representatives, March 26, 1975

Speaker laid before the House on Motion of Mr. Fraser of Mexico to refer to Transportation. Referred to the Committee on Business Legislation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Jacques of Lewiston.

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## STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FIVE

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**AN ACT to Regulate Business Practices Between Motor Vehicle  
Manufacturers, Distributors and Dealers.**

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Be it enacted by the People of the State of Maine, as follows:

10 MRSA c. 204 is enacted to read:

### CHAPTER 204

#### REGULATION OF BUSINESS PRACTICES BETWEEN MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS AND DEALERS

##### § 1171. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

1. Distributor or wholesaler. "Distributor" or "wholesaler" means any person who sells or distributes new or used motor vehicles to motor vehicle dealers or who maintains distributor representatives within this State.

2. Distributor branch. "Distributor branch" means a branch office maintained by a distributor or wholesaler who or which sells or distributes new or used motor vehicles to motor vehicle dealers.

3. Distributor representative. "Distributor representative" means a representative employed by a distributor branch, distributor or wholesaler.

4. Factory branch. "Factory branch" means a branch office maintained by a manufacturer which manufactures or assembles motor vehicles for sale

to distributors or motor vehicle dealers or which is maintained for directing and supervising the representatives of the manufacturer.

5. Factory representative. "Factory representative" means a representative employed by a manufacturer or employed by a factory branch for the purpose of making or promoting the sale of motor vehicles or for supervising, servicing, instructing or contracting motor vehicle dealers or prospective motor vehicle dealers.

6. Franchise. "Franchise" means an oral or written arrangement for a definite or indefinite period in which a manufacturer, distributor or wholesaler grants to a motor vehicle dealer a license to use a trade name, service mark or related characteristic, and in which there is a community of interest in the marketing of motor vehicles or services related thereto at wholesale, retail, leasing or otherwise.

7. Franchisee. "Franchisee" means a motor vehicle dealer to whom a franchise is offered or granted.

8. Franchisor. "Franchisor" means a manufacturer, distributor or wholesaler who grants a franchise to a motor vehicle dealer.

9. Fraud. "Fraud" includes in addition to its normal legal connotation, the following: A misrepresentation in any manner, whether intentionally false or due to gross negligence of a material fact; a promise or representation not made honestly and in good faith; and an intentional failure to disclose a material fact.

10. Manufacturer. "Manufacturer" means any person engaged in the business of manufacturing or assembling new and unused motor vehicles.

11. Motor vehicle. "Motor vehicle" means any motor driven vehicle required to be registered under Title 29, chapter 5.

12. Motor vehicle dealer. "Motor vehicle dealer" means any person who sells or solicits or advertises the sale of new or used motor vehicles. It shall not include receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court; or public officers while performing their duties as such officers.

13. New motor vehicle. "New motor vehicle" means a motor vehicle which has not been previously sold to any person except a distributor or wholesaler or motor vehicle dealer for resale.

14. Person. "Person" means a natural person, corporation, partnership, trust or other entity, and, in case of an entity, it shall include any other entity in which it has a majority interest or effectively controls as well as the individual officers, directors and other persons in active control of the activities of each such entity.

15. Sale. "Sale" means the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of any motor vehicle or interest therein or of any franchise related thereto; and any option, subscription or other contract, or

solicitation looking to a sale, or offer or attempt to sell in any form, whether spoken or written. A gift or delivery of any motor vehicle or franchise with respect thereto with or as a bonus on account of the sale of anything shall be deemed a sale of such motor vehicle or franchise.

#### § 1172. Advertisements

Any person who engages directly or indirectly in purposeful contacts within this State in connection with the offering or advertising for sale or has business dealings with respect to a motor vehicle within the State shall be subject to this chapter.

#### § 1173. Attorney General and civil remedies

1. Enforcement by Attorney General. The Attorney General shall enforce compliance with this chapter to the extent that violations of such provisions constitute violations of the consumer protection and antitrust laws. In the aid of such enforcement, the Attorney General may bring an action for a temporary and permanent injunction. In any such action by the Attorney General, the courts may be guided by interpretations of the United States antitrust laws and the Federal Trade Commission Act (15 U.S.C. 45) as from time to time amended.

2. Civil remedies. Any motor vehicle dealer or franchisee, who has been damaged by reason of a violation of a provision of this chapter, may bring an action to enjoin such violations and to recover any damages arising therefrom. A final judgment, order or decree rendered against a person in any civil, criminal or administrative proceeding under the United States antitrust laws, under the Federal Trade Commission Act, under the Revised Statutes or under this chapter shall be regarded as prima facie evidence against such person subject to the conditions set forth in the United States antitrust laws, (15 U.S.C. 16).

#### § 1174. Prohibited conduct

The following acts shall be deemed unfair methods of competition and unfair and deceptive practices. It shall be unlawful for any:

1. Damage to public. Manufacturer, factory branch, factory representative, distributor or wholesaler, distributor branch, distributor representative or motor vehicle dealer to engage in any action which is arbitrary, in bad faith or unconscionable and which causes damage to any of said parties or to the public.

2. Coercion involving deliveries and orders. Manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division, or officer, agent or other representative thereof, to coerce or attempt to coerce, any motor vehicle dealer:

A. To order or accept delivery of any motor vehicle or vehicles, appliances, equipment, parts or accessories therefor, or any other commodity or commodities which such motor vehicle dealer has not voluntarily ordered, or to order or accept delivery of any motor vehicle with special features,

appliances, accessories or equipment not included in the list price of said motor vehicles as publicly advertised by the manufacturer thereof, or

B. To order for any person any parts, accessories, equipment, machinery, tools, appliances or any commodity whatsoever.

3. Certain interference in dealer's business. Manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, or officer, agent or other representative thereof:

A. To refuse to deliver in reasonable quantities and within a reasonable time after receipt of dealer's order, to any motor vehicle dealer having a franchise or contractual arrangement for the retail sale of new motor vehicles sold or distributed by such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, any such motor vehicles as are covered by such franchise or contract specifically publicly advertised by such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to be available for immediate delivery; provided, however, the failure to deliver any motor vehicle shall not be considered a violation of this chapter if such failure is due to an act of God, work stoppage or delay due to a strike or labor difficulty, shortage of materials, freight embargo or other cause over which the manufacturer, distributor, wholesaler, or any agent thereof shall have no control.

B. To coerce, or attempt to coerce, any motor vehicle dealer to enter into any agreement with such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, or officer, agent or other representative thereof, or to do any other act prejudicial to said dealer by threatening to cancel any franchise or any contractual agreement existing between such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, and said dealer provided, however, that notice in good faith to any motor vehicle dealer of said dealer's violation of any terms or provisions of such franchise or contractual agreement shall not constitute a violation of this chapter.

C. To terminate or cancel the franchise or selling agreement of any such dealer without due cause. The nonrenewal of a franchise or selling agreement, without due cause, shall constitute an unfair termination or cancellation, regardless of the terms of provisions of such franchise or selling agreement. Such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, or officer, agent or other representative thereof shall notify a motor vehicle dealer in writing of the termination or cancellation of the franchise or selling agreement of such dealer at least 60 days before the effective date thereof, stating the specific grounds for such termination or cancellation; and such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, or officer, agent or other representative thereof shall notify a motor vehicle dealer in writing at least 60 days before the contractual term of his fran-

chise or selling agreement expires that the same will not be renewed, stating the specific grounds for such nonrenewal in those cases where there is no intention to renew the same, and in no event shall the contractual term of any such franchise or selling agreement expire without the written consent of the motor vehicle dealer involved, prior to the expiration of at least 60 days following such written notice. During said 60-day period, either party may in appropriate circumstances petition a court to modify said 60-day stay or to extend it pending a final determination of such proceedings on the merits. The court shall have authority to grant preliminary and final injunctive relief and such petition shall be entitled to a speedy trial.

D. To resort to or use any false or misleading advertisement in connection with his business as such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, or officer, agent or other representative thereof.

E. To offer to sell or to sell any new motor vehicle at a lower actual price therefor than the actual price offered to any other motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device including, but not limited to, sales promotion plans or programs which result in such lesser actual price; provided, however, this paragraph shall not apply to sales to a motor vehicle dealer for resale to any unit of the United States Government, the State or any of its political subdivisions; and provided, further, the provisions of this paragraph shall not apply to sales to a motor vehicle dealer of any motor vehicle ultimately sold, donated or used by said dealer in a driver education program; and provided further, that this paragraph shall not apply so long as a manufacturer, distributor, wholesaler or any agent thereof, offers to sell or sells new motor vehicles to all motor vehicle dealers at an equal price. This paragraph shall not apply to sales by a manufacturer, distributor or wholesaler to the United States Government or any agency thereof.

F. To offer to sell, lease or to sell or lease any new motor vehicle to any person, except a wholesaler or distributor, at a lower actual price therefor than the actual price offered and charged to a motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device which results in such lesser actual price.

G. To offer to sell or to sell parts or accessories to any new motor vehicle dealer for use in his own business for the purpose of replacing or repairing the same or a comparable part or accessory, at a lower actual price therefor than the actual price charged to any other new motor vehicle dealer for similar parts or accessories for use in his own business; provided, however, in those cases where motor vehicle dealers operate and serve as wholesalers of parts and accessories to retail outlets, nothing contained in this chapter shall be construed to prevent a manufacturer, distributor, wholesaler or any agent thereof from selling to a motor vehicle dealer who operates and services as a wholesaler of parts and accessories, such parts and accessories as may be ordered by such motor vehicle dealer for resale

to retail outlets, at a lower price than the actual price charged a motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories.

H. To prevent or attempt to prevent by contract or otherwise any motor vehicle dealer from changing the capital structure of his dealership or the means by or through which he finances the operation of his dealership, provided the dealer at all times meets any reasonable capital standards agreed to between the dealership and the manufacturer, distributor or wholesaler, and provided such change by the dealer does not result in a change in the executive management control of the dealership.

I. To prevent or attempt to prevent by contract or otherwise any motor vehicle dealer or any officer, partner or stockholder of any motor vehicle dealer from selling or transferring any part of the interest of any of them to any other person or persons or party or parties, provided, however, that no dealer, officer, partner or stockholder shall have the right to sell, transfer or assign the franchise or power of management or control thereunder without the consent of the manufacturer, distributor or wholesaler except that such consent shall not be unreasonably withheld.

J. To obtain money, goods, services, anything of value, or any other benefit from any other person with whom the motor vehicle dealer does business, on account of or in relation to the transactions between the dealer and said other person, unless such benefit is promptly accounted for and transmitted to the motor vehicle dealer.

K. To compete with a motor vehicle dealer operating under an agreement or franchise from such manufacturer, distributor or wholesaler in the relevant market area, such area to be determined exclusively by equitable principles; provided, however, that a manufacturer, distributor or wholesaler shall not be deemed to be competing when operating a dealership either temporarily for a reasonable period in any case not to exceed one year 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 said dealership on reasonable terms and conditions; and provided further, that a distributor shall not be deemed to be competing when a wholly owned subsidiary corporation or such distributor sells motor vehicles at retail, if, for at least 3 years prior to January 1, 1975, such subsidiary corporation has been a wholly owned subsidiary of such distributor and engaged in the sale of motor vehicles at retail.

L. To grant a competitive franchise in the relevant market area previously granted to another franchise, such relevant market area to be determined exclusively by equitable principles; provided, however, that if the manufacturer wishes to grant such a franchise to an independent dealer or to grant an interest in a new dealership to an independent person in a bona fide relationship in which such person has made a significant investment subject to loss in such a dealership and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions, then the manufacturer shall give notice to the existing dealer or dealers in the area

and, unless the parties agree, the matter shall be submitted to final and binding arbitration under the principles herein prescribed, for a determination of the relevant market area, the adequacy of the servicing of the area by the existing dealer or dealers and the propriety of the granting of such additional dealership.

M. To require a motor vehicle dealer to assent to a release assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this chapter.

4. Dealer violations. It shall be deemed a violation for a motor vehicle dealer:

A. To require a purchaser of a new motor vehicle, as a condition of sale and delivery thereof, to also purchase special features, appliances, equipment, parts or accessories not desired or requested by the purchaser; provided, however, that this prohibition shall not apply as to special features, appliances, equipment, parts or accessories which are already installed on the car when received by the dealer; provided further, that the motor vehicle dealer prior to the consummation of the purchase reveals to the purchaser the substance of this paragraph.

B. To represent and sell as a new motor vehicle any motor vehicle which has been used and operated for demonstration purposes or which is otherwise a used motor vehicle.

C. To resort to or use any false or misleading advertisement in connection with his business as such motor vehicle dealer.

#### § 1175. Dealers only product liability

Every manufacturer shall specify to the dealer the delivery and preparation obligations of its motor vehicle dealers prior to delivery of new motor vehicles to retail buyers. A copy of the delivery and preparation obligations of its motor vehicle dealers and a schedule of the compensation to be paid to its motor vehicle dealers for the work and services they shall be required to perform in connection with such delivery and preparation obligations shall be filed with the Attorney General by every motor vehicle manufacturer and shall constitute any such dealer's only responsibility for product liability as between such dealer and such manufacturer. The compensation as set forth on said schedule shall be reasonable.

#### § 1176. Warranty

Every manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division shall properly fulfill any warranty agreement and adequately and fairly compensate each of its motor vehicle dealers for labor and parts. All claims made by motor vehicle dealers hereunder and under section 5 for such labor and parts shall be paid within 30 days following their approval. All such claims shall be either approved or disapproved within 30 days after their receipt, and when any such claim is disapproved, the motor vehicle dealer who submits it shall be notified in writing of its disapproval within said period, and each such notice shall state the specific grounds upon which the disapproval is based.



**§ 1177. Unreasonable restrictions**

It shall be unlawful directly or indirectly to impose unreasonable restrictions on the motor vehicle dealer or franchisee relative to transfer, sale, right to renew, termination, discipline, noncompetition covenants, site-contract whether by sublease, collateral pledge of lease, or otherwise, right of first refusal to purchase, option to purchase, compliance with subjective standards and assertion of legal or equitable rights.

**§ 1178. Covered under written or oral agreements**

1. Agreements subject to this chapter. Written or oral agreements between a manufacturer, wholesaler or distributor with a motor vehicle dealer including, but not limited to, the franchise offering, the franchise agreement, sales of goods, services or advertising, leases or mortgages of real or personal property, promises to pay, security interests, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts, and all other such agreements in which the manufacturer, wholesaler or distributor has any direct or indirect interest, shall be subject to this chapter.

2. Copy of agreement or amendments. Before any new selling agreement or any amendment thereto between said parties shall become effective, the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division, or officer, agent or other representative thereof shall, 90 days prior to the effective date thereof, forward a copy of such agreement or amendment to the dealer.

**§ 1179. Franchise interest, vested rights**

Notwithstanding any other provision of law, it shall be unlawful for the manufacturer, wholesaler, distributor or franchisor without due cause, to fail to renew a franchise on terms then equally available to all its motor vehicle dealers, to terminate a franchise or to restrict the transfer of a franchise unless the franchisee shall receive fair and reasonable compensation for the value of the business.

**§ 1180. Franchisee's right to associate**

Any franchisee shall have the right of free association with other franchisees for any lawful purpose.

**§ 1181. Discounts and other inducements**

In connection with a sale of a motor vehicle or vehicles to the State or to any political subdivision thereof, no manufacturer, distributor or wholesaler shall offer any discounts, refunds or any other similar type of inducement to any dealer without making the same offer or offers to all other of its dealers within the relevant market area, and if such inducements are made, the manufacturer, distributor or wholesaler shall give simultaneous notice thereof to all of its dealers within the relevant market area.

**§ 1182. Enforcement by Attorney General and civil remedies**

The Attorney General shall enforce compliance with this chapter and other laws of the State consistent with its provisions. Any motor vehicle dealer

or franchisee shall have the right to damages as provided in such sections. A final judgment, order or decree rendered against a person in any civil, criminal or administrative proceeding under the United States antitrust laws, under the Federal Trade Commission Act, under the Revised Statutes or under this chapter shall be regarded as prima facie evidence against such person subject to the conditions set forth in the United States antitrust laws, (15 U.S.C. 16).

§ 1183. Public policy

Any contract or part thereof or practice thereunder in violation of any provision of this chapter shall be deemed against public policy and shall be void and unenforceable.

§ 1184. Statute of limitations

Actions arising out of any provision of this chapter shall be commenced within 4 years next after the cause of action accrues; provided, however, that if a person liable hereunder conceals the cause of action from the knowledge of the person entitled to bring it, the period prior to the discovery of his cause of action by the person so entitled shall be excluded in determining the time limited for commencement of the action. If a cause of action accrues during the pendency of any civil, criminal or administrative proceeding against a person brought by the United States, or any of its agencies under the antitrust laws, the Federal Trade Commission Act, or any other Federal Act, or the laws of the State related to antitrust laws or to franchising, such actions may be commenced within one year after the final disposition of such civil, criminal or administrative proceeding.

§ 1185. Construction

In construing this chapter the courts may be guided by the interpretations of the Federal Trade Commission Act (15 U.S.C. 45), as from time to time amended.

§ 1186. Jurisdiction

Any person who shall violate any provisions of this chapter shall be subject to the jurisdiction of the courts of this State, upon service of process in accordance with Title 14, chapter 203, and consistent with the maximum limits of due process as decided by the United States Supreme Court.

§ 1187. Penalty

Unfair methods of competition and unfair or deceptive acts or practices, as defined in Title 10, chapter 203, are hereby declared to be unlawful, and any person who violates this chapter shall be guilty of a misdemeanor.

### STATEMENT OF FACT

The purpose of this Act is to regulate business practices between motor vehicle manufacturers, distributors and dealers.