

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 873

H. P. 735

House of Representatives, February 17, 1981

Referred to the Committee on Business Legislation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Jackson of Yarmouth.

Cosponsors: Representative Hobbins of Saco, Senator Kerry of York and Senator Trafton of Androscoggin.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT Relating to the Regulation of Business Practices between Motor Vehicle Manufacturers, Distributors and Dealers.

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

Sec. 1. 10 MRSA § 1171, sub-§ 1-A is enacted to read:

1-A. Control. "Control" exists where one manufacturer, dealer, corporation, association, partnership, individual or trust:

A. Directly or indirectly or acting through one or more other persons owns, controls or has power to vote 25% or more of the outstanding voting stock of the controlled manufacturer, distributor, corporation, association, partnership, individual or trust;

B. Constitutes or constituted a primary or significant source of new motor vehicles, parts or accessories for the controlled manufacturer, distributor, corporation, association, partnership, individual or trust; or

C. Exerts or has authority to exert a significant degree of control over the controlled manufacturer, distributor, corporation, association, partnership, individual or trust's operations or gives significant assistance in any form, including, but not limited to, business management assistance or marketing assistance.

Sec. 2. 10 MRSA § 1171, sub-§ 9-A is enacted to read:

9-A. Good faith. “Good faith” means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade as defined and interpreted in the Uniform Commercial Code, Title 22, section 2-103, subsection (1), paragraph (b).

Sec. 3. 10 MRSA § 1171, sub-§ 10, as enacted by PL 1975, c. 573, is repealed and the following enacted in its place:

10. Manufacturer. “Manufacturer” means any person, partnership, firm, association, corporation or trust, resident or nonresident, who manufactures or assembles new motor vehicles or any partnership, firm, association, joint venture, corporation or trust, resident or nonresident, which is controlled by the manufacturer. The term manufacturer includes the term distributor; factory branch; and factory representative.

Sec. 4. 10 MRSA § 1174, sub-§ 3, ¶ C, as enacted by PL 1975, c. 573, is repealed.

Sec. 5. 10 MRSA § 1174, sub-§ 3, ¶ D, as enacted by PL 1975, c. 573, is amended to read:

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, or to participate in any advertising campaign or contest, or to purchase any promotional materials, display devices, or display decorations or materials at the expense of the new motor vehicle dealer;

Sec. 6. 10 MRSA § 1174, sub-§ 3, ¶¶ M-S are enacted to read:

M. To require any new motor vehicle dealer to refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products;

N. To require any new motor vehicle dealer to change the location of the new motor vehicle dealership or during the course of the agreement to make any substantial alterations to the dealership premises when to do so would be unreasonable;

O. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new motor vehicle dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise or notwithstanding the terms or provisions of any waiver, unless a manufacturer has:

- (1) Satisfied the notice requirement of paragraph R;
- (2) Acted in good faith as defined in this section; and
- (3) Has good cause for the cancellation, termination, nonrenewal or noncontinuance;

P. To terminate, fail to renew or refuse to continue any franchise relationship with a licensed new motor vehicle dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise or the terms or provisions of any waiver, unless good cause exists. Good cause shall exist for the purposes of a termination, cancellation, nonrenewal or noncontinuance when:

(1) There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship, provided that compliance on the part of the new motor vehicle dealer is reasonably possible; and the manufacturer first acquired actual or constructive knowledge of the failure not more than 120 days prior to the date on which notification is given pursuant to paragraph R;

(2) If the failure by the new motor vehicle dealer, defined in subparagraph (1) relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to effectively carry out the performance provisions of the franchise if:

(a) The new motor vehicle dealer was apprised by the manufacturer in writing of that failure; the notification stated that notice was provided of failure of performance pursuant to this section; and the new motor vehicle dealer was afforded a reasonable opportunity to exert good faith efforts to carry out these provisions;

(b) The failure thereafter continued within the period which began not more than 180 days before the date notification of termination, cancellation or nonrenewal was given pursuant to paragraph R; and

(c) The new motor vehicle dealer has not substantially complied with reasonable performance criteria established by the manufacturer and communicated to the dealer;

Q. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new motor vehicle dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise or notwithstanding the terms or provisions of any waiver, based on any of the following items which do not constitute good cause:

(1) The change of ownership of the new motor vehicle dealer's dealership. This paragraph does not authorize any change in ownership which would have the effect of the sale of the franchise without the manufacturer's or distributor's consent. This consent shall not be unreasonably withheld. The burden of establishing the reasonableness is on the franchisor;

(2) The fact that the new motor vehicle dealer unreasonably refused to purchase or accept delivery of any new motor vehicle parts, accessories or any other commodity or services not ordered by the new motor vehicle dealer;

(3) The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of, or holds a license for the sale of another make or line of new motor vehicle, or that the new motor vehicle dealer has established another make or line of new motor vehicle in the same dealership facilities as those of the manufacturer provided that the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and that the new motor vehicle dealer remains in substantial compliance with reasonable facilities' requirements of the manufacturer;

(4) The fact that the new motor vehicle dealer sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new motor vehicle dealers' spouse, son or daughter, and the manufacturer shall give effect to such change in the ownership in the franchise unless the transfer of the new motor vehicle dealer's license is denied or the new owner is unable to license as the case may be; or

(5) The manufacturer shall have the burden of proof under paragraph O for showing that it has acted in good faith, that the notice requirements have been complied with and that there was good cause for the franchise termination, cancellation, nonrenewal or noncontinuance;

R. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new motor vehicle dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise or the terms or provisions of any waiver, without first furnishing notification of the termination to the new motor vehicle dealer as follows:

(1) Notwithstanding the terms, provisions or conditions of any agreement or franchise or the terms or provisions of any waiver, prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of the termination, cancellation or nonrenewal to the new motor vehicle dealer as follows.

(a) Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer and shall contain:

(i) A statement of intention to terminate the franchise, cancel the franchise or not to renew the franchise;

(ii) A statement of the reasons for the termination, cancellation or nonrenewal; and

(iii) The date on which the termination, cancellation or nonrenewal takes effect.

(b) The notice described in this paragraph shall not be less than 90 days prior to the effective date of the termination, cancellation or nonrenewal; or

S. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new motor vehicle dealer without providing fair and reasonable compensation to the licensed new motor vehicle dealer for:

- (1) All unsold new motor vehicle inventory, including demonstrators;**
- (2) Supplies and parts;**
- (3) Equipment and furnishings provided the new motor vehicle dealer purchased from the manufacturer or its approved sources;**
- (4) Special tools; and**
- (5) Dealership facilities if the facilities were required to be purchased or constructed as a precondition to obtaining the franchise or to its renewal by the manufacturer. If the facilities described in this subparagraph were leased and the lease was required as a precondition to obtaining the franchise or to its renewal by the manufacturer, then the manufacturer is liable for the remainder of the term of the lease.**

Such fair and reasonable compensation shall be paid by the manufacturer within 90 days of the effective date of the termination, cancellation or nonrenewal.

Sec. 7. 10 MRSA §§ 1174-A, 1174-B and 1174-C are enacted to read:

§ 1174-A. Limitations on establishing or relocating dealerships

No new motor vehicle dealership may be established and no existing motor vehicle dealership may be relocated except as follows.

1. Notification. In the event that a manufacturer seeks to enter into a franchise establishing an additional new motor vehicle dealership or relocating an existing new motor vehicle dealership, within or into a relevant market area where the same line make is then represented, the manufacturer shall, in writing, first notify each new motor vehicle dealer in the line make in the relevant market area of the intention to establish an additional dealership or to relocate an existing dealership within or into that market area. In no case may the relevant market area be less than a radius of 2 miles around an existing dealership in the following cities: Augusta, Auburn, Bangor, Biddeford, Brewer, Falmouth, Lewiston, Portland, Saco, Scarborough, South Portland, Waterville and Westbrook. In no case may the relevant market area be less than a radius of 10 miles around all other existing dealerships.

Within 30 days of receiving the notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any such new motor vehicle dealership may file a complaint in the Superior Court of the county in which the dealership is located, protesting the establishing or relocating of the new motor vehicle dealership. When such a complaint is filed, the manufacturer may not establish or relocate the proposed new motor vehicle dealership until a hearing has been held on the merits, nor thereafter, if the court has determined that there is good cause

for not permitting the new motor vehicle dealership. For the purposes of this section, the reopening in a relevant market area of a new motor vehicle dealership that has not been in operation for one year or more is deemed the establishment of an additional new motor vehicle dealership.

2. **Good cause.** In determining whether good cause has been established for not entering into or relocating an additional franchise for the same line make, the court shall take into consideration the existing circumstances, including, but not limited to:

A. **Permanency of the investment;**

B. **Effect on the retail new motor vehicle business and the consuming public in the relevant market area;**

C. **Whether it is injurious to the public welfare for an additional new motor vehicle dealership to be established;**

D. **Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the line make in the market area which includes the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts and qualified service personnel; and**

E. **Whether the establishment of an additional new motor vehicle dealership would increase competition and therefore be in the public interest.**

§ 1174-B. Transportation damages

1. **Liability of new dealer after acceptance.** Notwithstanding the terms, provisions or conditions of any agreement or franchise, the new motor vehicle dealer is solely liable for damages to new motor vehicles after acceptance from the carrier and before delivery to the ultimate purchaser.

2. **Liability of manufacturer.** Notwithstanding the terms, provisions or conditions of any agreement or franchise, the manufacturer is liable for all damages to motor vehicles before delivery to a carrier or transporter.

3. **Additional liability of dealer.** The new motor vehicle dealer is liable for damages to new motor vehicles after delivery to the carrier only if the dealer selects the method of transportation, mode of transportation and the carrier; in all other instances, the manufacturer is liable for carrier-related new motor vehicle damage.

§ 1174-C. Survivorship

1. **Right of family member.** The right of a designated family member to succeed in dealer ownership is governed by the following provisions.

A. **Any designated family member of a deceased or incapacitated new motor vehicle dealer may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement provided the**

designated family member gives the manufacturer, distributor, factory branch or factory representative or importer of new motor vehicles written notice of the intention to succeed to the dealership within 120 days of the dealer's death or incapacity, and unless there exists good cause for refusal to honor the succession on the part of the manufacturer, factory branch, factory representative, distributor or importer.

B. The manufacturer, distributor, factory branch or factory representative or importer may request and the designated family member shall provide, upon the request, personal and financial data that is reasonably necessary to determine whether the succession shall be honored.

2. Refusal to honor; notice required. The refusal to honor the succession to ownership is governed by the following provisions.

A. If a manufacturer, distributor, factory branch or factory representative or importer believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a family member of a deceased or incapacitated new motor vehicle dealer under the existing franchise agreement, the manufacturer, distributor, factory branch or factory representative or importer may, within 30 days of receipt of notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member and the department notice of its refusal to honor the succession of its intent to discontinue the existing franchise agreement with the dealership no sooner than 90 days from the date the notice is served.

B. The notice shall state the specific grounds for the refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 90 days from the date the notice is served.

C. If notice of refusal and discontinuance is not timely served upon the family member, the franchise agreement shall continue in effect subject to termination only as otherwise permitted by this section.

3. Written designation of succession unaffected. This section does not preclude a new motor vehicle dealer from designating any person as his successor by written instrument filed with the manufacturer, distributor, factory branch or factory representative or importer.

Sec. 8. 10 MRSA § 1184, as enacted by PL 1975, c. 573, is amended by adding at the end a new paragraph to read:

If any provision of this chapter is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this chapter and the applicability thereof to persons and circumstances shall not be affected thereby.

STATEMENT OF FACT

The Legislature finds and declares that the distribution and sale of vehicles within this State vitally affects the general economy of the State and the public interest and the public welfare and that in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate and license vehicle manufacturers, distributors or wholesalers and factory or distributor representatives and to regulate and license dealers of vehicles doing business in this State in order to prevent frauds, impositions and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this State.

The current statute requires modification as a result of changes in the automobile industry and economy in recent years. In particular, pressing questions regarding manufacturer controlled and owned financing companies, the right of succession of a family member to a dealership franchise, the rights and obligations involved in the termination, cancellation or nonrenewal of a dealership franchise, the right of a dealership to operate separate franchises, the issue of relocation and "relevant market area" and transportation damages to vehicles have been addressed.

Title 10, section 1171 has been modified to more inclusively define "manufacturer" to include distributors and credit arms of the manufacturer. This modification is necessary in order to insure that all entities controlled by the manufacturer are subject to the provisions of Title 10, chapter 204.

Title 10, section 1174, subsection 3, paragraph C has been repealed and a new paragraph O enacted to provide more inclusive provisions with regard to the manufacturer's option to cancel, terminate or not renew a franchise. Paragraph O requires more explicit notice requirements and under certain circumstances affords the new motor vehicle dealer a reasonable opportunity to rectify any failure of performance under the franchise agreement. Paragraph O also stipulates that the manufacturer shall have the burden of proof for showing that it acted in good faith and that notice requirements were met. The paragraph also requires that upon the termination or nonrenewal of any franchise, the new motor vehicle dealer is allowed fair and reasonable compensation for various assets of the franchise.

Title 10, section 1174, subsection 3, paragraph M has been added in order to insure that the holder of a new motor vehicle dealership franchise may participate in, invest in or acquire any other new motor vehicle line or franchise.

Title 10, section 1174, subsection 3, paragraph N has been added in order to insure that a franchisee is not unreasonably asked to move the location of the dealership or make substantial alterations in the premises when to do so would be unreasonable.

Title 10, section 1174-A deals with the establishment of a new motor vehicle dealership or the relocation of an existing motor vehicle dealership within a

“relevant market area.” This provision more closely outlines what the “relevant market area” is in all portions of the State. The establishment of a new motor vehicle dealership, or the relocation of an existing motor vehicle dealership within the relevant market area of another dealership of the same make line would cause the existing new motor vehicle dealership extreme hardship and would unreasonably interfere with the operation of that dealership.

Title 10, section 1174-B has been added in order to clarify whether the manufacturer or the new motor vehicle dealer should bear the loss of damage to a new motor vehicle when the vehicle is damaged in transit from the manufacturer’s place of business to the new motor vehicle dealership.

A new section has been added as Title 10, section 1174-C to clarify that a new motor vehicle dealer may designate a family member to succeed to the dealership ownership. This provision is necessary in order to clarify the procedure to be followed in a succession transfer as opposed to an arm’s length business transfer of a dealership franchise between unrelated parties.

The construction section of Title 10, section 1184, has been modified in order to clarify that the constitutionality of the statute as a whole shall not be impaired by a finding of unconstitutionality of any particular section or provision in the statute.