

MAINE STATE LEGISLATURE

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177
R. of S.

L.D. 1747

DATE: *May 27, 1997*

(Filing No. S- 330)

BUSINESS AND ECONOMIC DEVELOPMENT

Reported by: *Senator Rand*

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**STATE OF MAINE
SENATE
118TH LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT "*A*" to S.P. 584, L.D. 1747, Bill, "An Act to Improve Transportation in Maine"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

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

1-B. Broker. "Broker" means a person who, for a fee, commission or other valuable consideration, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle and who is not:

A. A franchised dealer or a bona fide employee of a franchised dealer when acting on behalf of a franchised dealer;

B. A manufacturer or distributor or a bona fide employee of a manufacturer or distributor when acting on behalf of a manufacturer or distributor; or

C. At any point in the transaction the bona fide owner of the vehicle involved in the transaction.

Sec. 2. 10 MRSA §1171, sub-§9, as enacted by PL 1975, c. 573, is amended to read:

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
2 material-fact an intentionally false representation; a promise or
4 representation not made honestly and in good faith; and an
intentional failure to disclose a material fact.

6 **Sec. 3. 10 MRSA §1171, sub-§10**, as repealed and replaced by PL
1981, c. 331, §3, is amended to read:

8 **10. Manufacturer.** "Manufacturer" means any a person,
10 partnership, firm, association, corporation or trust, resident or
12 nonresident, who manufactures or assembles new motor vehicles, or
14 imports for distribution through distributors of motor vehicles,
or any partnership, firm, association, joint venture, corporation
16 or trust, resident or nonresident, ~~which~~ that is controlled by
the manufacturer. The term "manufacturer" includes the ~~term~~
terms "franchisor," "distributor," "distributor branch," "factory
branch" and "factory representative."

18 **Sec. 4. 10 MRSA §1171, sub-§§12 and 13**, as enacted by PL 1975,
20 c. 573, are amended to read:

22 **12. Motor vehicle dealer.** "Motor vehicle dealer" means any
24 a person other than a manufacturer, distributor, distributor
branch, distributor representative, factory branch or factory
representative who sells or solicits or advertises the sale of
26 new or used motor vehicles. ~~It shall~~ "Motor vehicle dealer" does
28 not include receivers, trustees, administrators, executors,
guardians or other persons appointed by or acting under judgment,
30 decree or order of any court, or public officers while performing
their duties as such public officers.

32 **13. New motor vehicle.** "New motor vehicle" means a motor
34 vehicle ~~which~~ that has not been previously sold to any person
except a distributor ~~or~~ wholesaler or motor vehicle dealer for
36 resale by a franchise.

38 **Sec. 5. 10 MRSA §§1171-A and 1171-B** are enacted to read:

40 **§1171-A. Corporate affiliates**

42 A franchisor may not use any subsidiary corporation,
affiliated corporation, other corporation in which it owns or
controls more than 5% of the stock or other corporation,
44 partnership, association or person to accomplish what would
otherwise be prohibited conduct under this chapter on the part of
46 the franchisor. This section does not limit the right of any
entity included within the scope of this section to engage in
48 reasonable and appropriate business practices in accordance with
the usage of the trade in which it is engaged.

§1171-B. Manufacturer; license

2
4 1. License. Effective January 1, 1999, the Secretary of State may grant a manufacturer license under the following conditions.

6
8 A. Except as provided by this section, a person may not engage in business or serve in the capacity of or act as a manufacturer or distributor without obtaining a license as provided in this section.

10
12 B. An application for a license for a manufacturer or distributor must be on a form prescribed by the Secretary of State, must contain the manufacturer or distributor's address of its principal place of business, the address where notices should be sent and the address of its registered agent in this State and must be accompanied by its annual report and a list of its franchised new motor vehicle dealers in this State.

14
16 C. All licensees may apply for issuance of a license for each succeeding year by complying with the application process specified by this section and rules of the Secretary of State. A license or renewal of a license is issued subject to provisions of this chapter and rules of the Secretary of State.

18
20 D. The annual fee for a license is \$1,500 for each manufacturer and distributor.

22
24 2. Sanctions, denial, revocation or suspension of license. The Secretary of State shall sanction, deny, revoke or suspend a license under the following conditions.

26
28 A. The Secretary of State may deny an application for a license, revoke or suspend an outstanding license, place on probation a person whose license has been suspended or reprimand a licensee for any of the following reasons:

30
32 (1) Material misrepresentation in any application or other information filed under this section or rules of the Secretary of State; or

34
36 (2) Failure to maintain the qualifications for a license.

38
40 B. A license may not be denied, revoked or suspended and disciplinary action may not be taken under this section except after a hearing conducted by the Secretary of State in accordance with the Maine Administrative Procedure Act.

2 3. Civil penalty. If the Secretary of State determines
4 after a proceeding conducted in accordance with the Maine
6 Administrative Procedure Act and rules of the Secretary of State
8 that a manufacturer or distributor is violating or has violated
10 any provision of this chapter or any rule or order of the
12 Secretary of State issued pursuant to this chapter, the Secretary
14 of State shall levy a civil penalty of not less than \$1,000 nor
16 more than \$10,000 for each violation. If the violation involves
18 multiple transactions within a 60-day period, these multiple
20 transactions are deemed a single violation.

22 In determining the amount of a civil penalty levied under this
24 chapter, the Secretary of State shall consider:

26 A. The seriousness of the violation, including but not
28 limited to the nature, circumstances, extent and gravity of
30 the prohibited acts and the harm or potential harm created
32 to the safety of the public;

34 B. The economic damage to the public caused by the
36 violation;

38 C. Any previous violations;

40 D. The amount necessary to deter future violations;

42 E. Efforts made to correct the violation; and

44 F. Any other matters that justice may require.

46 4. Rules. Rules adopted pursuant to this section are
48 routine technical rules pursuant to Title 5, chapter 375,
50 subchapter II-A.

5. License fees collected. License fees collected under
 subsection 1, paragraph D and subsection 3 are deposited in the
 Highway Fund.

 Sec. 6. 10 MRSA §1173, as enacted by PL 1975, c. 573, is
 amended to read:

§1173. Attorney General and civil remedies

 1. ~~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~~ franchisee or motor
 vehicle dealer who suffers financial loss of money or property,
 real or personal, or who has been otherwise adversely affected as

2 a result of the use or employment by a franchisor of an unfair
3 method of competition or an unfair or deceptive act or any
4 practice declared unlawful by this chapter may bring an action
5 for damages and equitable relief, including injunctive relief.
6 When the franchisee or dealer prevails, the court shall award
7 attorney's fees to the franchisee or dealer, regardless of the
8 amount in controversy, and assess costs against the opposing
9 party. For the purpose of the award of attorney's fees and
10 costs, whenever the franchisee or dealer is seeking injunctive or
11 other relief, the franchisee or dealer may be considered to have
12 prevailed when a judgment or other final order providing
13 equitable relief is entered in its favor. A final judgment, order
14 or decree rendered against a person in any civil, criminal or
15 administrative proceeding under the United States antitrust laws,
16 under the Federal Trade Commission Act, under the Maine Revised
17 Statutes or under this chapter shall--be is regarded as prima
18 facie evidence against such the person subject to the conditions
19 set forth in the United States antitrust laws, (~~15-U.S.C.--16~~) 15
20 United States Code, Section 16.

21 **Sec. 7. 10 MRSA §1173-A is enacted to read:**

22 **§1173-A. Mediation**

23 A franchisee may not bring an action for recovery of damages
24 or for equitable relief until the franchisee has served upon the
25 franchisor a written demand for nonbinding mediation and either
26 the parties have engaged in such mediation with an independent
27 mediator or 60 days have passed from the franchisor's receipt of
28 notice of mediation, whichever occurs sooner. The service of the
29 written notice of mediation tolls the running of any applicable
30 statute of limitations for the subsequent 60-day period.
31 Notwithstanding any agreement or requirement to engage in
32 nonbinding mediation, at the conclusion of the proceedings, the
33 franchisee is entitled to file an action in any court in this
34 State in accordance with section 1185. The results of the
35 nonbinding mediation are not admissible in the action.

36 **Sec. 8. 10 MRSA §1174, sub-§3, ¶¶A and B, as enacted by PL**
37 **1975, c. 573, are amended to read:**

38 **A.** To refuse to deliver in reasonable quantities and within
39 a reasonable time after receipt of a dealer's order, to any
40 motor vehicle dealer having a franchise or contractual
41 arrangement for the retail sale of new motor vehicles sold
42 or distributed by such that manufacturer, distributor,
43 wholesaler, distributor branch or division, factory branch
44 or division, any such motor vehicles as--are or parts or
45 accessories to motor vehicles covered by such that franchise
46 or contract specifically publicly advertised by such that

2 manufacturer, distributor, wholesaler, distributor branch or
3 division, factory branch or division, or wholesale branch or
4 division to be available for immediate delivery;--provided,
5 however,--the. The allocation of new motor vehicles in this
6 State must be made on a fair and equitable basis and must
7 consider the needs of those dealerships with a relevant
8 market area radius of more than 5 miles as defined in
9 section 1174-A, subsection 1. The manufacturer has the
10 burden of establishing the fairness of its allocation
11 system. The failure to deliver any motor vehicle shall is
12 not be considered a violation of this chapter if such the
13 failure is due to an act of God, work stoppage or delay due
14 to a strike or labor difficulty, shortage of materials,
15 freight embargo or other cause over which the manufacturer,
16 distributor,--wholesaler, or any agent thereof--shall have of
17 the manufacturer or distributor has no control. A separate
18 dealer agreement is not required of a new motor vehicle
19 dealer already a party to a dealer agreement or franchise
20 agreement for the retail sale of any particular new motor
21 vehicle model made or distributed by a manufacturer,
22 distributor, distributor branch or division, factory branch
23 or division, wholesale branch or division or officer, agent
24 or other representative thereof, except that a manufacturer
25 or distributor may require a dealer to purchase special
26 tools or equipment, stock reasonable quantities of certain
27 parts, purchase reasonable quantities of promotional
28 materials or participate in training programs that are
29 reasonably necessary for the dealer to sell or service such
30 a new motor vehicle model. Any special tools, parts or
31 signs not used within 2 years of receipt by the dealer may
32 be returned by the dealer to the manufacturer or distributor
33 for a full refund of cost of those special tools, parts and
34 signs;

35 B. To coerce, or attempt to coerce, any a motor vehicle
36 dealer to enter into any an agreement with such that
37 manufacturer, distributor, wholesaler, distributor branch or
38 division, factory branch or division, or wholesale branch or
39 division, or officer, agent or other representative thereof,
40 or to do any other act prejudicial to said the dealer by
41 threatening to cancel any a franchise or any a contractual
42 agreement existing between such that manufacturer,
43 distributor, wholesaler, distributor branch or division,
44 factory branch or division, or wholesale branch or division,
45 and said that dealer provided,--however,--that notice in good
46 faith to any motor vehicle dealer of said dealer's violation
47 of any terms or provisions of such franchise or contractual
48 agreement shall not constitute a violation of this chapter,
49 or by threatening to modify a franchise during the term of
50 the franchise or upon its renewal, if the modification

2 substantially and adversely affects the motor vehicle
3 dealer's rights, obligations, investment or return on
4 investment, without giving 60 days' written notice of the
5 proposed modification to the motor vehicle dealer, unless
6 the modification is required by law or court order. Within
7 the 60-day notice period, the motor vehicle dealer may file
8 with the Superior Court in the county where the dealership
9 is located and serve notice upon the manufacturer a protest
10 requesting a determination of whether there is good cause
11 for permitting the proposed modification. The manufacturer
12 has the burden of proving good cause. The court shall
13 promptly schedule a hearing and decide the matter within 180
14 days from the date the protest is filed. Multiple protests
15 pertaining to the same proposed modification must be
16 consolidated for hearing. The proposed modification may not
17 take effect pending the determination of the matter. In
18 determining whether there is good cause for permitting a
19 proposed modification, any relevant factors must be
20 considered, including, but not limited to:

21 (1) The reasons for the proposed modification;

22
23 (2) Whether the proposed modification is applied to or
24 affects all motor vehicle dealers in a
25 nondiscriminatory manner;

26
27 (3) Whether the proposed modification will have a
28 substantial and adverse effect upon the motor vehicle
29 dealer's investment or return on investment;

30
31 (4) Whether the proposed modification is in the public
32 interest;

33
34 (5) Whether the proposed modification is necessary to
35 the orderly and profitable distribution; and

36
37 (6) Whether the proposed modification is offset by
38 other modifications beneficial to the motor vehicle
39 dealer.

40
41 Notice in good faith to a motor vehicle dealer of that
42 dealer's violation of the terms or provisions of the
43 franchise or contractual agreement does not constitute a
44 violation of this chapter;

45 **Sec. 9. 10 MRSA §1174, sub-§3, ¶C-1 is enacted to read:**

46
47 C-1. To discriminate, directly or indirectly, against a
48 dealer or to take any action to terminate a dealer's
49 franchise based solely upon the results of a survey of a
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2 dealer's customers conducted on behalf of a manufacturer,
3 distributor, distributor branch or division, factory branch
4 or division, wholesale branch or division or officer or
5 agent thereof that is intended or otherwise purports to
6 measure the performance of a dealer, except a sales contest
7 or other recognition program based on reasonable sales and
8 service criteria;

9
10 **Sec. 10. 10 MRSA §1174, sub-§3, ¶D,** as repealed and replaced
11 by PL 1981, c. 331, §5, is amended to read:

12 D. To resort to or use any false or misleading
13 advertisement in connection with ~~his~~ the business as such a
14 manufacturer, distributor, ~~wholesaler,~~ distributor branch or
15 division, factory branch or division, ~~or~~ wholesaler branch
16 or division, or officer, agent or other representative
17 thereof, or to force any dealer or association of dealers
18 formed to advertise the sale of new motor vehicles to
19 participate in any advertising campaign or contest, or to
20 purchase any promotional materials, display devices, or
21 display decorations or materials at the expense of the new
22 motor vehicle dealer;

23 **Sec. 11. 10 MRSA §1174, sub-§3, ¶F,** as enacted by PL 1975, c.
24 573, is amended to read:

25 F. To offer to sell, or lease or to sell or lease any a new
26 motor vehicle to any person, except a ~~wholesaler--or~~
27 distributor, at a lower actual price ~~therefor~~ than the
28 actual price offered and charged to a motor vehicle dealer
29 for the same model vehicle similarly equipped or to utilize
30 any device which that results in such a lesser actual price.
31

32
33 **Sec. 12. 10 MRSA §1174, sub-§3, ¶I,** as enacted by PL 1975, c.
34 573, is amended to read:

35 I. To prevent or attempt to prevent by contract or
36 otherwise any a motor vehicle dealer or any an officer,
37 partner or stockholder of any a motor vehicle dealer from
38 selling or transferring any part of the interest of any of
39 them to any other person or persons or party or parties,
40 ~~provided,--however,~~ except that no a dealer, officer, partner
41 or stockholder ~~shall~~ does not have the right to sell,
42 transfer or assign the franchise or power of management or
43 control ~~thereunder~~ under that franchise without the consent
44 of the manufacturer, distributor or wholesaler ~~except--that~~
45 ~~such-consent-shall,~~ which may not be unreasonably withheld.
46

47 A franchisor may exercise a right of first refusal or other
48 right to acquire a motor vehicle franchise from a franchisee
49

2 as a means to influence the consideration or other terms
3 offered by a person in connection with the acquisition of
4 the franchise or to influence a person to refrain from
5 entering into, or to withdraw from, negotiations for the
6 acquisition of the franchise.

7 A franchisor may exercise a right of first refusal or other
8 right to acquire a franchise from a franchisee if all of the
9 following requirements are met.

10
11 (1) At the election of the franchisee, the franchisor
12 assumes the lease for or acquires the real property on
13 which the franchise is conducted on the same terms as
14 those on which the real property or lease was to be
15 sold or transferred to the acquiring transferee in
16 connection with the sale of the franchise, unless
17 otherwise agreed to by the franchisee and the
18 franchisor;

19 (2) The franchisor assumes all of the obligations of
20 the underlying agreement or proposal that entitles the
21 franchisor to exercise the right of first refusal; and

22
23 (3) The franchisor reimburses the acquiring transferee
24 of the motor vehicle franchise for the reasonable
25 expenses paid or incurred by the transferee in
26 evaluating and investigating the franchise and
27 negotiating and pursuing the acquisition of the
28 franchise prior to the franchisor's exercise of the
29 right of first refusal or other right to acquire the
30 franchise. For purposes of this subsection, expenses
31 to evaluate and investigate the franchise include, in
32 addition to any other expenses associated with the
33 evaluation and investigation of the franchise, legal
34 and accounting expenses and expenses associated with
35 the evaluation and investigation of any real property
36 on which the franchise is conducted, including, but not
37 limited to, expenses associated with title
38 examinations, environmental assessments and other
39 expenses directly related to the acquisition or lease
40 of the real property by the acquiring transferee. Upon
41 reimbursement, any title reports or other reports or
42 studies received by the acquiring transferee as a
43 result of the evaluation or investigation of the
44 franchise or the real property on which the franchise
45 is conducted must be provided to the franchisor. The
46 acquiring transferee shall submit an itemized list of
47 the expenses to be reimbursed along with supporting
48 documents, if any, to the franchisor no later than 30
49 days after receipt of a written request for an itemized
50

2 list of the expenses from the franchisor. The
3 franchisor shall make payment within 30 days after the
4 exercise of the right of first refusal;

5 For purposes of this paragraph, "acquiring transferee"
6 means the person who made the offer that entitles the
7 franchisor to exercise a right of first refusal;

8
9
10 **Sec. 13. 10 MRSA §1174, sub-§3, ¶K**, as amended by PL 1981, c.
11 470, Pt. A, §23, is further amended to read:

12 K. To compete with a motor vehicle dealer operating under
13 an agreement or franchise from the manufacturer, distributor
14 or wholesaler in the relevant market area, the area to be
15 determined exclusively by equitable principles, ~~and provided,~~
16 except that a manufacturer, ~~or distributor or wholesaler~~
17 ~~shall~~ is not be deemed considered to be competing when
18 operating a dealership either temporarily for a reasonable
19 period, in any case not to exceed one year, or in a bona
20 fide relationship in which an independent person has made a
21 significant investment subject to loss in the dealership and
22 can reasonably expect to acquire full ownership of the
23 dealership on reasonable terms and conditions, ~~and provided~~
24 and except that a distributor ~~shall~~ is not be deemed
25 considered to be competing when a wholly owned subsidiary
26 corporation or the distributor sells motor vehicles at
27 retail, if, for at least 3 years prior to January 1, 1975,
28 the subsidiary corporation has been a wholly owned
29 subsidiary of the distributor and engaged in the sale of
30 motor vehicles at retail; ~~or~~

31
32 **Sec. 14. 10 MRSA §1174, sub-§3, ¶M**, as enacted by PL 1981, c.
33 331, §6, is amended to read:

34 M. To require ~~any new motor vehicle dealer, coerce or~~
35 attempt to coerce a franchisee to refrain from participation
36 in the management of, investment in, or the acquisition of
37 any other line of new motor vehicle or related products as
38 long as the franchisee maintains a reasonable line of credit
39 for each franchise and the franchisee remains in substantial
40 compliance with reasonable facilities requirements of the
41 franchisor. The reasonable facilities requirements may not
42 include any requirement that a franchisee establish or
43 maintain exclusive facilities, personnel or display space
44 when the requirements are unreasonable considering current
45 economic conditions and are not otherwise justified by
46 reasonable business considerations. The burden of proving
47 that current economic conditions or reasonable business
48 considerations justify exclusive facilities is on the
49 franchisor;

2 **Sec. 15. 10 MRSA §1174, sub-§3, ¶O**, as enacted by PL 1981, c.
331, §6, is amended to read:

4
6 O. To cancel, terminate, fail to renew or refuse to
continue any franchise relationship with a licensed new
8 motor vehicle dealer, notwithstanding the terms, provisions
or conditions of any agreement or franchise, ~~and~~ and
10 notwithstanding the terms or provisions of any waiver,
unless a manufacturer has:

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

20 The manufacturer has the burden of proof 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;

24 **Sec. 16. 10 MRSA §1174, sub-§3, ¶P**, as enacted by PL 1981, c.
26 331, §6, is amended to read:

28 P. To terminate, fail to renew or refuse to continue any
30 franchise relationship with a licensed new motor vehicle
dealer, notwithstanding the terms, provisions or conditions
32 of any agreement or franchise or the terms or provisions of
any waiver, unless good cause exists. Good cause may not be
shown or based solely on the desire of the manufacturer,
distributor, distributor branch or division or officer,
agent or other representative thereof for market
penetration. Good cause ~~shall exist~~ exists for the purposes
36 of a termination, cancellation, nonrenewal or noncontinuance
38 when:

- 40 (1) There is a failure by the new motor vehicle dealer
42 to comply with a provision of the franchise, which
provision is both reasonable and of material
44 significance to the franchise relationship, ~~provided~~
that as long as compliance on the part of the new motor
46 vehicle dealer is reasonably possible, and the
manufacturer first acquired actual or constructive
48 knowledge of the failure not more than 180 days prior
to the date on which notification is given pursuant to
50 paragraph R.

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

8 When the failure by the new motor vehicle dealer
10 relates to the performance of the new motor vehicle
12 dealer in sales or service, the failure of the new
14 motor vehicle dealer to effectively carry out the
16 performance provisions of the franchise is good cause
18 if:

16 (a) The new motor vehicle dealer was apprised by
18 the manufacturer in writing of that failure; the
20 notification stated that notice was provided of
22 failure of performance pursuant to this section;
24 and the new motor vehicle dealer was afforded a
26 reasonable opportunity for a period of not less
28 than 6 months to exert good faith efforts to carry
30 out the performance provisions;

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

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

36 (3) The dealer and the manufacturer or distributor
38 agree not to renew the franchise; or

38 (4) The manufacturer discontinues production or
40 distribution of the franchise product;

42 **Sec. 17. 10 MRSA §1174, sub-§3, ¶Q, as enacted by PL 1981, c.**
44 **331, §6, is amended to read:**

44 Q. To cancel, terminate, fail to renew or refuse to
46 continue any franchise relationship with a licensed new
48 motor vehicle dealer, notwithstanding the terms, provisions
50 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:

2 (1) The change of ownership of the new motor vehicle
3 dealer's dealership. This subparagraph does not
4 authorize any change in ownership ~~which~~ that would have
5 the effect of the sale of the franchise without the
6 manufacturer's or distributor's written consent. This
7 consent ~~shall~~ may not be unreasonably withheld. The
8 burden of establishing the reasonableness is on the
9 manufacturer or distributor;

10 (2) The fact that the new motor vehicle dealer
11 unreasonably refused to purchase or accept delivery of
12 any new motor vehicle parts, accessories or any other
13 commodity or services not ordered by the new motor
14 vehicle dealer, except that the manufacturer may
15 require that the dealer stock a reasonable supply of
16 parts or accessories as required to perform campaign,
17 recall or warranty work, and except that this provision
18 is not intended to modify or ~~supereede~~ supersede any
19 requirement of the franchise that dealers market a
20 representative line of those motor vehicles ~~which~~ that
21 the manufacturer is publicly advertising;

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

34 (4) The fact that the new motor vehicle dealer sells
35 or transfers ownership of the dealership or sells or
36 transfers capital stock in the dealership to the new
37 motor vehicle dealer's spouse, son or daughter, and the
38 manufacturer shall give effect to ~~such~~ that change in
39 the ownership in the franchise unless the transfer of
40 the new motor vehicle dealer's license is denied or the
41 new owner is unable to license ~~as-the-case-may-be~~. This
42 paragraph does not authorize any changes in ownership
43 ~~which-would~~ that have the effect of the sale of the
44 franchise without the manufacturer's or distributor's
45 written consent. This consent ~~shall~~ may not be
46 unreasonably withheld. The burden of establishing the
47 reasonableness is on the manufacturer or distributor; or
48
49
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2 (4-A) The fact that there is a survey or surveys of a
4 dealer's customers conducted by or on behalf of the
6 manufacturer, distributor, distributor branch or
 distributor representative, factory branch or factory
 representative that is intended or otherwise purports
 to measure the performance of a dealer;

8
 ~~(5) -- The manufacturer shall have the burden of proof~~
10 ~~under paragraph 0 for showing that it has acted in good~~
12 ~~faith, that the notice requirements have been complied~~
14 ~~with and that there was good cause for the franchise~~
 ~~termination, cancellation, nonrenewal or noncontinuance;~~

16 **Sec. 18. 10 MRSA §1174, sub-§3, ¶S,** as enacted by PL 1981, c.
 331, §6, is amended to read:

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

24 (1) All unsold new model motor vehicle inventory of
 the current and previous model year purchased from the
26 manufacturer;

28 (2) Supplies and parts purchased from the manufacturer
 or its approved sources;

30 (3) Equipment and furnishings purchased from the
32 manufacturer or its approved sources; and

34 (4) Special tools purchased from the manufacturer or
 its approved sources; and

36 ~~(5) -- In the event the involuntary termination,~~
38 ~~cancellation or nonrenewal is due to a failure of~~
40 ~~performance of the new motor vehicle dealer in sales or~~
 ~~service; and~~

42 ~~(a) -- The new motor vehicle dealer is leasing the~~
44 ~~dealership facilities from a lessor other than the~~
46 ~~manufacturer, the manufacturer shall pay the new~~
 ~~motor vehicle dealer a sum equivalent to the rent~~
 ~~for the unexpired term of the lease or one year's~~
 ~~rent, whichever is less; or~~

48 ~~(b) -- If the new motor vehicle dealer owns the~~
 ~~facilities, the manufacturer shall pay the new~~

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~~motor--vehiele--dealer--a--sum--equivalent--to--the
reasonable--rental--value--of--the--facilities--for--one
year;~~

If the involuntary termination, cancellation or nonrenewal is due to a failure of performance of the new motor vehicle dealer in sales or service and the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or, if the new motor vehicle dealer owns the facilities, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the facilities for one year, prorated for each line make at the facility based on total sales volume of each line make at the facility for the calendar year prior to the involuntary termination, cancellation or nonrenewal.

~~Such~~ The fair and reasonable compensation for the items listed in subparagraphs ~~1-to-5-shall~~ (1) to (4) may in no instance be less than the acquisition price and shall must be paid by the manufacturer when possible within 90 days of the effective date of the termination, cancellation or nonrenewal, provided that the new motor vehicle dealer has clear title to the inventory and other items and is in a position to convey that title to the manufacturer.

In lieu of any injunctive relief or any other damages, if the manufacturer fails to prove there was good cause for the termination, cancellation or nonrenewal, or if the manufacturer fails to prove that it acted in good faith, then the manufacturer may pay the new motor vehicle dealer fair and reasonable compensation for the value of the dealership as an ongoing business; or

Sec. 19. 10 MRSA §1174, sub-§3, ¶T is enacted to read:

T. To act as, offer to act as or purport to be a broker;

Sec. 20. 10 MRSA §1174, sub-§4, ¶¶B and C, as amended by PL 1995, c. 269, §1, are further amended to read:

B. To represent and sell as a new motor vehicle, without disclosure, any motor vehicle that has been used and operated for demonstration purposes or is otherwise a used motor vehicle;

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

2 **Sec. 21. 10 MRSA §1174, sub-§4, ¶D**, as enacted by PL 1995, c.
369, §1, is amended to read:

4
6 D. To fail to disclose conspicuously in writing the motor
7 vehicle dealer's policy in relation to the return of
8 deposits received from any person. A dealer shall require
9 that a person making a deposit sign the form on which the
10 disclosure appears; or

12 **Sec. 22. 10 MRSA §1174, sub-§4, ¶E** is enacted to read:

14 E. To fail to disclose in writing to a purchaser of a new
15 motor vehicle before entering into a sales contract that the
16 new motor vehicle has been damaged and repaired if the
17 dealer has knowledge of the damage or repair or if the
18 damage calculated at the retail cost of repair to the new
19 motor vehicle exceeds 5% of the manufacturer's suggested
20 retail price, except that a new motor vehicle dealer is not
21 required to disclose to a purchaser that any glass, bumpers,
22 audio system, instrument panel, communication system or
23 tires were damaged at any time if the glass, bumpers, audio
24 system, instrument panel, communication system or tires have
been replaced with original or comparable equipment.

26 **Sec. 23. 10 MRSA §1174-C, sub-§1, ¶A**, as enacted by PL 1981,
27 c. 331, §7, is amended to read:

28 A. Any A designated family member of a deceased or
29 incapacitated new motor vehicle dealer, which family member
30 has been designated under the will of the dealer or in
31 writing to the manufacturer, distributor, factory branch,
32 factory representative or importer, may succeed the dealer
33 in the ownership or operation of the dealership under the
34 existing franchise or distribution agreement, ~~provided that~~
35 if the designated family member gives the manufacturer,
36 distributor, factory branch, factory representative or
37 importer of new motor vehicles written notice of the
38 intention to succeed to the dealership within 120 days of
39 the dealer's death or incapacity, and unless there exists
40 good cause for refusal to honor the succession on the part
41 of the manufacturer, factory branch, factory representative,
42 distributor or importer.

44 **Sec. 24. 10 MRSA §1174-C, sub-§1, ¶C** is enacted to read:

46 C. In addition to a designated family member, a person who
47 has been a general manager or other employee with
48 significant and varied managerial experience for a dealer
49 for at least 5 years may be designated by that dealer to
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2 succeed in dealer ownership, and the designee has the same
3 rights and status as a designated family member.

4 **Sec. 25. 10 MRSA §1176**, as amended by PL 1995, c. 65, Pt. A,
5 §16 and affected by §153 and Pt. C, §15, is further amended by
6 adding at the end a new paragraph to read:

7 It is unlawful for a franchisor, manufacturer, factory
8 branch, distributor branch or subsidiary to own, operate or
9 control, either directly or indirectly, a motor vehicle warranty
10 or service facility located in the State except on an emergency
11 or interim basis or if no qualified applicant has applied for
12 appointment as a dealer in a market previously served by a new
13 motor vehicle dealer of that manufacturer, factory branch,
14 distributor branch or subsidiary's line make.

15 **Sec. 26. 10 MRSA §1176-A** is enacted to read:

16 **§1176-A. Audits**

17 A manufacturer may reasonably and periodically audit a new
18 motor vehicle dealer to determine the validity of paid claims or
19 any charge-backs for customer or dealer incentives. Audits of
20 incentive payments may be only for the 18-month period
21 immediately preceding the date notifying the dealer that an audit
22 is to be conducted.

23 **Sec. 27. 10 MRSA §1182**, as enacted by PL 1975, c. 573, is
24 amended by adding at the end a new paragraph to read:

25 The Legislature finds that the manufacture, distribution and
26 sale of motor vehicles in the State vitally affects the general
27 economy of the State and the public interest and public welfare;
28 that the manufacturers of motor vehicles whose physical
29 manufacturing facilities are not located within the State and
30 distributors are doing business in the State through their
31 control over and relationship and transactions with their dealers
32 in the State; that the geographical location of the State makes
33 it necessary to ensure the availability of motor vehicles and
34 parts and dependable service for motor vehicles throughout the
35 State to protect and preserve the transportation system, the
36 public safety and welfare and the investments of its residents.
37 The Legislature declares, on the basis of these findings, that it
38 is necessary to regulate and to license motor vehicle
39 manufacturers and distributors and their branches and
40 representatives, motor vehicle dealers and any other person
41 engaged in the business of selling or purchasing vehicles in the
42 State in order to prevent frauds, impositions and other abuses
43 against residents and to protect and preserve the economy, the
44 investments of residents, the public safety and the
45 transportation system of the State.

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Sec. 28. 10 MRSA §1182-A is enacted to read:

§1182-A. Exemption for installation on previously assembled truck chassis

This chapter does not apply to a person, partnership, firm, association, corporation or trust, resident or nonresident, that manufactures, assembles, distributes, sells, leases, solicits or advertises the sale or lease of a motor vehicle that consists of the installation on a previously assembled truck chassis in excess of 25,000 pounds gross vehicle weight rating, as defined by Title 29-A, section 2351, subsection 3, special bodies or equipment that, when installed, form an integral part of the motor vehicle and constitute a major manufacturing alteration. This exemption applies only to entities that do not franchise in the State.

Sec. 29. 10 MRSA §1183, as enacted by PL 1975, c. 573, is amended by adding at the end a new paragraph to read:

Notwithstanding any provision in a franchise agreement, if a dispute covered by this chapter or any other law is submitted to mediation or arbitration, the time for the dealer to file a complaint, action, petition or protest is tolled until the mediation or arbitration proceeding is completed.

Sec. 30. Allocation. The following funds are allocated from the Highway Fund to carry out the purposes of this Act.

1998-99

SECRETARY OF STATE,
DEPARTMENT OF THE

Administration - Motor Vehicles

Positions - Legislative Count	(1.0)
Personal Services	\$38,113
All Other	8,231

Provides funds for a confidential, unclassified Research and Planning Associate II position to provide assistance in regulating motor vehicle manufacturers, brokers and dealers.

2 DEPARTMENT OF THE SECRETARY
OF STATE

4 TOTAL \$46,344'

6 Further amend the bill by inserting at the end before the
summary the following:

8
10 FISCAL NOTE

12 1998-99

14 APPROPRIATIONS/ALLOCATIONS

16 Highway Fund \$46,344

18 REVENUES

20 Highway Fund \$52,500

22 Establishing a license fee for motor vehicle manufacturers
and distributors will increase Highway Fund revenue by \$52,500
24 annually beginning in fiscal year 1998-99.

26 This bill includes a Highway Fund allocation to the
Department of the Secretary of State of \$46,344 in fiscal year
28 1998-99 for a confidential, unclassified Planning and Research
Associate II position to provide assistance in regulating motor
30 vehicle manufacturers, brokers and dealers.

32 This bill may increase the number of civil suits and the
prosecution of civil violations filed in the court system. The
34 additional workload and administrative costs associated with the
minimal number of new cases filed can be absorbed within the
36 budgeted resources of the Judicial Department. The collection of
additional filing fees and fines may also increase General Fund
38 revenue by minor amounts.'

40 SUMMARY

42 This amendment replaces the bill and amends several
provisions of the motor vehicle dealer franchise laws to address
44 the changing business environment among motor vehicle dealers,
distributors and manufacturers. The amendment does the following.

46
48 1. It enacts a new definition of the term "broker" and
clarifies several definitions.

50 2. It precludes a manufacturer from using a factory finance
branch or other corporate affiliate to engage in conduct that
52 would otherwise be illegal.

2 3. It licenses manufacturers, establishes registration and
3 fee requirements, authorizes rulemaking by the Secretary of State
4 and authorizes the Secretary of State to conduct hearings and
5 impose civil penalties in appropriate circumstances. The civil
6 penalty section clarifies that violations involving similar
7 transactions that occur on a repeating basis within a 60-day
8 period constitute a single violation. License fees collected
9 will be deposited in the Highway Fund.

10 4. It clarifies provisions concerning damages and remedies.

11 5. It authorizes mandatory nonbinding mediation as an
12 initial step in dispute resolution.

13 6. It confirms the right of a dealer to bring an action in
14 Superior Court.

15 7. It clarifies that a manufacturer must establish a just
16 and equitable system for allocation of its vehicles and that that
17 system must consider the rural environment of this State and the
18 needs of rural dealers in this State.

19 8. It clarifies that a franchised dealer is entitled to
20 receive all makes and models of vehicles that the manufacturer
21 produces for that particular franchise, that for a new vehicle
22 the manufacturer may require a dealer to obtain certain tools,
23 parts and inventory, among other things, and that any materials
24 required to be purchased by the manufacturer may be returned by
25 the dealer for a full refund if these materials have not been
26 used within a 2-year period.

27 9. It provides a process for a dealer to provide notice and
28 to appeal the proposed modification or replacement of a franchise
29 agreement when a manufacturer modifies or replaces the franchise
30 agreement. The manufacturer has the burden of proving that it
31 had good cause for the modification or replacement.

32 10. It prohibits discriminatory conduct or threats to
33 terminate a franchise based solely on the results of manufacturer
34 surveys. A sales or recognition program that is not tied to
35 vehicle allocation systems or the cost of vehicles, parts or
36 accessories is allowed. It establishes that it is not good cause
37 for termination for a manufacturer to rely exclusively on
38 manufacturer surveys.

39 11. It amends the prohibition against mandatory
40 participation in manufacturer advertisement schemes to include
41 associations of dealers.

COMMITTEE AMENDMENT "A" to S.P. 584, L.D. 1747

2 12. It establishes the standards that apply when a
4 manufacturer exercises a right of first refusal in the transfer
6 of a franchise to ensure that the actual agreement being assumed
8 in the right of first refusal is the identical underlying
10 agreement that had been made with a proposed transferee. It also
12 provides basic protections for the proposed transferee.

13. It protects the rights of dealers to dual franchises
and establishes criteria if a manufacturer imposes exclusive
facility requirements on a franchisee.

14. It establishes that if a dealer is involuntarily
terminated, canceled or not renewed, then the manufacturer shall
pay a sum equivalent to the rent for the unexpired term of the
lease or for one year, whichever is less. If the dealer has more
than one franchise at the dealership, the manufacturer shall pay
a prorated amount of rent or rental value based on the volume of
sales of each franchise in that dealership.

15. It clarifies that new vehicles may be distributed only
to franchised new car dealers and may be sold to the public only
by franchised new car dealers.

16. It clarifies that a dealer must disclose in the course
of selling a vehicle that the vehicle has been operated for
demonstrator purposes and requires disclosure of certain damages
to a new motor vehicle when that damage exceeds 5% of the
manufacturer's suggested retail price.

17. It includes general managers and long-standing
employees with significant experience in survivorship rights in
the transfer of a dealership to a successor in interest.

18. It establishes an 18-month time limitation on audits.

19. It specifically does not address warranty reimbursement
of parts and labor in the Maine Revised Statutes, Title 10,
section 1176. The Legislature is aware of the case of Acadia
Motors, Inc. v. Ford Motor Credit Company, 44 F.3rd 1050 (1st
Cir. 1995) and other cases currently pending in the United States
District Court for the District of Maine, the Maine Superior
Court and the Maine District Court. The Legislature has
refrained from addressing warranty reimbursement provisions and
warranty audit provisions of Title 10, section 1176 in light of
this pending litigation. No inference should be drawn from this
inaction, and this enactment should not be construed as
expressing any view of the statutory language of Title 10,
section 1176 or any decisions issued by courts in this State or
federal courts on Title 10, section 1176. Title 10, section 1176
is amended to clarify that manufacturers may not establish

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COMMITTEE AMENDMENT "A" to S.P. 584, L.D. 1747

2 warranty repair centers in this State except in certain limited
situations.

4 20. It clarifies that the public policy of this State is
the protection of the transportation system, the public safety
6 and the financial interests of its citizens in relation to the
automobile industry. The Legislature does not intend that the
8 Maine Revised Statutes, Title 10, section 1182 be utilized by the
federal court or courts of this State in construing legislative
10 intent with regard to the currently pending litigation regarding
Title 10, section 1176.

12 21. It also adds an allocation section and a fiscal note to
14 the bill.