

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1997

Legislative Document

No. 1747

S.P. 584

In Senate, April 7, 1997

An Act to Improve Transportation in Maine.

Reference to the Committee on Business and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by President LAWRENCE of York.
Cosponsored by Representative VIGUE of Winslow and
Senators: JENKINS of Androscoggin, KIEFFER of Aroostook, MacKINNON of York,
RAND of Cumberland, Representatives: CAMERON of Rumford, DONNELLY of Presque
Isle, KONTOS of Windham.

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

2
4 **Sec. 1. 10 MRSA §1171, sub-§9**, as enacted by PL 1975, c. 573,
is amended to read:

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

12 **Sec. 2. 10 MRSA §1171, sub-§10**, as repealed and replaced by PL
14 1981, c. 331, §3, is amended to read:

16 **10. Manufacturer.** "Manufacturer" means any a person,
partnership, firm, association, corporation or trust, resident or
18 nonresident, who manufactures or assembles new motor vehicles, or
manufactures or installs on previously assembled truck chassis
20 special bodies or equipment that, when installed, form an
integral part of the motor vehicle and constitute a major
22 manufacturing alteration and the completed unit is owned by the
manufacturer or imports for distribution through distributors of
24 motor vehicles, or any partnership, firm, association, joint
venture, corporation or trust, resident or nonresident, ~~which is~~
26 controlled by the manufacturer. The term "manufacturer" includes
the term "franchisor," "distributor," "distributor branch,"
28 "wholesaler," "factory branch" and "factory representative."

30 **Sec. 3. 10 MRSA §1171, sub-§§12 and 13**, as enacted by PL 1975,
c. 573, are amended to read:

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

42 **13. New motor vehicle.** "New motor vehicle" means a motor
44 vehicle ~~which~~ that has not been previously sold to any a person
except a distributor ~~or,~~ wholesaler or motor vehicle dealer for
46 that franchise for resale.

48 **Sec. 4. 10 MRSA §§1171-A and 1171-B** are enacted to read:

50 §1171-A. Corporate affiliates

2 A franchisor may not use any subsidiary corporation,
3 affiliated corporation, any other corporation in which it owns or
4 controls more than 5% of the stock or any other corporation,
5 partnership, association or person to accomplish what would
6 otherwise be prohibited conduct under this chapter on the part of
7 the franchisor.

8
9 **§1171-B. Manufacturer; license**

10 1. License. The Secretary of State may grant a
11 manufacturer license under the following conditions.

12
13 A. Except as provided by this section, a person may not
14 engage in business or serve in the capacity of or act as a
15 manufacturer, distributor, wholesaler, distributor branch,
16 distributor representative, factory branch or factory
17 representative without obtaining a license as provided in
18 this section and according to rules of the Secretary of
19 State. All new license applications must be reviewed and,
20 in the discretion of the Secretary of State, investigated to
21 determine compliance with the provisions of this section.
22 Licenses issued by the Secretary of State expire one year
23 from the date of issuance. A license or a renewal of a
24 license is issued subject to provisions of this chapter and
25 rules of the Secretary of State in effect upon the date of
26 issuance as well as all future provisions of this chapter
27 and rules that may become effective during the term of that
28 license.

29
30 B. An application for a license for a manufacturer,
31 distributor, wholesaler, distributor branch, distributor
32 representative, factory branch or factory representative
33 must be on a form prescribed by the Secretary of State, and
34 contain information the Secretary of State determines
35 necessary to fully determine the qualifications of an
36 applicant for a license, including financial resources,
37 business integrity and experience, facilities and personnel
38 for servicing franchise dealers and any other information
39 the Secretary of State considers pertinent to safeguard the
40 public interest and welfare.

41
42 (1) An applicant for a manufacturer's license shall
43 furnish a list of all distributors, representatives
44 acting for the applicant and all dealers franchised to
45 sell the applicant's products in this State in their
46 respective locations. All applicants for
47 manufacturer's licenses and all licensed manufacturers
48 shall advise the Secretary of State within 30 days of
49 any change in their list of distributors,
50

2 representatives and franchised dealers. This
3 information becomes part of the application.

4 (2) An application for a distributor's, wholesaler's,
5 distributor branch's, distributor representative's,
6 factory branch's or factory representative's license
7 must disclose the manufacturer for whom the applicant
8 acts and whether the manufacturer is licensed in this
9 State. The license application must disclose the
10 franchised dealers with whom the applicant does
11 business. All applicants for a license shall advise
12 the Secretary of State within 15 days of any change in
13 their list of franchised dealers.

14
15 C. All licensees may apply for issuance of a license for
16 each succeeding year by complying with the application
17 process specified by this section and rules of the Secretary
18 of State.

19
20 D. The annual fees for licenses are as follows:

21 (1) For each manufacturer, \$150 plus \$60 for each
22 individual dealer franchised by the manufacturer or
23 distributor; and

24
25 (2) For each distributor, wholesaler, distributor
26 branch, distributor representative, factory branch or
27 factory representative, \$150 plus \$60 for each
28 individual franchised dealer with whom the licensee
29 does business.

30
31 2. Sanctions, denial, revocation or suspension of license.
32 The Secretary of State shall sanction, deny, revoke or suspend a
33 license under the following conditions.

34
35 A. The Secretary of State may deny an application for a
36 license, revoke or suspend an outstanding license or place
37 on probation a person whose license has been suspended or
38 reprimand a licensee for any of the following reasons:

39 (1) Unfitness of an applicant or licensee under
40 standards set out in this section or under rules of the
41 Secretary of State;

42
43 (2) Material misrepresentation in any application or
44 other information filed under this section or rules of
45 the Secretary of State;

46
47 (3) Failure to comply with this section or any rules
48 adopted by the Secretary of State; or
49

2 (4) Failure to maintain the qualifications for a
3 license.

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

10 Rules adopted pursuant to this section are routine technical
11 rules pursuant to Title 5, chapter 375, subchapter II-A.

12 Sec. 5. 10 MRSA §1173, as enacted by PL 1975, c. 573, is
13 amended to read:

16 §1173. Attorney General and civil remedies

18 1. Civil remedies. Any motor-vehicle-dealer-or-franchisee,
19 who-has-been-damaged-by-reason-of-a-violation-of-a-provision-of
20 this-chapter,-may-bring-an-action-to-enjoin-such-violations-and
21 to-recover-any-damages-arising-therefrom franchisee or motor
22 vehicle dealer who suffers financial loss of money or property,
23 real or personal, or who has been otherwise adversely affected as
24 a result of the use or employment by a franchisor of an unfair
25 method of competition or an unfair or deceptive act or any
26 practice declared unlawful by this chapter may bring an action
27 for damages and equitable relief, including injunctive relief.
28 When the franchisee or dealer prevails, the court shall award a
29 sum of 3 times the franchisee's or dealer's actual damages and
30 attorney's fees, regardless of the amount in controversy, and
31 assess costs against the opposing party. For the purpose of the
32 award of attorney's fees and costs, when the franchisee or dealer
33 is seeking injunctive or other relief, the franchisee or dealer
34 may be considered to have prevailed when a judgment or other
35 order providing equitable relief is entered in its favor. A final
36 judgment, order or decree rendered against a person in any civil,
37 criminal or administrative proceeding under the United States
38 antitrust laws, under the Federal Trade Commission Act, under the
39 Maine Revised Statutes or under this chapter shall-be is regarded
40 as prima facie evidence against such the person subject to the
41 conditions set forth in the United States antitrust laws, (15
42 U.S.C.-16) 15 United States Code, Section 16.

44 Sec. 6. 10 MRSA §1173-A is enacted to read:

46 §1173-A. Arbitration; mediation

48 A franchise agreement may stipulate that a dispute arising
49 under a franchise agreement or under this chapter may be
50 submitted to mediation or nonbinding arbitration. A franchise

2 agreement may not require that a dispute be submitted to binding
3 mediation or arbitration. Any mediation or arbitration
4 proceeding must be under such terms and conditions as are
5 established between the franchisor and franchisee, except that
6 the mediation or arbitration proceeding must occur in this State
7 pursuant to the notice and hearing requirements in the Maine
8 Uniform Arbitration Act. Notwithstanding any agreement to engage
9 in nonbinding arbitration or mediation, at the conclusion of the
10 proceedings, the franchisee is entitled to file an action in any
11 court in this State in accordance with section 1185. The results
12 of the nonbinding mediation or arbitration are not admissible in
13 the action.

14 **Sec. 7. 10 MRSA §1174, sub-§3, ¶¶A and B,** as enacted by PL
15 1975, c. 573, are amended to read:

16
17 A. To refuse to deliver in reasonable quantities and within
18 a reasonable time after receipt of a dealer's order, to any
19 motor vehicle dealer having a franchise or contractual
20 arrangement for the retail sale of new motor vehicles sold
21 or distributed by such a manufacturer, distributor,
22 wholesaler, distributor branch or division, factory branch
23 or division, any such motor vehicles as--are or parts or
24 accessories to motor vehicles covered by such a franchise or
25 contract specifically publicly advertised by such a
26 manufacturer, distributor, wholesaler, distributor branch or
27 division, factory branch or division, or wholesale branch or
28 division to be available for immediate delivery,--provided,
29 however, or actually being delivered. The delivery to
30 another dealer of a motor vehicle of the same model and
31 similarly equipped as the vehicle ordered by a motor vehicle
32 dealer who has not received delivery of the motor vehicle
33 but who has placed an order for the vehicle prior to the
34 order of the dealer receiving the vehicle is evidence of a
35 delayed delivery of or refusal to deliver a new motor
36 vehicle to a motor vehicle dealer within a reasonable time
37 without cause, except that the failure to deliver any motor
38 vehicle shall is not be considered a violation of this
39 chapter if such the failure is due to an act of God, work
40 stoppage or delay due to a strike or labor difficulty,
41 shortage of materials, freight embargo or other cause over
42 which the manufacturer, distributor, wholesaler, or any
43 agent thereof--shall-have of the manufacturer, distributor or
44 wholesaler has no control. A separate dealer agreement is
45 not required of a new motor vehicle dealer already a party
46 to a dealer agreement or franchise agreement for the retail
47 sale of any particular new motor vehicle model made or
48 distributed by a manufacturer, distributor, wholesaler,
distributor branch or division, factory branch or division,

2 wholesale branch or division or officer, agent or other
3 representative;

4 B. To coerce, or attempt to coerce, any a motor vehicle
5 dealer to enter into any an agreement with such a
6 manufacturer, distributor, wholesaler, distributor branch or
7 division, factory branch or division, ~~or~~ wholesale branch or
8 division, or officer, agent or other representative thereof,
9 or to do any other act prejudicial to said the dealer by
10 threatening to cancel any a franchise or any a contractual
11 agreement existing between such a manufacturer, distributor,
12 wholesaler, distributor branch or division, factory branch
13 or division, or wholesale branch or division, and said the
14 dealer ~~provided, however,~~ or by threatening to modify or
15 replace or by modifying and replacing a franchise agreement
16 or part of a franchise agreement with a succeeding franchise
17 agreement or part of a succeeding franchise agreement that
18 adversely alters the rights or obligations of a motor
19 vehicle dealer under an existing franchise agreement or
20 substantially impairs the sales, service obligations or
21 investment of the motor vehicle dealer, except that notice
22 in good faith to any a motor vehicle dealer of said that
23 dealer's violation of any the terms or provisions of such
24 the franchise or contractual agreement shall does not
25 constitute a violation of this chapter;

26 **Sec. 8. 10 MRSA §1174, sub-§3, ¶C-1 is enacted to read:**

27
28 C-1. To discriminate, directly or indirectly, against a
29 dealer or to take any action to terminate a dealer's
30 franchise based solely upon the results of a survey of a
31 dealer's customers conducted on behalf of a manufacturer,
32 distributor, wholesaler, distributor branch or division,
33 factory branch or division, wholesale branch or division or
34 officer or agent that is intended or otherwise purports to
35 measure the performance of a dealer;

36
37 **Sec. 9. 10 MRSA §1174, sub-§3, ¶D, as repealed and replaced by**
38 **PL 1981, c. 331, §5, is amended to read:**

39
40 D. To resort to or use any false or misleading
41 advertisement in connection with his the business as such a
42 manufacturer, distributor, wholesaler, distributor branch or
43 division, factory branch or division, ~~or~~ wholesaler branch
44 or division, or officer, agent or other representative
45 thereof, or to force any dealer or association of dealers
46 formed to advertise the sale of new motor vehicles to
47 participate in any advertising campaign or contest, or to
48 purchase any promotional materials, display devices, or

2 display decorations or materials at the expense of the new
motor vehicle dealer;

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

6
7 F. To offer to sell, or lease or to sell or lease any a new
8 motor vehicle to any a person, except a wholesaler or
9 distributor, at a lower actual price ~~therefor~~ than the
10 actual price offered and charged to a motor vehicle dealer
11 for the same model vehicle similarly equipped or to utilize
12 any device ~~which~~ that results in such a lesser actual price;

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

16
17 I. To prevent or attempt to prevent by contract or
18 otherwise any a motor vehicle dealer or any an officer,
19 partner or stockholder of any a motor vehicle dealer from
20 selling or transferring any part of the interest of any of
21 them to any other person or persons or party or parties,
22 ~~provided,--however,~~ except that no a dealer, officer, partner
23 or stockholder ~~shall~~ does not have the right to sell,
24 transfer or assign the franchise or power of management or
25 control ~~thereunder~~ without the consent of the manufacturer,
26 distributor or wholesaler except that such the consent shall
27 may not be unreasonably withheld.

28
29 A franchisor may not exercise a right of first refusal or
30 other right to acquire a motor vehicle franchise from a
31 franchisee as a means to influence the consideration or
32 other terms offered by a person in connection with the
33 acquisition of the franchise or to influence a person to
34 refrain from entering into, or to withdraw from,
35 negotiations for the acquisition of the franchise.

36
37 A franchisor may not exercise a right of first refusal or
38 other right to acquire a franchise from a franchisee unless
39 the franchisor:

40
41 (1) At the election of the franchisee, assumes the
42 lease for or acquires the real property on which the
43 franchise is conducted on the same terms as those on
44 which the real property or lease was to be sold or
45 transferred to the acquiring transferee in connection
46 with the sale of the franchise, unless otherwise agreed
47 to by the franchisee and the franchisor;

2 (2) Assumes all of the obligations of the underlying
3 agreement or proposal that entitles the franchisor to
4 exercise the right of first refusal; and

5 (3) Reimburses the acquiring transferee of the motor
6 vehicle franchise for the reasonable expenses paid or
7 incurred by the franchisee in evaluating and
8 investigating the franchise and negotiating and
9 pursuing the acquisition of the franchisee prior to the
10 franchisor's exercise of the right of first refusal or
11 other right to acquire the franchise. For purposes of
12 this subsection, expenses to evaluate and investigate
13 the franchise means, in addition to any other expenses
14 associated with the evaluation and investigation of the
15 franchise, legal and accounting expenses and expenses
16 associated with the evaluation and investigation of any
17 real property on which the franchise is conducted,
18 including, but not limited to, expenses associated with
19 title examinations, environmental assessments and other
20 expenses directly related to the acquisition or lease
21 of the real property by the acquiring transferee. Upon
22 reimbursement, any title reports or other reports or
23 studies received by the acquiring transferee as a
24 result of the evaluation or investigation of the
25 franchise or the real property on which the franchise
26 is conducted must be provided to the franchisor. The
27 acquiring transferee shall submit an itemized list of
28 the expenses to be reimbursed along with supporting
29 documents, if any, to the franchisor no later than 30
30 days after receipt of a written request for an itemized
31 list of the expenses from the franchisor. The
32 franchisor shall make payment within 30 days of receipt
33 of the itemized list.

34 (4) For purposes of this section, "acquiring
35 transferee" means the person who made the offer that
36 entitles the franchisor to exercise a right of first
37 refusal;

38
39 **Sec. 12. 10 MRSA §1174, sub-§3, ¶K, as amended by PL 1981, c.**
40 **470, Pt. A, §23, is further amended to read:**

41
42 K. To compete with a motor vehicle dealer operating under
43 an agreement or franchise from the manufacturer, distributor
44 or wholesaler in the relevant market area, the area to be
45 determined exclusively by equitable principles, ~~provided,~~
46 except that a manufacturer, distributor or wholesaler shall
47 is not be-deemed considered to be competing when operating a
48 dealership either temporarily for a reasonable period, in
49 any case not to exceed one year, or in a bona fide
50 dealership either temporarily for a reasonable period, in

2 relationship in which an independent person has made a
3 significant investment subject to loss in the dealership and
4 can reasonably expect to acquire full ownership of the
5 dealership on reasonable terms and conditions; ~~and provided~~
6 except that a distributor shall is not be deemed considered
7 to be competing when a wholly owned subsidiary corporation
8 or the distributor sells motor vehicles at retail, if, for
9 at least 3 years prior to January 1, 1975, the subsidiary
10 corporation has been a wholly owned subsidiary of the
11 distributor and engaged in the sale of motor vehicles at
12 retail; or

13 **Sec. 13. 10 MRSA §1174, sub-§3, ¶M,** as enacted by PL 1981, c.
14 331, §6, is amended to read:

15 M. To require ~~any new motor vehicle dealer, coerce or~~
16 attempt to coerce a franchisee to refrain from participation
17 in the management of, investment in, or the acquisition of
18 any other line of new motor vehicle or related products as
19 long as the franchisee maintains a reasonable line of credit
20 for each franchise and the franchisee remains in substantial
21 compliance with reasonable facilities requirements of the
22 franchisor. The reasonable facilities requirements do not
23 include any requirement that a franchisee establish or
24 maintain exclusive facilities, personnel or display space
25 when the requirements are unreasonable considering current
26 economic conditions and are not otherwise justified by
27 reasonable business considerations. The burden of proving
28 that current economic conditions or reasonable business
29 considerations justify exclusive facilities is on the
30 franchisor;

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

33 P. To terminate, fail to renew or refuse to continue any
34 franchise relationship with a licensed new motor vehicle
35 dealer, notwithstanding the terms, provisions or conditions
36 of any agreement or franchise or the terms or provisions of
37 any waiver, unless good cause exists. Good cause may not be
38 shown or based solely by the desire of the manufacturer,
39 distributor, wholesaler, distributor branch or division or
40 officer, agent or other representative for market
41 penetration. Good cause shall-exist exists for the purposes
42 of a termination, cancellation, nonrenewal or noncontinuance
43 when:

44 (1) There is a failure by the new motor vehicle dealer
45 to comply with a provision of the franchise, which
46 provision is both reasonable and of material

2 significance to the franchise relationship, provided
3 that as long as compliance on the part of the new motor
4 vehicle dealer is reasonably possible, and the
5 manufacturer first acquired actual or constructive
6 knowledge of the failure not more than 180 days prior
7 to the date on which notification is given pursuant to
8 paragraph R;

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

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

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

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

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

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

42 **Sec. 15. 10 MRSA §1174, sub-§3, ¶Q,** as enacted by PL 1981, c.
43 331, §6, is amended to read:

44 Q. To cancel, terminate, fail to renew or refuse to
45 continue any franchise relationship with a licensed new
46 motor vehicle dealer, notwithstanding the terms, provisions
47 or conditions of any agreement or franchise or
48 notwithstanding the terms or provisions of any waiver, based

on any of the following items which that do not constitute good cause:

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

(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, except that the manufacturer may require that the dealer stock a reasonable supply of parts or accessories as required to perform campaign, recall or warranty work, and except that this provision is not intended to modify or ~~supersede~~ supersede any requirement of the franchise that dealers market a representative line of those motor vehicles which that the manufacturer is publicly advertising;

(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 dealer's spouse, son or daughter, and the manufacturer shall ~~give~~ gives effect to such that 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 ease may be~~. This paragraph does not authorize any changes in ownership which ~~would~~ that have the effect of the sale of the franchise without the manufacturer's or distributor's written consent. This consent shall

2 may not be unreasonably withheld. The burden of
establishing the reasonableness is on the manufacturer
or distributor; e#

4
6 (4-A) The fact that there is a survey or surveys of a
dealer's customers conducted by or on behalf of the
manufacturer, distributor, wholesaler, distributor
branch or distributor representative, factory branch or
factory representative or that is intended or otherwise
purports to measure the performance of a dealer; or

12 (5) The manufacturer shall--have has 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;

18 **Sec. 16. 10 MRSA §1174, sub-§3, ¶S,** as enacted by PL 1981, c.
20 331, §6, is amended to read:

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

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

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

32 (3) Equipment and furnishings purchased from the
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,
cancellation or nonrenewal is due to a failure of
performance of the new motor vehicle dealer in sales or
service, and:~~

40 (a) ~~The new motor vehicle dealer is leasing the
dealership facilities from a lessor other than the
42 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~~

2 ~~(b)---If the new motor vehicle dealer owns the~~
3 ~~facilities, the manufacturer shall pay the new~~
4 ~~motor vehicle dealer a sum equivalent to the~~
5 ~~reasonable rental value of the facilities for one~~
6 ~~year.~~

8 If the involuntary termination, cancellation or nonrenewal
9 is due to a failure of performance of the new motor vehicle
10 dealer in sales or service, and the new motor vehicle dealer
11 is leasing the dealership facilities from a lessor other
12 than the manufacturer, the manufacturer shall pay the new
13 motor vehicle dealer a sum equivalent to the rent for the
14 unexpired term of the lease or one year's rent, whichever is
15 less or if the new motor vehicle dealer owns the facilities,
16 the manufacturer shall pay the new motor vehicle dealer a
17 sum equivalent to the reasonable rental value of the
18 facilities for one year.

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

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

36 **Sec. 17. 10 MRSA §1174, sub-§3, ¶T** is enacted to read:

38 T. To distribute or make available for sale, lease or any
39 other transaction that results in the registration and
40 titling of a new motor vehicle by any person other than a
41 new motor vehicle dealer who has a franchise with that
42 manufacturer, distributor, wholesaler, distributor branch or
43 division, factory branch or division or wholesale branch or
44 division.

46 **Sec. 18. 10 MRSA §1174, sub-§4, ¶¶B and C,** as amended by PL
47 1995, c. 269, §1, are further amended to read:

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

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

10 **Sec. 19. 10 MRSA §1174, sub-§4, ¶D**, as enacted by PL 1995, c.
12 269, §1, is amended to read:

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

18 **Sec. 20. 10 MRSA §1174, sub-§4, ¶E** is enacted to read:

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

34 **Sec. 21. 10 MRSA §1174-C, sub-§1, ¶A**, as enacted by PL 1981,
36 c. 331, §7, is amended to read:

38 A. Any A designated family member of a deceased or
incapacitated new motor vehicle dealer, which family member
has been designated under the will of the dealer or in
40 writing to the manufacturer, distributor, factory branch,
42 factory representative or importer, may succeed the dealer
44 in the ownership or operation of the dealership under the
existing franchise or distribution agreement, ~~provided that~~
as long as the designated family member gives the
46 manufacturer, distributor, factory branch, factory
representative or importer of new motor vehicles written
notice of the intention to succeed to the dealership within
48 120 days of the dealer's death or incapacity, and unless
there exists good cause for refusal to honor the succession

2 on the part of the manufacturer, factory branch, factory
representative, distributor or importer.

4 **Sec. 22. 10 MRSA §1174-C, sub-§1, ¶C** is enacted to read:

6 C. In addition to a designated family member, a person who
8 has been a general manager for a dealer for at least 5 years
10 may be designated by that dealer to succeed in dealer
ownership and the designee has the same rights and status as
a designated family member.

12 **Sec. 23. 10 MRSA §1176**, as amended by PL 1995, c. 65, Pt. A,
14 §16 and affected by §153 and Pt. C, §15, is further amended to
read:

16 **§1176. Warranty**

18 If a motor vehicle franchisor requires or permits a motor
20 vehicle franchisee to perform labor or provide parts in
satisfaction of a warranty created by the franchisor, the
22 franchisor shall properly and promptly fulfill its warranty
obligations, in the case of motor vehicles over 10,000 pounds
24 gross vehicle weight rating, shall adequately and fairly
compensate the franchisee for any parts so provided and, in the
26 case of all other motor vehicles, shall reimburse the franchisee
for any parts so provided at the retail rate customarily charged
by that franchisee for the same similar parts when not provided
28 in satisfaction of a warranty. A dealer may establish a retail
rate, for purposes of warranty reimbursement, by calculating the
30 markup ratio of all parts sold at retail for that franchise for
the most recently completed calendar month and multiplying that
32 markup ratio by the amount paid for each part at wholesale. The
calculation must be a ratio, the numerator of which is the total
34 price paid by the franchisee for those same parts and the
denominator of which is the total price of all parts provided at
36 retail for that franchise. A dealer utilizing this method may
not recalculate the average retail markup more than twice in any
38 12 consecutive months. Further, the franchisor shall reimburse
the franchisee for any labor so performed at the posted hourly
40 retail rate customarily charged by that franchisee, multiplied by
the time component for such labor as is set forth in the labor
42 manual customarily used by the franchisee for the same similar
labor when not performed in satisfaction of a warranty, ~~provided~~
44 that as long as the franchisee's rate for labor not performed in
satisfaction of a warranty is routinely posted in a place
46 conspicuous to its service customer. A franchisor is not
required to pay the price charged by the dealer to retail
48 customers for parts of systems, appliances, furnishings,
accessories and fixtures of a motor home as defined in Title
50 29-A, section 101, subsection 40 that are designed, used and

2 maintained primarily for nonvehicular residential purposes. Any
3 A claim made by a franchisee for compensation for parts provided
4 or for reimbursement for labor performed in satisfaction of a
5 warranty must be paid within 30 days of its approval. All the
6 claims must be either approved or disapproved within 30 days of
7 their receipt. When any--such a claim is disapproved, the
8 franchisee that submitted it must be notified in writing of its
9 disapproval within that period, together with the specific
10 reasons for its disapproval. No A franchisor may not, by
11 agreement, by restriction upon reimbursement, or otherwise,
12 restrict the nature or extent of labor performed or parts
13 provided so that such the restriction impairs the franchisee's
14 ability to satisfy a warranty created by the franchisor by
15 performing labor in a professional manner or by providing parts
16 required in accordance with generally accepted standards.

17 In any a claim that is disapproved by the manufacturer, and
18 the dealer brings legal action to collect the disapproved claim
19 and is successful in the action, the court shall award the dealer
20 the cost of the action together with reasonable attorney
21 attorney's fees. Reasonable attorney attorney's fees shall--be
22 are determined by the value of the time reasonably expended by
23 the attorney and not by the amount of the recovery on behalf of
24 the dealer.

25 It is unlawful for a franchisor, manufacturer, factory
26 branch, distributor branch or subsidiary to own, operate or
27 control, either directly or indirectly, a motor vehicle warranty
28 or service facility located in the State. A franchisor may not
29 authorize or permit a person to perform warranty service repairs
30 on motor vehicles, except warranty service repairs: by a
31 franchisee with whom the franchisor has entered into a franchise
32 agreement for the sale and service of the franchisor's motor
33 vehicles; by a franchisee with whom the franchisor has entered
34 into a franchise agreement for the service of the franchisor's
35 trucks with a gross vehicle weight of at least 15,000 pounds; or
36 on motor vehicles owned by a government entity.

37
38 **Sec. 24. 10 MRSA §1176-A is enacted to read:**

39
40 **§1176-A. Audits**

41
42 An audit conducted by a franchisor of a franchisee's
43 manufacturer rebate, incentive or other similar program must be
44 commenced and completed within 6 months of the date of the
45 warranty claim or rebate, incentive or other program sought to be
46 audited. Failure to commence and complete an audit within the
47 6-month period is an absolute bar to a manufacturer's claim for
48 reimbursement, set-off or other recovery or assessment relating

2 to the warranty claim or rebate, incentive or other program
3 sought to be audited.

4 **Sec. 25. 10 MRSA §1182**, as enacted by PL 1975, c. 573, is
5 amended by adding at the end a new paragraph to read:

6
7 The Legislature finds that the manufacture, distribution and
8 sale of motor vehicles in the State vitally affects the general
9 economy of the State and the public interest and public welfare;
10 that the manufacturers of motor vehicles whose physical
11 manufacturing facilities are not located within the State and
12 distributors are doing business in the State through their
13 control over and relationship and transactions with their dealers
14 in the State; that the geographical location of the State makes
15 it necessary to ensure the availability of motor vehicles and
16 parts and dependable service for motor vehicles throughout the
17 State to protect and preserve the transportation system, the
18 public safety and welfare and the investments of its residents.
19 The Legislature declares, on the basis of these findings, that it
20 is necessary to regulate and to license motor vehicle
21 manufacturers and distributors and their branches and
22 representatives, motor vehicle dealers and any other person
23 engaged in the business of selling or purchasing vehicles in the
24 State in order to prevent frauds, impositions and other abuses
25 against residents and to protect and preserve the economy, the
26 investments of residents, the public safety and the
27 transportation system of the State.

28
29 **Sec. 26. 10 MRSA §1183**, as enacted by PL 1975, c. 573, is
30 amended by adding at the end a new paragraph to read:

31
32 Notwithstanding any provision in a franchise agreement, if a
33 dispute covered by this chapter or any other law is submitted to
34 mediation or arbitration, the time for the dealer to file a
35 complaint, action, petition or protest, is tolled until the
36 mediation or arbitration proceeding is completed.

38 SUMMARY

39
40 This bill amends several provisions of the motor vehicle
41 dealer franchise laws to address the changing business
42 environment among motor vehicle dealers, distributors and
43 manufacturers.

44
45 The bill does the following:

- 46
47 1. It clarifies several definitions;

- 2 2. It precludes a manufacturer from using a factory finance
branch to engage in conduct that would otherwise be illegal;
- 4 3. It licenses manufacturers, establishes registration and
fee requirements and authorizes rules by the Secretary of State;
- 6 4. It clarifies provisions concerning damages and remedies;
- 8 5. It encourages nonbinding arbitration and mediation and
10 confirms the right of a dealer to bring an action in Superior
Court;
- 12 6. It clarifies that a franchised dealer is entitled to
14 receive all makes and models of vehicles that the manufacturer
produces for that particular franchise;
- 16 7. It includes a provision that to cancel or to modify or
18 replace a franchise agreement with a succeeding franchise
agreement is unfair or coercive conduct;
- 20 8. It prohibits discriminatory conduct or threats to
22 terminate a franchise based solely on the results of manufacturer
surveys;
- 24 9. It amends the prohibition against mandatory
26 participation in manufacturer advertisement schemes to include
associations of dealers;
- 28 10. It establishes the standards that apply when a
30 manufacturer exercises a right of first refusal in the transfer
of a franchise to ensure that the actual agreement being assumed
32 in the right of first refusal is the identical underlying
agreement that had been made with a proposed transferee. It also
34 provides basic protections for the proposed transferee;
- 36 11. It clarifies that a manufacturer shall distribute or
make available its vehicles only through dealers who have a
38 franchise with that manufacturer;
- 40 12. It protects the rights of dealers to dual franchises
and establishes criteria if a manufacturer imposes exclusive
42 facilities requirements on a franchisee;
- 44 13. It establishes that it is not good cause for
termination to rely exclusively on manufacturer surveys;
- 46 14. It clarifies that a dealer must disclose in the course
48 of selling a vehicle that that vehicle has been operated for
demonstration purposes;
- 50

2 15. It includes long-standing dealership general managers
in survivorship rights in transfer of a dealership to a successor
in interest;

4

6 16. It amends the warranty reimbursement provisions of the
franchise laws. The bill clarifies the standards and applies a
clear formula as one method of calculating appropriate
8 reimbursement rates. The bill also establishes that warranty
repair may be conducted only by franchised dealers;

10

12 17. It establishes standards to be applied in manufacturer
audits; and

14

16 18. It clarifies that the public policy of the State is the
protection of the transportation system, the public safety and
the financial interests of the citizens in relation to the
18 automobile industry. The bill also provides direction to the
courts in response to the comments of the First Circuit in Acadia
Motors, Inc. v. Ford Motor Credit Company, 44 F.3d 1050 C.A. 1st,
20 1995, that the legislative purpose behind the elements of the law
was unclear.