

MAINE STATE LEGISLATURE

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2 L.D. 1931

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6 BUSINESS AND ECONOMIC DEVELOPMENT

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14 STATE OF MAINE
16 SENATE
119TH LEGISLATURE
SECOND REGULAR SESSION

18 COMMITTEE AMENDMENT "A" to S.P. 681, L.D. 1931, Bill, "An
20 Act to Amend the Franchise Law"

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

26 'Sec. 1. 10 MRSA §1174, sub-§3, ¶F-1 is enacted to read:

28 F-1. To vary or change the cost or the markup in any
30 fashion or through any device whatsoever to any dealer for
any motor vehicle of that line make based on:

32 (1) The purchase by any dealer of furniture or other
34 fixtures from any particular source; or

36 (2) The purchase by any dealer of computers or other
technology from any particular source;

38 Sec. 2. 10 MRSA §1174, sub-§3, ¶I, as amended by PL 1997, c.
40 521, §12, is further amended to read:

42 I. To prevent or attempt to prevent by contract or
otherwise a motor vehicle dealer or an officer, partner or
44 stockholder of a motor vehicle dealer from selling or
transferring any part of the interest of any of them to any
other person or persons or party or parties, except that a

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dealer, officer, partner or stockholder does not have the right to sell, transfer or assign the franchise or power of management or control under that franchise without the consent of the manufacturer, distributor or wholesaler, which may not be unreasonably withheld.

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

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

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

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

(3) The franchisor reimburses the acquiring transferee of the motor vehicle franchise for the reasonable expenses paid or incurred by the transferee in evaluating and investigating the franchise and negotiating and pursuing the acquisition of the franchise prior to the franchisor's exercise of the right of first refusal or other right to acquire the franchise. For purposes of this subsection, expenses to evaluate and investigate the franchise include, in addition to any other expenses associated with the evaluation and investigation of the franchise, legal and accounting expenses and expenses associated with the evaluation and investigation of any real property on which the franchise is conducted, including, but not limited to, expenses associated with title examinations, environmental assessments and other expenses directly related to the acquisition or lease of the real property by the acquiring transferee. Upon reimbursement, any title reports or other reports or

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2 studies received by the acquiring transferee as a
3 result of the evaluation or investigation of the
4 franchise or the real property on which the franchise
5 is conducted must be provided to the franchisor. The
6 acquiring transferee shall submit an itemized list of
7 the expenses to be reimbursed along with supporting
8 documents, if any, to the franchisor no later than 30
9 days after receipt of a written request for an itemized
10 list of the expenses from the franchisor. The
11 franchisor shall make payment within 30 days after the
12 exercise of the right of first refusal.

13 ~~For purposes of this paragraph, "acquiring transferee"~~
14 ~~means the person who made the offer that entitles the~~
15 ~~franchisor to exercise a right of first refusal.~~

16 For purposes of this paragraph, "acquiring transferee" means
17 the person who made the offer that entitles the franchisor
18 to exercise a right of first refusal.

19 The right of first refusal does not apply in any right of
20 succession established in section 1174-C unless the
21 franchisor and either the franchisee, if the franchisee is
22 not deceased or incapacitated, or, if the franchisee is
23 deceased or incapacitated, the designated family member or
24 other person authorized to succeed the franchisee pursuant
25 to section 1174-C, subsection 1, paragraphs A to C agree to
26 the exercise of a right of first refusal;

27 **Sec. 3. 10 MRSA §1176, first ¶**, as amended by PL 1995, c. 65,
28 Pt. A, §16 and affected by §153 and Pt. C, §15, is further
29 amended to read:

30 If a motor vehicle franchisor requires or permits a motor
31 vehicle franchisee to perform labor or provide parts in
32 satisfaction of a warranty created by the franchisor, the
33 franchisor shall properly and promptly fulfill its warranty
34 obligations, in the case of motor vehicles over 10,000 pounds
35 gross vehicle weight rating, shall adequately and fairly
36 compensate the franchisee for any parts so provided and, in the
37 case of all other motor vehicles, shall reimburse the franchisee
38 for any parts so provided at the retail rate customarily charged
39 by that franchisee for the same parts when not provided in
40 satisfaction of a warranty. A franchisor may not otherwise
41 recover its cost for reimbursing a franchisee for parts and labor
42 pursuant to this section by any means. This section is not
43 intended to affect a franchisor's right to set prices for its
44 products on a national basis. Further, the franchisor shall
45 reimburse the franchisee for any labor so performed at the retail

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rate customarily charged by that franchisee for the same labor when not performed in satisfaction of a warranty; provided that the franchisee's rate for labor not performed in satisfaction of a warranty is routinely posted in a place conspicuous to its service customer. A franchisor is not required to pay the price charged by the dealer to retail customers for parts of systems, appliances, furnishings, accessories and fixtures of a motor home as defined in Title 29-A, section 101, subsection 40 that are designed, used and maintained primarily for nonvehicular residential purposes. Any claim made by a franchisee for compensation for parts provided or for reimbursement for labor performed in satisfaction of a warranty must be paid within 30 days of its approval. All the claims must be either approved or disapproved within 30 days of their receipt. When any such claim is disapproved, the franchisee that submitted it must be notified in writing of its disapproval within that period, together with the specific reasons for its disapproval. No franchisor may, by agreement, by restriction upon reimbursement, or otherwise, restrict the nature or extent of labor performed or parts provided so that such restriction impairs the franchisee's ability to satisfy a warranty created by the franchisor by performing labor in a professional manner or by providing parts required in accordance with generally accepted standards.

Sec. 4. 10 MRSA §1181, as enacted by PL 1975, c. 573, is amended to read:

§1181. Discounts and other inducements

In connection with a sale of a motor vehicle or vehicles to the State or to any political subdivision thereof of the State, ~~no~~ a manufacturer, distributor or, wholesaler shall or corporate affiliate may not offer any discounts, refunds or any other similar type of inducement to any dealer without making the same offer or offers to all other of its dealers within the relevant market area, and if such inducements are made, the manufacturer, distributor or wholesaler shall give simultaneous notice thereof of the inducements to all of its dealers within the relevant market area.'

SUMMARY

This amendment replaces the original bill. It amends certain provisions of the law pertaining to automobile manufacturers and dealers. It adds an additional action that is considered to be an unfair method of competition and deceptive practice. It puts certain limits on a franchisor's ability to exercise a right of first refusal. It adds a corporate affiliate of a manufacturer, distributor or wholesaler to the list that can

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2 not offer discounts without making the same offer to all dealers
in the market area. Finally, it provides that a franchisor can
4 not recover its cost for reimbursing a franchisee for parts and
labor provided in satisfaction of a warranty.

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