

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1294

S.P. 425

In Senate, March 11, 2003

An Act To Amend the Motor Vehicle Franchise Law

Reference to the Committee on Business, Research 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 Senator LaFOUNTAIN of York.
Cosponsored by Representative O'NEIL of Saco and
Senators: BROMLEY of Cumberland, President DAGGETT of Kennebec, MAYO of
Sagadahoc, SHOREY of Washington. Representatives: CLOUGH of Scarborough, O'BRIEN
of Augusta, PELLON of Machias, SULLIVAN of Biddeford.

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

2
3 **Sec. 1. 5 MRSA §12004-G, sub-§6-B** is enacted to read:

4 **6-B.** Maine Motor \$100/day 10 MRSA
5 Commerce and Vehicle §1187
6 and Trade Franchise
7 Board

8
9 **Sec. 2. 10 MRSA c. 204** is amended by repealing the chapter
10 headnote and enacting the following in its place:

11 CHAPTER 204

12 BUSINESS PRACTICES BETWEEN MOTOR
13 VEHICLE MANUFACTURERS, DISTRIBUTORS
14 AND DEALERS

15 SUBCHAPTER 1

16 REGULATION OF BUSINESS PRACTICES BETWEEN
17 MOTOR VEHICLE MANUFACTURERS,
18 DISTRIBUTORS AND DEALERS

19 **Sec. 3. 10 MRSA §1171, sub-§1-C** is enacted to read:

20 1-C. Board. "Board" means the Maine Motor Vehicle
21 Franchise Board created pursuant to section 1187.

22 **Sec. 4. 10 MRSA §1173-A**, as enacted by PL 1997, c. 521, §7,
23 is repealed.

24 **Sec. 5. 10 MRSA §1174, sub-§3, ¶B**, as amended by PL 1997, c.
25 521, §8, is further amended to read:

26 B. To coerce, or attempt to coerce, a motor vehicle dealer
27 to enter into an agreement with that manufacturer,
28 distributor, distributor branch or division, factory branch
29 or division, wholesale branch or division or officer, agent
30 or other representative thereof, or to do any other act
31 prejudicial to the dealer by threatening to cancel a
32 franchise or a contractual agreement existing between that
33 manufacturer, distributor, distributor branch or division,
34 factory branch or division or wholesale branch or division
35 and that dealer or by threatening or attempting to modify a
36 franchise during the term of the franchise or upon its
37 renewal, if the modification substantially and adversely
38 affects the motor vehicle dealer's rights, obligations,
39 investment or return on investment, without giving 60 365
40 days' written notice by certified mail of the proposed

2 modification to the motor vehicle dealer, unless the
3 modification is required by law or court board order.
4 Within the 60-day 365-day notice period, the motor vehicle
5 dealer may file with the Superior-Court-in-the-county-where
6 the-dealership-is-located board and serve notice upon the
7 manufacturer a protest requesting a determination of whether
8 there is good cause for permitting the proposed
9 modification. The manufacturer has the burden of proving
10 good cause. The court board shall promptly schedule a
11 hearing and decide the matter within 180 days from the date
12 the protest is filed. Multiple protests pertaining to the
13 same proposed modification must be consolidated for
14 hearing. The proposed modification may not take effect
15 pending the determination of the matter. In determining
16 whether there is good cause for permitting a proposed
17 modification, any relevant factors must be considered,
18 including, but not limited to:

19 (1) The reasons for the proposed modification;

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

23 (3) Whether the proposed modification will have a
24 substantial and adverse effect upon the motor vehicle
25 dealer's investment or return on investment;

26 (4) Whether the proposed modification is in the public
27 interest;

28 (5) Whether the proposed modification is necessary to
29 the orderly and profitable distribution; and

30 (6) Whether the proposed modification is offset by
31 other modifications beneficial to the motor vehicle
32 dealer.

33 Notice in good faith to a motor vehicle dealer of that
34 dealer's violation of the terms or provisions of the
35 franchise or contractual agreement does not constitute a
36 violation of this chapter;

37 **Sec. 6. 10 MRSA §1174, sub-§3, ¶M,** as amended by PL 1997, c.
38 521, §14, is further amended to read:

39 M. To require, coerce or attempt to coerce a franchisee to
40 refrain from participation in the management of, investment
41 in or the acquisition of any other line of new motor vehicle
42 or related products as long as the franchisee maintains a
43

2 reasonable line of credit for each franchise and the
franchisee remains in substantial compliance with reasonable
4 facilities requirements of the franchisor. The reasonable
facilities requirements may not include any requirement that
6 a franchisee establish or maintain exclusive facilities,
personnel or display space ~~when--the--requirements--are
unreasonable--considering--current--economic--conditions--and--are
8 not---otherwise---justified---by---reasonable---business
considerations,--The--burden--of--proving--that--current--economic
10 conditions--or--reasonable--business--considerations--justify
exclusive--facilities--is--on--the--franchisor;~~

12 **Sec. 7. 10 MRSA §1174, sub-§4, ¶E**, as enacted by PL 1997, c.
14 521, §22, is amended to read:

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

28 **Sec. 8. 10 MRSA §1174-C, sub-§1, ¶A**, as amended by PL 1997, c.
30 521, §23, is further amended to read:

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

48 **Sec. 9. 10 MRSA §1176, first ¶**, as amended by PL 1995, c. 65,
Pt. A, §16 and affected by §153 and Pt. C, §15, is further
50 amended to read:

2 If a motor vehicle franchisor requires or permits a motor
vehicle franchisee to perform labor or provide parts in
4 satisfaction of a warranty created by the franchisor, the
franchisor shall properly and promptly fulfill its warranty
6 obligations, in the case of motor vehicles over 10,000 pounds
gross vehicle weight rating, shall adequately and fairly
8 compensate the franchisee for any parts so provided and, in the
case of all other motor vehicles, shall reimburse the franchisee
10 for any parts so provided at the retail rate customarily charged
by that franchisee for the same parts when not provided in
12 satisfaction of a warranty. A franchisor may not otherwise
recover its costs for reimbursing a franchisee for parts and
14 labor pursuant to this section. For purposes of this section,
the retail rate customarily charged by the franchisee for parts
16 may be established by submitting to the franchisor 100 sequential
nonwarranty customer-paid service repair orders or 60 days of
18 nonwarranty customer-paid service repair orders, whichever is
less in terms of total cost, covering repairs made no more than
20 180 days before the submission and declaring the average
percentage markup. The average percentage markup so declared is
22 the retail rate, which goes into effect 30 days following the
declaration, subject to audit of the submitted repair orders by
24 the franchisor and adjustment of the average percentage markup
based on that audit. Only retail sales not involving warranty
26 repairs, not involving state inspection, not involving routine
maintenance such as changing the oil and oil filter and not
28 involving accessories may be considered in calculating the
average percentage markup. A franchisor may not require a
30 franchisee to establish the average percentage markup by an
unduly burdensome or time-consuming method or by requiring
32 information that is unduly burdensome or time-consuming to
provide, including, but not limited to, part-by-part or
34 transaction-by-transaction calculations. A franchisee may not
change the average percentage markup more than 2 times in one
36 calendar year. Further, the franchisor shall reimburse the
franchisee for any labor so performed at the retail rate
38 customarily charged by that franchisee for the same labor when
not performed in satisfaction of a warranty; ~~provided-that~~ as
40 long as the franchisee's rate for labor not performed in
satisfaction of a warranty is routinely posted in a place
42 conspicuous to its service customer. A franchisor is not
required to pay the price charged by the dealer to retail
44 customers for parts of systems, appliances, furnishings,
accessories and fixtures of a motor home as defined in Title
46 29-A, section 101, subsection 40 that are designed, used and
maintained primarily for nonvehicular residential purposes. Any
48 claim made by a franchisee for compensation for parts provided or
for reimbursement for labor performed in satisfaction of a
50 warranty must be paid within 30 days of its approval. All the
claims must be either approved or disapproved within 30 days

2 of their receipt. A claim may be submitted within 180 days after
3 the performance of services. When any--such a claim is
4 disapproved, the franchisee that submitted ~~it~~ the claim must
5 be notified in writing of ~~its~~ the claim's disapproval within that
6 period, together with the specific reasons for its disapproval.
7 No A franchisor may not, by agreement, by restriction upon
8 reimbursement, or otherwise, restrict the nature or extent of
9 labor performed or parts provided so that such restriction
10 impairs the franchisee's ability to satisfy a warranty created by
11 the franchisor by performing labor in a professional manner or by
12 providing parts required in accordance with generally accepted
standards.

14 **Sec. 10. 10 MRSA §1178, sub-§1**, as enacted by PL 1975, c. 573,
is amended to read:

16 **1. Agreements subject to this chapter.** Written or oral
17 agreements between a manufacturer, wholesaler or distributor with
18 a motor vehicle dealer including, but not limited to, the
19 franchise offering, the franchise agreement, sales agreements,
20 policies and procedures agreements, bulletins or manuals, sales
21 of goods, services or advertising, leases or mortgages of real or
22 personal property, promises to pay, security interests, pledges,
23 insurance contracts, advertising contracts, construction or
24 installation contracts, servicing contracts, and all other such
25 agreements in which the manufacturer, wholesaler or distributor
26 has any direct or indirect interest, ~~shall be~~ are subject to this
27 chapter.

30 **Sec. 11. 10 MRSA c. 204, sub-c. 2** is enacted to read:

32 **SUBCHAPTER 2**

34 **MAINE MOTOR VEHICLE FRANCHISE BOARD**

36 **§1187. Maine Motor Vehicle Franchise Board; established**

38 The Maine Motor Vehicle Franchise Board, as established in
39 Title 5, section 12004-G, subsection 6-B and referred to in this
40 chapter as "the board," is established for the purpose of
41 enforcing the provisions of this chapter.

42 **1. Membership.** The board consists of 7 members:

44 **A. Six members appointed by the Governor:**

46 (1) Four members who are or have been franchised new
48 motor vehicle dealers in the State of Maine;

50 (2) A member who is or has been an employee or
representative of a franchisor; and

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(3) A member of the public; and

B. One member appointed by the Secretary of State who is not and has not been either a motor vehicle dealer or manufacturer representative and who is an attorney employed by the Secretary of State and assigned to the Bureau of Motor Vehicles.

2. Chair. The member appointed by the Secretary of State is the chair of the board. The chair shall:

A. Act as the presiding officer in all matters that come before the board;

B. Make preliminary rulings on discovery and other questions;

C. Participate fully in board deliberations; and

D. Vote on the merits of complaints that come before the board only when necessary to break a tie.

3. Terms. Appointments to the board are for 5-year terms. A member may not serve more than 2 consecutive 5-year terms. The terms of the initial board members must be staggered, with 2 members serving a term of 3 years, 2 members serving a term of 4 years and 2 members serving a term of 5 years. The term of the member who serves as chair is without limit.

4. Vacancy. Any vacancy on the board must be filled by the Governor or the Secretary of State by appointment of a person of the same category as the board member being replaced to hold office for the unexpired term.

5. Compensation. With the exception of the chair, whose position is funded pursuant to section 1187-A, members of the board are entitled to a per diem of \$100 for each day actually engaged in the performance of their duties and may be reimbursed for reasonable and necessary expenses incurred in carrying out their duties.

6. Rulemaking. The board shall adopt rules to implement the provisions of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

7. Affiliation. The board is affiliated with the Department of the Secretary of State, Bureau of Motor Vehicles.

2 **§1187-A. Fund**

4 To fund the board and to pay the start-up expenses of
6 administration and enforcement of this chapter, there is
8 established the Maine Motor Vehicle Franchise Fund, referred to
10 in this section as "the fund." The board shall impose an initial
12 fee upon each new motor vehicle dealer of \$200 for each dealer's
 license held by that dealer and an initial fee of \$2,000 for each
 line make of each manufacturer. The board shall determine on an
 annual basis whether additional funding is required. The board
 shall maintain a fund balance of at least \$20,000.

14 The fund is administered by the Secretary of State. The
16 fund must be used exclusively for the administration and
18 operation of the board for the enforcement of this chapter.
20 Expenses for operation of the board, including the compensation
 for the chair, which must be 1/2 the salary of the Bureau of
 Motor Vehicle's attorney assigned to the board, must be paid by
 the board to the Secretary of State on a quarterly basis.

22 **§1188. Duties**

24 The board:

26 1. Complaints. Shall review written complaints filed with
28 the board by persons complaining of conduct governed by this
 chapter;

30 2. Decision. Shall issue written decisions and may issue
32 orders to a franchisee in violation of this chapter;

34 3. Penalty. May levy a civil penalty pursuant to section
 1171-B, subsection 3;

36 4. Award costs. Shall award costs and attorney's fees
38 pursuant to section 1173;

40 5. Interim order. Shall levy a civil penalty pursuant to
42 section 1171-B, subsection 3 when a party to a complaint under
44 this subchapter is found to have recklessly or knowingly failed,
 neglected or refused to comply with an interim order issued by
 the board; and

46 6. Procedures. May appoint persons to be present at the
48 deposition of out-of-state witnesses, administer oaths, issue
 subpoenas to compel the presence of witnesses or documents and
 authorize stenographic or recorded transcripts of proceedings.

50 **§1188-A. Prehearing conference**

2 Prior to hearing a complaint, but not later than 45 days
4 after the filing of the complaint, the board shall require the
6 parties to attend a prehearing conference with the chair to
8 discuss the possibility of settlement. If the matter is not
10 resolved through the conference, the matter must be placed on the
12 board's calendar for hearing. Settlement conference discussions
14 remain confidential and may not be disclosed or used as an
16 admission in any subsequent hearing.

10 **§1189. Hearings**

12 The board shall hold a hearing on the merits of a complaint
14 within 120 days of the filing of the complaint. The hearing must
16 be conducted pursuant to rules established by the board. A
18 decision must be issued within 30 days of the completion of the
20 hearing. The board shall determine the location of hearings.

20 **§1189-A. Discovery**

22 The parties to a hearing conducted pursuant to this
24 subchapter are permitted to conduct and use the same discovery
26 procedures as provided in the Maine Rules of Civil Procedure,
28 subject to any amendments to the rules as the board might adopt
30 to secure that discovery is expedited.

32 Compliance with discovery procedures authorized by this
34 section and by rule may be enforced by application to the board
36 or on the board's own motion.

36 **§1189-B. Appeal**

38 A party appealing an order of the board to the Superior
40 Court shall indicate in the appeal whether it is an appeal on
42 issues of law or on factual matters.

44 1. Appeal as matter of law. An order or decision may be
46 appealed solely on the basis that the board made an error of
48 law. An order or decision appealed may not be set aside or
50 vacated except for an error of law. Additional evidence may not
 be heard or taken by the Superior Court on an appeal made under
 this section.

2. Appeal involving factual matters. A party to a decision
 by the board may appeal to the Superior Court for a hearing on
 the merits of the dispute. In any such hearing before the
 Superior Court, all findings of fact of the board are presumed to
 be correct unless rebutted by clear and convincing evidence.

A copy of the decision, certified as true and accurate by

2 the chair must be admitted into evidence in any appeal hearing.
3 There is a right to trial by jury in any action brought in
4 Superior Court under this section. An appeal for hearing is
5 subject to the provisions of section 1173.

6 **§1190. Statute of limitations**

8 If a complaint is filed with the board by a person otherwise
9 entitled to bring a complaint in the courts of the State, then
10 the applicable statute of limitations is tolled and a civil
11 action in a court of competent jurisdiction is barred pending the
12 outcome of proceedings before the board.

14 **§1190-A. Action filed; court**

16 An action, filed in a court of competent jurisdiction, that
17 gives rise or could give rise to a claim or defense under this
18 chapter must be stayed if, within 60 days after the date of
19 filing of the complaint, or service of process, whichever date is
20 later, a party to the action files a complaint with the board
21 asserting the claims or defenses under this chapter.

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26 **SUMMARY**

28 This bill amends the laws concerning regulation of business
29 practices between motor vehicle manufacturers, distributors and
30 dealers.

32 The bill establishes the Maine Motor Vehicle Franchise
33 Board. Motor vehicle dealers and manufacturers engage in complex
34 and time-consuming litigation before the courts of the State and
35 in hearings before the Secretary of State. The board is composed
36 of 7 members. This bill provides a forum for the prompt
37 resolution of such complaints by a board with specific expertise
38 in the motor vehicle industry, subject to review by the Superior
39 Court, and when requested, a hearing on the merits of the
40 dispute. In an appeal of an order of the board to the Superior
41 Court, the findings of the board must be published to the
42 Superior Court and the decision of the board admitted as an
43 exhibit.

44 The board is not the exclusive venue for initially bringing
45 a complaint, but if any party asserting claims or defenses under
46 the Maine Revised Statutes, Title 10, chapter 204 or that could
47 be brought under chapter 204 brings a complaint before the board,
48 then all other civil actions or administrative actions must be
49 tolled pending the outcome of proceedings before the board.
50

2 The bill repeals the Maine Revised Statutes, Title 10,
3 section 1173-A. The mediation requirement will not be necessary
4 given the alternative dispute resolution procedures now in place
5 in the State's civil justice system and the mandatory settlement
6 conference proposed in this bill.

7 The bill clarifies that manufacturers must provide one
8 year's notice prior to attempting to modify a franchise agreement
9 if the attempted modification substantially and adversely affects
10 the motor vehicle dealer's rights, obligations, investments or
11 returns on investments. This clarification provides the dealer
12 with adequate notice to respond to the proposed modification.

13 The bill confirms that the right to succeed to ownership of
14 a franchise by family members and others identified in the
15 statute applies to retirement as well as death or disability.

16 The bill amends the Maine Revised Statutes, Title 10,
17 section 1178, which is intended to be broadly construed to cover
18 all agreements, directives or edicts by a manufacturer.
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20