

MAINE STATE LEGISLATURE

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BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT

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STATE OF MAINE

SENATE

124TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 483, L.D. 1337, Bill, "An Act To Protect Maine Citizens and Franchised New Motor Vehicle Dealers"

Amend the bill in the emergency preamble by striking out all of the 5th paragraph (page 1, lines 11 and 12 in L.D.)

Amend the bill in the emergency preamble in the 6th paragraph in the 2nd line (page 1, line 14 in L.D.) by striking out the following: "both current economic conditions and the decision making of manufacturers" and inserting the following: 'current economic conditions'

Amend the bill in section 1 in subsection 9-B in the last 3 lines (page 1, lines 27 to 29 in L.D.) by striking out the following: "or that are substantially similar in their design and specifications or are manufactured in the same facility or facilities"

Amend the bill by inserting after section 1 the following:

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

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

Amend the bill in section 2 in paragraph P in subparagraph (1) in division (a) in the last 2 lines (page 2, lines 16 and 17 in L.D.) by striking out the following: "6 months" and inserting the following: '~~6 months~~ 180 days'

Amend the bill in section 2 in paragraph P in subparagraph (1) in division (b) in the 2nd line (page 2, line 19 in L.D.) by inserting after the following: "cancellation" the following: ', noncontinuance'

Amend the bill in section 2 in paragraph P by striking out all of subparagraph (3) (page 2, lines 24 to 27 in L.D.) and inserting the following:

COMMITTEE AMENDMENT

2 of 3

1 (3) The dealer and the manufacturer or distributor agree not to renew the
2 franchise, although the dealer is entitled to the protections set forth in paragraph
3 S in any termination, cancellation, nonrenewal or noncontinuance, whether by the
4 manufacturer or the dealer; however, a termination, cancellation, nonrenewal or
5 noncontinuance resulting from a sale of the assets or stock of the dealer or when
6 a franchisee of motor homes, as defined in Title 29-A, section 101, subsection 40,
7 voluntarily terminates a motor home franchise is exempt from the requirements
8 of paragraph S; or

9 Amend the bill in section 3 by striking out all of paragraph S (page 2, lines 32 to 40
10 and page 3, lines 1 to 26 in L.D.) and inserting the following:

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

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

16 (2) Supplies and parts purchased from the manufacturer or its approved sources
17 that are listed in the current parts catalog or identical to a part in the current parts
18 catalog except for the number assigned to the part, and that can be used for
19 repairs under the terms of a manufacturer's new motor vehicle warranty;

20 (3) Equipment and furnishings purchased from the manufacturer or its approved
21 sources less a reasonable allowance for normal wear and tear; and

22 (4) Special tools and automotive service equipment owned by the dealer that
23 were designated as special tools or equipment and required by and purchased
24 from the manufacturer or its approved sources, if the tools and equipment are in
25 useable and good condition, normal wear and tear excepted.

26 If Except for a termination related to a conviction and imprisonment for a felony
27 involving moral turpitude that is substantially related to the involuntary termination,
28 cancellation or nonrenewal is due to a failure of performance of the new motor
29 vehicle dealer in sales or service and qualifications, functions or duties of a
30 franchisee, if the new motor vehicle dealer is leasing the dealership facilities from a
31 lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle
32 dealer a sum equivalent to the rent for the unexpired term of the lease or one year's
33 rent, whichever is less, or, if the new motor vehicle dealer owns the facilities, the
34 manufacturer shall pay the new motor vehicle dealer a sum equivalent to the
35 reasonable rental value of the facilities for one year, prorated for each line make at
36 the facility based on total sales volume of each line make at the facility for the
37 calendar year prior to the involuntary termination, cancellation, noncontinuance or
38 nonrenewal. The manufacturer shall pay the new motor vehicle dealer the sum
39 equivalent to the rent or the reasonable rental value of the facilities when possible
40 within 90 days of the effective date of the termination, cancellation, noncontinuance
41 or nonrenewal if the new motor vehicle dealer has notified the manufacturer of the
42 amount of rent or reasonable rental value to which the dealer is entitled.

COMMITTEE AMENDMENT

Am 3

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

9 In order to be entitled to rental assistance from the manufacturer, the dealer is
10 obligated to mitigate rental assistance by listing the dealership facilities for lease or
11 sublease with a licensed real estate agent within 30 days after the effective date of the
12 termination of the franchise and thereafter by reasonably cooperating with the real
13 estate agent in the performance of the agent's duties and responsibilities. In the event
14 that the dealer is able to lease or sublease the dealership facilities on terms that are
15 consistent with local zoning requirements to preserve the right to sell motor vehicles
16 from the dealership facilities and the terms of the dealer's lease, the dealer is required
17 to pay the manufacturer the net revenue received from such mitigation, but only
18 following receipt of rental assistance payments pursuant to this paragraph and only
19 up to the total amount of rental assistance payments that the dealer has received. If
20 the facility is used for the operations of more than one franchise, the dealer does not
21 have a duty to list the dealership facilities, and the reasonable rental assistance must
22 be paid based upon the portion of the facility used by the franchise being terminated,
23 cancelled, noncontinued or nonrenewed for one year unless the space is filled with
24 another product line, in which case no rental payments are required.

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

30 Amend the bill in section 5 by striking out all of paragraph U (page 3, lines 31 to 43
31 and page 4, lines 1 to 33 in L.D.) and inserting the following:

32 'U. To cancel, terminate, fail to renew or refuse to continue any franchise
33 relationship with a licensed new motor vehicle dealer not less than 180 days prior to
34 the effective date of such termination, cancellation, noncontinuance or nonrenewal
35 that occurs in whole or in part as a result of any change in ownership, operation or
36 control of all or any part of the business of the manufacturer, whether by sale or
37 transfer of assets, corporate stock or other equity interest, assignment, merger,
38 consolidation, combination, joint venture, redemption, operation of law or otherwise;
39 or the termination, suspension or cessation of a part or all of the business operations
40 of the manufacturer; or discontinuance of the sale of the product line or a change in
41 distribution system by the manufacturer, whether through a change in distributors or
42 the manufacturer's decision to cease conducting business through a distributor
43 altogether.

44 In addition to any other payments or requirements in this chapter, if a termination,
45 cancellation, noncontinuance or nonrenewal was premised in whole or in part upon

COMMITTEE AMENDMENT

1203

1 any of the occurrences set forth in this paragraph, the manufacturer is liable to the
2 licensed new motor vehicle dealer in an amount at least equivalent to the fair market
3 value of the franchise arising from the termination, cancellation, noncontinuance or
4 nonrenewal of the franchise.

5 (1) If liability is based on the fair market value of the franchise, which must
6 include diminution in value of the facilities leased or owned by the dealer as a
7 result of the loss of the franchise to operate in the facilities, the fair market value
8 must be computed on the date in divisions (a) to (c) that yields the highest fair
9 market value:

10 (a) The date the manufacturer announces the action that results in
11 termination, cancellation, noncontinuance or nonrenewal;

12 (b) The date the action that results in termination, cancellation,
13 noncontinuance or nonrenewal first becomes general knowledge; or

14 (c) The date 12 months prior to the date on which the notice of termination,
15 cancellation, noncontinuance or nonrenewal is issued.

16 If the termination, cancellation, noncontinuance or nonrenewal is due to the
17 manufacturer's change in distributors, the manufacturer may avoid paying fair market
18 value to the licensed new motor vehicle dealer if the new distributor or the
19 manufacturer offers the dealer a franchise agreement with terms acceptable to the
20 dealer.

21 If an entity other than the original manufacturer of a line make becomes the
22 manufacturer for the line make and intends to distribute motor vehicles of that line
23 make in this State, that entity shall honor the franchise agreements of the original
24 manufacturer and its licensed new motor vehicle dealers or offer those dealers of that
25 line make, or of motor vehicles historically of that line make that are substantially
26 similar in their design and specifications and are manufactured in the same facility or
27 facilities, a new franchise agreement with substantially similar terms and conditions;
28 and'

29 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
30 section number to read consecutively.

SUMMARY

32 This amendment makes the following changes to the bill.

33 1. It removes provisions in the emergency preamble that reference manufacturers'
34 conduct.

35 2. It removes the reference to motor vehicles that are substantially similar in design
36 and specifications and manufactured in the same facility from the definition of "line
37 make" and instead amends the provision of law that prohibits interference in a dealer's
38 business to require that, if an entity other than the original manufacturer of a line make
39 becomes the manufacturer for the line make and intends to distribute motor vehicles of
40 that line make in this State, that entity must honor the franchise agreements of the original
41 manufacturer and its licensed new motor vehicle dealers or offer those dealers of that

COMMITTEE AMENDMENT

1 same line make, or of motor vehicles historically of that line make that are substantially
2 similar in their design and specifications and are manufactured in the same facility or
3 facilities, a new franchise agreement with substantially similar terms and conditions.

4 3. It provides that modifications to dealership facilities as a condition of renewal are
5 precluded when unreasonable.

6 4. It provides that termination benefits are precluded if the new motor vehicle
7 dealership stock or assets are otherwise sold.

8 5. It provides that supplies and parts payments in the event of a termination,
9 cancellation, noncontinuance or nonrenewal are limited to parts in the current parts
10 catalog or parts used in relation to new motor vehicle warranty repairs; equipment and
11 furnishings and special tools payments, which are subject to a reasonable allowance for
12 wear and tear; and special tools and automotive service equipment owned by the dealer
13 that were designated as special tools or equipment and required by and purchased from
14 the manufacturer or its approved sources, if the tools and equipment are in useable and
15 good condition, normal wear and tear excepted.

16 6. It provides for rental assistance for a term of one year for dealership facilities in
17 all termination, cancellation, noncontinuance and nonrenewal cases, except for those
18 cases when the dealer is convicted and imprisoned for a felony involving moral turpitude
19 that is substantially related to the qualifications, functions or duties of the franchisee.

20 7. It makes technical changes to include the term "noncontinuance."

21 8. It provides that rental assistance is subject to a requirement by the dealer to list
22 the dealership facilities with a real estate agent except in those instances when the
23 facilities are used for more than one franchise.

24 9. It removes all provisions proposing to allow pecuniary loss as a measure of the
25 value of a franchise and provisions relating to factory finance terms.

26 **FISCAL NOTE REQUIRED**

27 **(See attached)**



124th MAINE LEGISLATURE

LD 1337

LR 1399(02)

An Act To Protect Maine Citizens and Franchised New Motor Vehicle Dealers

Fiscal Note for Bill as Amended by Committee Amendment "A"
Committee: Business, Research and Economic Development
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Increases the number of civil suits.

The collection of additional fines may also increase General Fund revenue by minor amounts.