

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

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Legislative Document

No. 1337

S.P. 483

In Senate, March 31, 2009

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

(EMERGENCY)

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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 SULLIVAN of York.

Cosponsored by Senators: COURTNEY of York, DAMON of Hancock, HOBBS of York, MARRACHÉ of Kennebec, PERRY of Penobscot, RECTOR of Knox, SCHNEIDER of Penobscot, Representatives: CLEARY of Houlton, COHEN of Portland, KNIGHT of Livermore Falls, MacDONALD of Boothbay, MARTIN of Eagle Lake, MAZUREK of Rockland, PRESCOTT of Topsham, TARDY of Newport, WRIGHT of Berwick.

1           **Emergency preamble. Whereas,** acts and resolves of the Legislature do not.  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3           **Whereas,** Maine has regulated the terms of franchise agreements between  
4 franchised new motor vehicle dealers and their manufacturers for decades; and

5           **Whereas,** the manufacture, distribution and sale of motor vehicles in this State and  
6 the ability of franchised new motor vehicle dealers to provide for the distribution, sale  
7 and repair of vehicles vitally affect the general economy of the State, the transportation  
8 system and the public interest and public welfare; and

9           **Whereas,** recent economic circumstances have created a crisis in the automobile  
10 industry, most particularly among domestic automobile manufacturers; and

11           **Whereas,** manufacturers themselves have contributed to this crisis through suspect  
12 decision making in recent years in the operation of their businesses; and

13           **Whereas,** the solvency and economic vitality of Maine dealerships are jeopardized  
14 by both current economic conditions and the decision making of manufacturers; and

15           **Whereas,** Maine new motor vehicle dealerships provide thousands of high-paying  
16 jobs in Maine; and

17           **Whereas,** revenues crucial to the operation of state and local government, including  
18 property, excise and income taxes and in excess of 20% of all sales taxes, are collected as  
19 a result of the sale of motor vehicles; and

20           **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
21 the meaning of the Constitution of Maine and require the following legislation as  
22 immediately necessary for the preservation of the public peace, health and safety; now,  
23 therefore,

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

25           **Sec. 1. 10 MRSA §1171, sub-§9-B** is enacted to read:

26           **9-B. Line make.** "Line make" means motor vehicles that are offered for sale, lease  
27 or distribution under a common name, trademark, service mark or brand name or that are  
28 substantially similar in their design and specifications or are manufactured in the same  
29 facility or facilities.

30           **Sec. 2. 10 MRSA §1174, sub-§3, ¶P,** as amended by PL 1997, c. 521, §16, is  
31 further amended to read:

32           P. To terminate, fail to renew or refuse to continue any franchise relationship with a  
33 licensed new motor vehicle dealer, notwithstanding the terms, provisions or  
34 conditions of any agreement or franchise or the terms or provisions of any waiver,  
35 unless good cause exists. Good cause may not be shown or based solely on the desire  
36 of the manufacturer, distributor, distributor branch or division or officer, agent or

1 other representative thereof for market penetration. Good cause exists for the  
2 purposes of a termination, cancellation, nonrenewal or noncontinuance when:

3 (1) There is a failure by the new motor vehicle dealer to comply with a provision  
4 of the franchise, which provision is both reasonable and of material significance  
5 to the franchise relationship, as long as compliance on the part of the new motor  
6 vehicle dealer is reasonably possible and the manufacturer first acquired actual or  
7 constructive knowledge of the failure not more than 180 days prior to the date on  
8 which notification is given pursuant to paragraph R.

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

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

18 (b) The failure thereafter continued within the period that began not more  
19 than 180 days before the date notification of termination, cancellation or  
20 nonrenewal was given pursuant to paragraph R; and

21 (c) The new motor vehicle dealer has not substantially complied with  
22 reasonable performance criteria established by the manufacturer and  
23 communicated to the dealer; or

24 (3) The dealer and the manufacturer or distributor agree not to renew the  
25 franchise, although the dealer is entitled to the protections set forth in paragraph  
26 S in any termination, whether by the manufacturer, the dealer or the parties in  
27 unison; or

28 ~~(4) The manufacturer discontinues production or distribution of the franchise~~  
29 ~~product;~~

30 **Sec. 3. 10 MRSA §1174, sub-§3, ¶S,** as amended by PL 1997, c. 521, §18, is  
31 further amended to read:

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

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

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

38 (3) Equipment and furnishings purchased from the manufacturer or its approved  
39 sources; and

40 (4) Special tools purchased from the manufacturer or its approved sources.

1 If the ~~involuntary termination, cancellation or nonrenewal is due to a failure of~~  
2 ~~performance of the new motor vehicle dealer in sales or service and the new motor~~  
3 ~~vehicle dealer is leasing the dealership facilities from a lessor other than the~~  
4 ~~manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum~~  
5 ~~equivalent to the rent for the unexpired term of the lease or one year's rent, whichever~~  
6 ~~is less greater, or, if the new motor vehicle dealer owns the facilities, the~~  
7 ~~manufacturer shall pay the new motor vehicle dealer a sum equivalent to the~~  
8 ~~reasonable rental value of the facilities for one year, prorated for each line make at~~  
9 ~~the facility based on total sales volume of each line make at the facility for the~~  
10 ~~calendar year prior to the involuntary termination, cancellation or nonrenewal. The~~  
11 ~~manufacturer shall pay the new motor vehicle dealer the sum equivalent to the rent or~~  
12 ~~the reasonable rental value of the facilities when possible within 90 days of the~~  
13 ~~effective date of the termination, cancellation or nonrenewal if the new motor vehicle~~  
14 ~~dealer has notified the manufacturer of the amount of rent or reasonable rental value~~  
15 ~~to which the dealer is entitled.~~

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

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

27 **Sec. 4. 10 MRSA §1174, sub-§3, ¶T**, as enacted by PL 1997, c. 521, §19, is  
28 amended to read:

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

30 **Sec. 5. 10 MRSA §1174, sub-§3, ¶U** is enacted to read:

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

42 In addition to any other payments or requirements in this chapter, if a termination,  
43 cancellation or nonrenewal was premised in whole or in part upon any of the

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

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 or nonrenewal;

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

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

16 (2) As an alternative to the methodology set forth in subparagraph (1), a licensed  
17 new motor vehicle dealer may choose to accept the pecuniary loss arising out of a  
18 termination, cancellation or nonrenewal under this paragraph. This pecuniary  
19 loss must be established based upon the dealer's reasonable expectation of gain  
20 for a period of time not to exceed 7 years from the date of notice of termination,  
21 cancellation or nonrenewal. Pecuniary loss includes diminution in the value of  
22 the facilities leased or owned by the dealer as a result of the loss of the franchise  
23 to operate in the facilities.

24 If the termination, cancellation or nonrenewal is due to the manufacturer's change in  
25 distributors, the manufacturer may avoid paying fair market value or pecuniary loss  
26 to the licensed new motor vehicle dealer if the new distributor or the manufacturer  
27 offers the dealer a franchise agreement with terms acceptable to the dealer.

28 If an entity other than the original manufacturer of a line make becomes the  
29 manufacturer for the line make and intends to distribute motor vehicles of that line  
30 make in this State, that entity shall honor the franchise agreements of the original  
31 manufacturer and its licensed new motor vehicle dealers or offer those dealers a new  
32 franchise agreement for the line make on substantially similar terms and conditions;  
33 and

34 **Emergency clause.** In view of the emergency cited in the preamble, this  
35 legislation takes effect when approved.

## 36 SUMMARY

37 This bill provides protections to franchised new motor vehicle dealers against losses  
38 caused by unreasonable terminations by manufacturers.