

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1491

S.P. 571

In Senate, June 10, 2009

An Act To Protect Maine Citizens and Franchised New Car and Truck Dealers

(EMERGENCY)

Reference to the Committee on Transportation suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by President MITCHELL of Kennebec. (GOVERNOR'S BILL)
Cosponsored by Speaker PINGREE of North Haven.

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,** the State 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; and

11 **Whereas,** manufacturers are attempting to use these economic circumstances to
12 circumvent the laws of the State; and

13 **Whereas,** manufacturer efforts to circumvent the laws of the State will result in the
14 loss of franchise rights and protections currently provided to Maine motor vehicle dealers
15 under state law; and

16 **Whereas,** the circumvention of these laws will be to the detriment of Maine
17 consumers, citizens and municipalities and towns; and

18 **Whereas,** Maine's franchise laws now balance the rights and obligations of motor
19 vehicle dealers and manufacturers and the interests of the State and its citizens in a fair
20 and reasonable manner; and

21 **Whereas,** the solvency and economic vitality of Maine motor vehicle dealerships
22 are jeopardized by current economic conditions and the decision making of
23 manufacturers; and

24 **Whereas,** new motor vehicle dealerships provide thousands of high-paying jobs in
25 the State; and

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

29 **Whereas,** it is crucial that Maine's motor vehicle dealership network around the
30 State remain intact to provide for the distribution, sale and repair of motor vehicles in all
31 areas of the State; and

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

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

1 **Sec. 1. 10 MRSA §1171, sub-§16** is enacted to read:

2 **16. Successor manufacturer; predecessor manufacturer.** "Successor
3 manufacturer" means any manufacturer that succeeds, or assumes any part of the business
4 of, another manufacturer, referred to as the "predecessor manufacturer," as the result of:

5 A. A change in ownership, operation or control of the predecessor manufacturer by
6 sale or transfer of assets, corporate stock or other equity interest, assignment, merger,
7 consolidation, combination, joint venture, redemption, court-approved sale, operation
8 of law or otherwise;

9 B. The termination, suspension or cessation of a part or all of the business operations
10 of the predecessor manufacturer;

11 C. The noncontinuation of the sale of the product line; or

12 D. A change in distribution system by the predecessor manufacturer, whether
13 through a change in distributor or the predecessor manufacturer's decision to cease
14 conducting business through a distributor altogether.

15 **Sec. 2. 10 MRSA §1174, sub-§3-A** is enacted to read:

16 **3-A. Successor manufacturer.** Successor manufacturer, for a period of 5 years
17 from the date of acquisition of control by that successor manufacturer, to offer a franchise
18 to any person for a line make of a predecessor manufacturer in any franchise market area
19 in which the predecessor manufacturer previously cancelled, terminated, noncontinued,
20 failed to renew or otherwise ended a franchise agreement with a franchisee who had a
21 franchise facility in that franchise market area without first offering the franchise to the
22 former franchisee at no cost, unless:

23 A. Within 30 days of the former franchisee's cancellation, termination,
24 noncontinuance or nonrenewal, the predecessor manufacturer had consolidated the
25 line make with another of its line makes for which the predecessor manufacturer had
26 a franchisee with a then-existing franchise facility in that franchise market area;

27 B. The successor manufacturer has paid the former franchisee the fair market value
28 of the former franchisee's motor vehicle dealership in accordance with this
29 subsection; or

30 C. The successor manufacturer proves that the former franchisee is not competent to
31 be a franchisee.

32 For purposes of this subsection, "franchise market area" means the area located within 15
33 miles of the territorial limits of the municipality in which the former franchisee's
34 franchise facility was located.

35 For purposes of this subsection, the fair market value of a former franchisee's motor
36 vehicle dealership must be calculated as of the date of the following that yields the
37 highest fair market value: the date the predecessor manufacturer announced the action
38 that resulted in the cancellation, termination, noncontinuance or nonrenewal; the date the
39 action that resulted in cancellation, termination, noncontinuance or nonrenewal became
40 final; the date 12 months prior to the date that the predecessor manufacturer announced
41 the action that resulted in the cancellation, termination, noncontinuance or nonrenewal.

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

3 **SUMMARY**

4 The purpose of this bill is to protect motor vehicle dealer rights, preserve local
5 businesses and protect public access to essential dealers' services throughout the State.

6 This bill limits the ability of a successor manufacturer to offer a franchise to any
7 person for a line make of a predecessor manufacturer without first offering the franchise
8 to the former franchisee.