

# MAINE STATE LEGISLATURE

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Majority

L.D. 1482

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Date: 3/20/14

(Filing No. S-439)

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**LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT**

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**STATE OF MAINE**

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**SENATE**

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**126TH LEGISLATURE**

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**SECOND REGULAR SESSION**

9

COMMITTEE AMENDMENT “**A**” to S.P. 544, L.D. 1482, Bill, “An Act To Amend the Motor Vehicle Franchise Laws”

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Amend the bill in section 1 in subsection 3-A in the first line (page 1, line 3 in L.D.) by inserting after the following: “device” the following: ‘required by the manufacturer’

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Amend the bill by striking out all of section 2 and inserting the following:

14

**‘Sec. 2. 10 MRSA §1174, sub-§3, ¶A,** as amended by PL 1997, c. 521, §8, is further amended to read:

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16

A. To refuse to deliver in reasonable quantities and within a reasonable time after receipt of a dealer's order to any motor vehicle dealer having a franchise or contractual arrangement for the retail sale of new motor vehicles sold or distributed by that manufacturer, distributor, distributor branch or division, factory branch or division any motor vehicles or parts or accessories to motor vehicles covered by that franchise or contract specifically publicly advertised by that manufacturer, distributor, distributor branch or division, factory branch or division or wholesale branch or division to be available for delivery. The allocation of new motor vehicles in this State must be made on a fair and equitable basis and must consider the needs of those dealerships with a relevant market area radius of more than 5 miles as defined in section 1174-A, subsection 1. The manufacturer has the burden of establishing the fairness of its allocation system. A failure by a manufacturer to provide to a dealer a fair and adequate supply and mix of vehicles, including the allocation of vehicles under any separate dealer designation, including but not limited to "premier," "business class or elite" or any other designation not available to all new motor vehicle dealers for that franchise, that results in an effort to terminate a new motor vehicle dealer for, in whole or in part, poor sales performance or market penetration may be evidence that the termination was not for good cause. The failure to deliver any motor vehicle is not considered a violation of this chapter if the failure is due to an act of God, work stoppage or delay due to a strike or labor difficulty, shortage of materials, freight embargo or other cause over which the manufacturer, distributor or any agent of the manufacturer or distributor has no

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**COMMITTEE AMENDMENT**

1 control. A separate dealer agreement is not required of a new motor vehicle dealer  
 2 already a party to a dealer agreement or franchise agreement for the retail sale of any  
 3 particular new motor vehicle model made or distributed by a manufacturer,  
 4 distributor, distributor branch or division, factory branch or division, wholesale  
 5 branch or division or officer, agent or other representative thereof, except that a  
 6 manufacturer or distributor may require a dealer to purchase special tools or  
 7 equipment, stock reasonable quantities of certain parts, purchase reasonable  
 8 quantities of promotional materials or participate in training programs that are  
 9 reasonably necessary for the dealer to sell or service such a new motor vehicle model.  
 10 Any special tools, parts or signs not used within 2 years of receipt by the dealer may  
 11 be returned by the dealer to the manufacturer or distributor for a full refund of cost of  
 12 those special tools, parts and signs;

13 Amend the bill in section 3 in paragraph F-1 by striking out all of the last blocked  
 14 paragraph (page 2, lines 16 to 20 in L.D.) and inserting the following:

15 'A manufacturer that designates any tool as special or essential, or who requires the  
 16 purchase of hardware or software, whether or not designated as an essential tool, may  
 17 recover from the dealer only the actual costs of providing any such tool, the actual  
 18 costs of user fees, the actual costs of maintenance fees and other costs of any nature  
 19 of software for any such tool, as long as the tool is directly available only from the  
 20 manufacturer or its wholly owned subsidiary.'

21 Amend the bill by striking out all of section 4 and inserting the following:

22 **'Sec. 4. 10 MRSA §1174, sub-§3, ¶N,** as amended by PL 2009, c. 367, §2, is  
 23 further amended to read:

24 N. To require any new motor vehicle dealer to change the location of the new motor  
 25 vehicle dealership or during the course of the agreement or as a condition of renewal  
 26 of a franchise agreement to make any substantial alterations to the dealership  
 27 premises when to do so would be unreasonable. A manufacturer may not require any  
 28 substantial alterations or renovations to the dealership's premises without written  
 29 assurance of a sufficient supply of new motor vehicles so as to justify an expansion in  
 30 light of the current market and economic conditions or require any new motor vehicle  
 31 dealer to use a specific product or service provider in relation to any dealership  
 32 premises or facilities alterations or renovations unless the manufacturer reimburses  
 33 the dealer for a substantial portion, which may not be less than 55%, of the cost of the  
 34 product or service provider. However, a new motor vehicle dealer may elect to use a  
 35 vendor selected by the dealer if the product or service is substantially similar in  
 36 quality and design to that required by the manufacturer, subject to the manufacturer's  
 37 approval, which may not be unreasonably withheld. A manufacturer may not require  
 38 any substantial renovation or alteration to dealership premises or facilities without  
 39 providing, upon a dealer's request, a dealer-specific detailed economic analysis of the  
 40 impact of the alteration or renovation on sales, service and dealer profitability that  
 41 substantiates the need for the alteration or renovation or require a new motor vehicle  
 42 dealer to make any substantial alterations or renovations more than once every 10  
 43 years. A dealer-specific economic analysis provided by the manufacturer may not be  
 44 interpreted as a guaranty of a return on investment by the dealer. Nothing in this  
 45 paragraph creates an exemption from the requirements of state health and safety laws

**ROFS**

1           or local zoning laws or restricts the requirement to comply with alterations or  
2           renovations that are necessary to adequately sell or service a vehicle due to the  
3           technology of the vehicle. Nothing in this paragraph allows a dealer or vendor to  
4           infringe upon or impair a manufacturer's intellectual property or trademark and trade  
5           dress rights. A manufacturer is not required to reimburse a dealer for the cost of  
6           signs or other materials bearing that manufacturer's own trademark;

7           **Sec. 5. 10 MRSA §1174, sub-§3, ¶T**, as amended by PL 2009, c. 367, §5, is  
8 further amended to read:

9           T. To act as, offer to act as or purport to be a broker; ø'

10           Amend the bill in section 5 in paragraph V in subparagraph (1) by striking out all of  
11 division (b) (page 3, lines 8 to 10 in L.D.) and inserting the following:

12           '(b) "Dealer management computer system vendor" means a seller or reseller  
13           of dealer management computer systems, a person that sells computer  
14           software for use on dealer management computer systems or a person that  
15           services or maintains dealer management computer systems, but only to the  
16           extent the seller, reseller or other person listed is engaged in such activities.'

17           Amend the bill in section 5 in paragraph V by striking out all of subparagraph (5) and  
18 inserting the following:

19           '(5) A manufacturer, distributor, wholesaler, distributor branch or division,  
20           factory branch or division, wholesale branch or division or officer, agent, dealer  
21           management computer system vendor or other representative thereof, or a 3rd  
22           party acting on behalf of a manufacturer, distributor, wholesaler, distributor  
23           branch or division, factory branch or division, wholesale branch or division or  
24           officer, agency, dealer management computer system vendor or other  
25           representative thereof, may not access or obtain dealer or customer data from or  
26           write dealer or customer data to a dealer management computer system used by a  
27           motor vehicle dealer or require or coerce a motor vehicle dealer to use a  
28           particular dealer management computer system, unless the dealer management  
29           computer system allows the dealer to reasonably maintain the security, integrity  
30           and confidentiality of the data maintained in the system. A manufacturer,  
31           distributor, wholesaler, distributor branch or division, factory branch or division,  
32           wholesale branch or division or officer, agent, dealer management computer  
33           system vendor or other representative thereof, or a 3rd party acting on behalf of a  
34           manufacturer, distributor, wholesaler, distributor branch or division, factory  
35           branch or division, wholesale branch or division or officer, agency, dealer  
36           management computer system vendor or other representative thereof, may not  
37           prohibit a dealer from providing a means to regularly and continually monitor the  
38           specific data accessed from or written to the dealer's dealer management  
39           computer system or from complying with applicable state and federal laws, rules  
40           and regulations. Nothing in this subparagraph imposes an obligation on a  
41           manufacturer, distributor, wholesaler, distributor branch or division, factory  
42           branch or division, wholesale branch or division or officer, agent, dealer  
43           management computer system vendor or other representative thereof, or a 3rd  
44           party acting on behalf of a manufacturer, distributor, wholesaler, distributor  
45           branch or division, factory branch or division, wholesale branch or division or

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COMMITTEE AMENDMENT "A" to S.P. 544, L.D. 1482

1                    officer, agency, dealer management computer system vendor or other  
2                    representative thereof, to provide such capability.'

3                    Amend the bill in section 5 in paragraph V in subparagraph (6) in division (b) in the  
4 first line (page 5, line 27 in L.D.) by striking out the following: "100" and inserting the  
5 following: '60'

6                    Amend the bill in section 5 in paragraph V in subparagraph (12) in the last line (page  
7 9, line 5 in L.D.) by striking out the following: "and" and inserting the following: 'or'

8                    Amend the bill in section 5 in paragraph V by striking out all of subparagraph (13)  
9 (page 9, line 6 in L.D.).

10                   Amend the bill in section 5 in paragraph W in subparagraph (3) in the last line (page  
11 9, line 45 in L.D.) by striking out the following: "." and inserting the following: ';'

12                   Amend the bill by striking out all of section 6 and inserting the following:

13                   '**Sec. 6. 10 MRSA §1176**, as amended by PL 2003, c. 356, §10, is further amended  
14 by adding at the end a new paragraph to read:

15                   A franchisor may not deny those elements of a warranty claim that are based on a  
16 dealer's incidental failure to comply with a claim requirement or a clerical error or other  
17 technicality, regardless of whether the franchisor contests any other element of that  
18 warranty claim, as long as the dealer corrects any such clerical error or other technicality  
19 according to licensee guidelines.

20                   **Sec. 7. 10 MRSA §1176-A**, as enacted by PL 1997, c. 521, §26, is amended to  
21 read:

22                   **§1176-A. Audits**

23                   A manufacturer may reasonably and periodically audit a new motor vehicle dealer to  
24 determine the validity of paid claims or any charge-backs for customer or dealer  
25 incentives. Audits of incentive payments may be only for the ~~18-month~~ 12-month period  
26 immediately preceding the date notifying the dealer that an audit is to be conducted.'

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

29                   **SUMMARY**

30                   This amendment is the majority report of the committee. It makes the following  
31 changes to the bill.

32                   1. It changes the definition of "essential tool" to specify that an essential tool is one  
33 that is required by a motor vehicle manufacturer.

34                   2. It changes the provisions governing the requirement that a motor vehicle  
35 manufacturer provide a fair and adequate supply and mix of vehicles to a dealer to  
36 provide that a failure by a manufacturer to do so that results in an effort to terminate a  
37 new motor vehicle dealer for, in whole or in part, poor sales performance or market  
38 penetration may be evidence that the termination was not for good cause.

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3. It changes the provisions governing recovery of actual costs by the manufacturer from the dealer for special or essential tools to provide that the manufacturer may recover costs only if the tool is directly available only from the manufacturer or its wholly owned subsidiary.

4. It clarifies the provisions governing prohibited conduct by a manufacturer relating to alterations or renovations to a dealership's premises or facilities and provides that the provisions do not supersede certain other laws, including state health and safety laws or local zoning laws.

5. It expands the definition of "dealer management computer system vendor."

6. In the section relating to standards protecting dealership data from unauthorized use, it strikes the provision regarding fees and adds language to include 3rd parties in the provision prohibiting access to dealer and customer data.

7. It changes the provisions regarding exceptions to the limitations on the access or use of customer or prospect information maintained in a dealer management computer system to provide that the limitations do not apply to a customer that moves more than 60 miles away from the dealer whose data were accessed.

8. It removes the provision relating to the retroactive application of contracts in the section governing security breaches.

9. It replaces the language governing a franchisor's responsibility to pay elements of a warranty claim to provide that the franchisor is prohibited from denying those elements of a warranty claim that are based on a dealer's incidental failure to comply with a claim requirement, as long as the dealer corrects any related clerical error or other technicality according to licensee guidelines.

10. It adds a provision to amend current law to reduce from 18 to 12 the number of months a manufacturer may audit a new motor vehicle dealer to determine the validity of customer or dealer incentive payments.

**COMMITTEE AMENDMENT**