

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE

ONE HUNDRED AND TENTH LEGISLATURE

FIRST REGULAR SESSION
December 3, 1980 to June 19, 1981

AND AT THE

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PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

1981

CHAPTER 331

H. P. 1441 — L. D. 1584

AN ACT Relating to the Regulation of Business Practices between Motor Vehicle
Manufacturers, Distributors and Dealers.

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

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

1-A. Designated family member. "Designated family member" means the spouse, child, grandchild, parent, brother or sister of the owner of a new motor vehicle dealer who, in the case of the owner's death, is entitled to inherit the ownership interest in the new motor vehicle dealer under the terms of the owner's will, or who, in the case of an incapacitated owner of a new motor vehicle dealer, has been appointed by a court as the legal representative of the new motor vehicle dealer's property.

Sec. 2. 10 MRSA § 1171, sub-§ 9-A is enacted to read:

9-A. Good faith. "Good faith" means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade as is defined and interpreted in the Uniform Commercial Code, Title 11, section 2-103, subsection 1, paragraph B.

Sec. 3. 10 MRSA § 1171, sub-§ 10, as enacted by PL 1975, c. 573, is repealed and the following enacted in its place:

10. Manufacturer. "Manufacturer" means any person, partnership, firm, association, corporation or trust, resident or nonresident, who manufactures or assembles new motor vehicles, or imports for distribution through distributors of motor vehicles, or any partnership, firm, association, joint venture, corporation or trust, resident or nonresident, which is controlled by the manufacturer. The term "manufacturer" includes the term "distributor," "factory branch" and "factory representative."

Sec. 4. 10 MRSA § 1174, sub-§ 3, ¶ C, as enacted by PL 1975, c. 573, is repealed.

Sec. 5. 10 MRSA § 1174, sub-§ 3, ¶ D, as enacted by PL 1975, c. 573, is repealed and the following enacted in its place:

D. To resort to or use any false or misleading advertisement in connection with his business as such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, or officer, agent or other representative thereof; or to force any dealer to participate in any advertising campaign or contest, or to purchase any

promotional materials, display devices, or display decorations or materials at the expense of the new motor vehicle dealer;

Sec. 6. 10 MRSA § 1174, sub-§ 3, ¶¶ M-S are enacted to read:

M. To require any new motor vehicle dealer to refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products;

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 to make any substantial alterations to the dealership premises when to do so would be unreasonable;

O. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new motor vehicle dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise, or notwithstanding the terms or provisions of any waiver, unless a manufacturer has:

- (1) Satisfied the notice requirement of paragraph R;
- (2) Acted in good faith as defined in this chapter; and
- (3) Has good cause for the cancellation, termination, nonrenewal or noncontinuance;

P. To terminate, fail to renew or refuse to continue any franchise relationship with a licensed new motor vehicle dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise or the terms or provisions of any waiver, unless good cause exists. Good cause shall exist for the purposes of a termination, cancellation, nonrenewal or noncontinuance when:

- (1) There is a failure by the new motor vehicle dealer to comply with a provision of the franchise, which provision is both reasonable and of material significance to the franchise relationship, provided that compliance on the part of the new motor vehicle dealer is reasonably possible, and the manufacturer first acquired actual or constructive knowledge of the failure not more than 180 days prior to the date on which notification is given pursuant to paragraph R;
- (2) If the failure by the new motor vehicle dealer, defined in subparagraph (1), relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to effectively carry out the performance provisions of the franchise if:
 - (a) The new motor vehicle dealer was apprised by the manufacturer in writing of that failure; the notification stated that notice was provided of

failure of performance pursuant to this section; and the new motor vehicle dealer was afforded a reasonable opportunity for a period of not less than 6 months to exert good faith efforts to carry out the performance provisions;

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

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

(3) The dealer and the manufacturer or distributor agree not to renew the franchise; or

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

Q. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new motor vehicle dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise or notwithstanding the terms or provisions of any waiver, based on any of the following items which do not constitute good cause:

(1) The change of ownership of the new motor vehicle dealer's dealership. This subparagraph does not authorize any change in ownership which would have the effect of the sale of the franchise without the manufacturer's or distributor's written consent. This consent shall not be unreasonably withheld. The burden of establishing the reasonableness is on the manufacturer or distributor;

(2) The fact that the new motor vehicle dealer unreasonably refused to purchase or accept delivery of any new motor vehicle parts, accessories or any other commodity or services not ordered by the new motor vehicle dealer, except that the manufacturer may require that the dealer stock a reasonable supply of parts or accessories as required to perform campaign, recall or warranty work, and except that this provision is not intended to modify or supercede any requirement of the franchise that dealers market a representative line of those motor vehicles which the manufacturer is publicly advertising;

(3) The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of or holds a license for the sale of another make or line of new motor vehicle, or that the new motor vehicle dealer has established another make or line of new motor vehicle in the same dealership facilities as those of the manufacturer, provided that the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new

motor vehicle, and that the new motor vehicle dealer remains in substantial compliance with reasonable facilities' requirements of the manufacturer;

(4) The fact that the new motor vehicle dealer sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new motor vehicle dealer's spouse, son or daughter, and the manufacturer shall give effect to such change in the ownership in the franchise unless the transfer of the new motor vehicle dealer's license is denied or the new owner is unable to license as the case may be. This paragraph does not authorize any changes in ownership which would have the effect of the sale of the franchise without the manufacturer's or distributor's written consent. This consent shall not be unreasonably withheld. The burden of establishing the reasonableness is on the manufacturer or distributor; or

(5) The manufacturer shall have the burden of proof under paragraph O for showing that it has acted in good faith, that the notice requirements have been complied with and that there was good cause for the franchise termination, cancellation, nonrenewal or noncontinuance;

R. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new motor vehicle dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise or the terms or provisions of any waiver, without first furnishing notification of the termination to the new motor vehicle dealer as follows:

(1) Notification under this paragraph shall be in writing, shall be by certified mail or personally delivered to the new motor vehicle dealer and shall contain:

(a) A statement of intention to terminate the franchise, cancel the franchise or not to renew the franchise;

(b) A statement of the reasons for the termination, cancellation or nonrenewal; and

(c) The date on which the termination, cancellation or nonrenewal takes effect;

(2) The notice described in this paragraph shall not be less than 90 days prior to the effective date of the termination, cancellation or nonrenewal; or

(3) The notice described in this paragraph shall not be less than 15 days prior to the effective date of the termination, cancellation or nonrenewal with respect to any of the following:

(a) Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

(b) The business operations of the franchised motor vehicle dealer have been abandoned or closed for 7 consecutive business days unless the closing is due to an act of God, strike or labor difficulty;

(c) Conviction of or plea of nolo contendere of a franchised motor vehicle dealer, or one of its principal owners, of any Class A, B or C crime, as defined in the Maine Criminal Code, Title 17-A, in which a sentence of imprisonment of one year or more is imposed under Title 17-A, sections 1251 and 1252; or

(d) Revocation of the franchised motor vehicle dealer's license pursuant to Title 29, section 350-A;

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

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

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

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

(4) Special tools purchased from the manufacturer or its approved sources; and

(5) In the event the involuntary termination, cancellation or nonrenewal is due to a failure of performance of the new motor vehicle dealer in sales or service and:

(a) The new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less; or

(b) If the new motor vehicle dealer owns the facilities, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the facilities for one year;

Such fair and reasonable compensation for the items listed in subparagraphs 1 to 5 shall in no instance be less than the acquisition price and shall be paid by the manufacturer when possible within 90 days of the effective date of the termination, cancellation or nonrenewal, provided the new motor vehicle dealer has clear title to the inventory and other items and is in a position to convey that title to the manufacturer.

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

Sec. 7. 10 MRSA §§ 1174-A, 1174-B and 1174-C are enacted to read:

§ 1174-A. Limitations on establishing or relocating dealerships

No new motor vehicle dealership may be established and no existing motor vehicle dealership may be relocated, except as follows.

1. Notification. In the event that a manufacturer seeks to enter into a franchise establishing an additional new motor vehicle dealership or relocating an existing new motor vehicle dealership, within or into a relevant market area where the same line make is then represented, the manufacturer shall, in writing, first notify each new motor vehicle dealer in the line make in the relevant market area of the intention to establish an additional dealership or to relocate an existing dealership within or into that market area. The relevant market area shall be a radius of 5 miles around an existing dealership in the following cities: Augusta; Auburn; Bangor; Biddeford; Brewer; Falmouth; Lewiston; Portland; Saco; South Portland; Waterville; and Westbrook. The relevant market area shall be a radius of 10 miles around all other existing dealerships.

Within 30 days of receiving the notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any such new motor vehicle dealership may file a complaint in the Superior Court of the county in which the dealership is located, protesting the establishing or relocating of the new motor vehicle dealership. When such a complaint is filed, the manufacturer may not establish or relocate the proposed new motor vehicle dealership until a hearing has been held on the merits, nor thereafter, if the court has determined that there is good cause for not permitting the new motor vehicle dealership. For the purposes of this section, the reopening in a relevant market area of a new motor vehicle dealership that has not been in operation for one year or more is deemed the establishment of an additional new motor vehicle dealership.

2. Good cause. In determining whether good cause has been established for not entering into or relocating an additional franchise for the same line make, the court shall take into consideration the existing circumstances, including, but not limited to:

A. Permanency of the investment of both the existing and proposed new motor vehicle dealers;

B. Effect on the retail new motor vehicle business and the consuming public in the relevant market area;

C. Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;

D. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the line make in the market area which includes the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts and qualified service personnel;

E. Whether the establishment of an additional new motor vehicle dealership would increase competition and therefore be in the public interest; and

F. The effect on the relocating dealer as a result of not being permitted to relocate.

§ 1174-B. Transportation damages

1. Liability of a new dealer after acceptance. Notwithstanding the terms, provisions or conditions of any agreement or franchise, the new motor vehicle dealer is solely liable for damages to new motor vehicles after acceptance from the carrier and before delivery to the ultimate purchaser.

2. Liability of manufacturer. Notwithstanding the terms, provisions or conditions of any agreement or franchise, the manufacturer is liable for all damages to motor vehicles before delivery to a carrier or transporter.

3. Additional liability of dealer. The new motor vehicle dealer is liable for damages to new motor vehicles after delivery to the carrier only if the dealer selects the method of transportation, mode of transportation and the carrier. In all other instances, the manufacturer is liable for carrier-related new motor vehicle damage, except that the new motor vehicle dealer must annotate the bill of lading or other carrier document indicating damages observed at the time of delivery to the motor vehicle dealer, and that the dealer shall promptly notify the manufacturer of any concealed damage discovered after delivery.

§ 1174-C. Survivorship

1. Right of family member. The right of a designated family member to succeed in dealer ownership is governed by the following provisions.

A. Any family member of a deceased or incapacitated new motor vehicle dealer, which family member has been designated in writing to the manufacturer, distributor, factory branch, factory representative or importer, may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement, provided that the designated family member gives the manufacturer, distributor, factory branch, factory representative or importer of new motor vehicles written notice of the intention to succeed to the dealership within 120 days of the dealer's death or incapacity, and unless there exists good cause for refusal to honor the succession on the

part of the manufacturer, factory branch, factory representative, distributor or importer.

B. The manufacturer, distributor, factory branch, factory representative or importer may request and the designated family member shall provide, upon the request, on forms provided for that purpose, personal and financial data that is reasonably necessary to determine whether the succession shall be honored.

2. Refusal to honor; notice required. The refusal to honor the succession to ownership is governed by the following provisions.

A. If a manufacturer, distributor, factory branch, factory representative or importer believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a family member of a deceased or incapacitated new motor vehicle dealer under the existing franchise agreement, the manufacturer, distributor, factory branch, factory representative or importer may, within 60 days of receipt of the information requested in subsection 1, paragraph B, serve upon the designated family member notice of its refusal to honor the succession or its intent to discontinue the existing franchise agreement with the dealership no sooner than 90 days from the date the notice is served.

B. The notice shall state the specific grounds for the refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 90 days from the date the notice is served.

C. If notice of refusal and discontinuance is not timely served upon the family member, the franchise agreement shall continue in effect subject to termination only as otherwise permitted by this section.

3. Written designation of succession unaffected. This section does not preclude a new motor vehicle dealer from designating any person as his successor by written instrument filed with the manufacturer, distributor, factory branch, factory representative or importer.

Sec. 8. 10 MRSA § 1184, as enacted by PL 1975, c. 573, is amended by adding at the end a new paragraph to read:

If any provision of this chapter is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this chapter and the applicability thereof to persons and circumstances shall not be affected thereby.