

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
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NON-EMERGENCY LAWS IS
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NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1997

Secretary of State is the property of the person to whom the plate was issued.

See title page for effective date.

CHAPTER 521

S.P. 584 - L.D. 1747

An Act to Improve Transportation in Maine

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

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

1-B. Broker. "Broker" means a person who, for a fee, commission or other valuable consideration, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle and who is not:

A. A franchised dealer or a bona fide employee of a franchised dealer when acting on behalf of a franchised dealer;

B. A manufacturer or distributor or a bona fide employee of a manufacturer or distributor when acting on behalf of a manufacturer or distributor; or

C. At any point in the transaction the bona fide owner of the vehicle involved in the transaction.

Sec. 2. 10 MRSA §1171, sub-§9, as enacted by PL 1975, c. 573, is amended to read:

9. Fraud. "Fraud" includes in addition to its normal legal connotation, the following: A misrepresentation in any manner, whether intentionally false or due to gross negligence of a material fact an intentionally false representation; a promise or representation not made honestly and in good faith; and an intentional failure to disclose a material fact.

Sec. 3. 10 MRSA §1171, sub-§10, as repealed and replaced by PL 1981, c. 331, §3, is amended to read:

10. Manufacturer. "Manufacturer" means any a 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 that is controlled by the manufacturer. The term "manufacturer" includes the ~~term~~ terms "franchisor,"

"distributor," "distributor branch," "factory branch" and "factory representative."

Sec. 4. 10 MRSA §1171, sub-§§12 and 13, as enacted by PL 1975, c. 573, are amended to read:

12. Motor vehicle dealer. "Motor vehicle dealer" means any a person other than a manufacturer, distributor, distributor branch, distributor representative, factory branch or factory representative who sells or solicits or advertises the sale of new or used motor vehicles. ~~It shall~~ "Motor vehicle dealer" does not include receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court; or public officers while performing their duties as ~~such~~ public officers.

13. New motor vehicle. "New motor vehicle" means a motor vehicle which that has not been previously sold to any person except a distributor ~~or,~~ wholesaler or motor vehicle dealer for resale by a franchise.

Sec. 5. 10 MRSA §§1171-A and 1171-B are enacted to read:

§1171-A. Corporate affiliates

A franchisor may not use any subsidiary corporation, affiliated corporation, other corporation in which it owns or controls more than 5% of the stock or other corporation, partnership, association or person to accomplish what would otherwise be prohibited conduct under this chapter on the part of the franchisor. This section does not limit the right of any entity included within the scope of this section to engage in reasonable and appropriate business practices in accordance with the usage of the trade in which it is engaged.

§1171-B. Manufacturer; license

1. License. Effective January 1, 1999, the Secretary of State may grant a manufacturer license under the following conditions.

A. Except as provided by this section, a person may not engage in business or serve in the capacity of or act as a manufacturer or distributor without obtaining a license as provided in this section.

B. An application for a license for a manufacturer or distributor must be on a form prescribed by the Secretary of State, must contain the manufacturer or distributor's address of its principal place of business, the address where notices should be sent and the address of its registered agent in this State and must be accompanied by

its annual report and a list of its franchised new motor vehicle dealers in this State.

C. All licensees may apply for issuance of a license for each succeeding year by complying with the application process specified by this section and rules of the Secretary of State. A license or renewal of a license is issued subject to provisions of this chapter and rules of the Secretary of State.

D. The annual fee for a license is \$1,500 for each manufacturer and distributor.

2. Sanctions, denial, revocation or suspension of license. The Secretary of State shall sanction, deny, revoke or suspend a license under the following conditions.

A. The Secretary of State may deny an application for a license, revoke or suspend an outstanding license, place on probation a person whose license has been suspended or reprimand a licensee for any of the following reasons:

(1) Material misrepresentation in any application or other information filed under this section or rules of the Secretary of State; or

(2) Failure to maintain the qualifications for a license.

B. A license may not be denied, revoked or suspended and disciplinary action may not be taken under this section except after a hearing conducted by the Secretary of State in accordance with the Maine Administrative Procedure Act.

3. Civil penalty. If the Secretary of State determines after a proceeding conducted in accordance with the Maine Administrative Procedure Act and rules of the Secretary of State that a manufacturer or distributor is violating or has violated any provision of this chapter or any rule or order of the Secretary of State issued pursuant to this chapter, the Secretary of State shall levy a civil penalty of not less than \$1,000 nor more than \$10,000 for each violation. If the violation involves multiple transactions within a 60-day period, these multiple transactions are deemed a single violation.

In determining the amount of a civil penalty levied under this chapter, the Secretary of State shall consider:

A. The seriousness of the violation, including but not limited to the nature, circumstances, extent and gravity of the prohibited acts and the harm or potential harm created to the safety of the public;

B. The economic damage to the public caused by the violation;

C. Any previous violations;

D. The amount necessary to deter future violations;

E. Efforts made to correct the violation; and

F. Any other matters that justice may require.

4. Rules. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

5. License fees collected. License fees collected under subsection 1, paragraph D and subsection 3 are deposited in the Highway Fund.

Sec. 6. 10 MRSA §1173, as enacted by PL 1975, c. 573, is amended to read:

§1173. Attorney General and civil remedies

1. Civil remedies. Any motor vehicle dealer or franchisee, who has been damaged by reason of a violation of a provision of this chapter, may bring an action to enjoin such violations and to recover any damages arising therefrom franchisee or motor vehicle dealer who suffers financial loss of money or property, real or personal, or who has been otherwise adversely affected as a result of the use or employment by a franchisor of an unfair method of competition or an unfair or deceptive act or any practice declared unlawful by this chapter may bring an action for damages and equitable relief, including injunctive relief. When the franchisee or dealer prevails, the court shall award attorney's fees to the franchisee or dealer, regardless of the amount in controversy, and assess costs against the opposing party. For the purpose of the award of attorney's fees and costs, whenever the franchisee or dealer is seeking injunctive or other relief, the franchisee or dealer may be considered to have prevailed when a judgment or other final order providing equitable relief is entered in its favor. A final judgment, order or decree rendered against a person in any civil, criminal or administrative proceeding under the United States antitrust laws, under the Federal Trade Commission Act, under the Maine Revised Statutes or under this chapter shall be is regarded as prima facie evidence against such the person subject to the conditions set forth in the United States antitrust laws, (15 U.S.C. 16) 15 United States Code, Section 16.

Sec. 7. 10 MRSA §1173-A is enacted to read:

§1173-A. Mediation

A franchisee may not bring an action for recovery of damages or for equitable relief until the

franchisee has served upon the franchisor a written demand for nonbinding mediation and either the parties have engaged in such mediation with an independent mediator or 60 days have passed from the franchisor's receipt of notice of mediation, whichever occurs sooner. The service of the written notice of mediation tolls the running of any applicable statute of limitations for the subsequent 60-day period. Notwithstanding any agreement or requirement to engage in nonbinding mediation, at the conclusion of the proceedings, the franchisee is entitled to file an action in any court in this State in accordance with section 1185. The results of the nonbinding mediation are not admissible in the action.

Sec. 8. 10 MRSA §1174, sub-§3, ¶¶A and B, as enacted by PL 1975, c. 573, are amended to read:

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 such that manufacturer, distributor, ~~wholesaler,~~ distributor branch or division, factory branch or division; any such motor vehicles ~~as are~~ or parts or accessories to motor vehicles covered by such that franchise or contract specifically publicly advertised by such that manufacturer, distributor, ~~wholesaler,~~ distributor branch or division, factory branch or division; or wholesale branch or division to be available for ~~immediate~~ delivery; ~~provided, however, the~~. 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. The failure to deliver any motor vehicle shall is not be considered a violation of this chapter if such 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, ~~wholesaler,~~ or any agent ~~thereof shall have~~ of the manufacturer or distributor has no control. A separate dealer agreement is not required of a new motor vehicle dealer already a party to a dealer agreement or franchise agreement for the retail sale of any particular new motor vehicle model made or distributed by a manufacturer, distributor, distributor branch or division, factory branch or division, wholesaler branch or division or officer, agent or other representative thereof, except that a manufacturer or distributor may require a dealer to purchase special tools or equipment, stock reasonable quantities of certain parts, pur-

chase reasonable quantities of promotional materials or participate in training programs that are reasonably necessary for the dealer to sell or service such a new motor vehicle model. Any special tools, parts or signs not used within 2 years of receipt by the dealer may be returned by the dealer to the manufacturer or distributor for a full refund of cost of those special tools, parts and signs;

B. To coerce, or attempt to coerce, ~~any a~~ motor vehicle dealer to enter into ~~any an~~ agreement with ~~such that~~ manufacturer, distributor, ~~wholesaler,~~ distributor branch or division, factory branch or division, ~~or~~ wholesale branch or division; or officer, agent or other representative thereof, or to do any other act prejudicial to ~~said~~ the dealer by threatening to cancel ~~any a~~ franchise or ~~any a~~ contractual agreement existing between ~~such that~~ manufacturer, distributor, ~~wholesaler,~~ distributor branch or division, factory branch or division; or wholesale branch or division; and ~~said that~~ dealer ~~provided, however,~~ that notice in good faith to any motor vehicle dealer of said dealer's violation of any terms or provisions of ~~such franchise or contractual agreement shall not constitute a violation of this chapter,~~ or by threatening to modify a franchise during the term of the franchise or upon its renewal, if the modification substantially and adversely affects the motor vehicle dealer's rights, obligations, investment or return on investment, without giving 60 days' written notice of the proposed modification to the motor vehicle dealer, unless the modification is required by law or court order. Within the 60-day notice period, the motor vehicle dealer may file with the Superior Court in the county where the dealership is located and serve notice upon the manufacturer a protest requesting a determination of whether there is good cause for permitting the proposed modification. The manufacturer has the burden of proving good cause. The court shall promptly schedule a hearing and decide the matter within 180 days from the date the protest is filed. Multiple protests pertaining to the same proposed modification must be consolidated for hearing. The proposed modification may not take effect pending the determination of the matter. In determining whether there is good cause for permitting a proposed modification, any relevant factors must be considered, including, but not limited to:

- (1) The reasons for the proposed modification;
- (2) Whether the proposed modification is applied to or affects all motor vehicle dealers in a nondiscriminatory manner;

(3) Whether the proposed modification will have a substantial and adverse effect upon the motor vehicle dealer's investment or return on investment;

(4) Whether the proposed modification is in the public interest;

(5) Whether the proposed modification is necessary to the orderly and profitable distribution; and

(6) Whether the proposed modification is offset by other modifications beneficial to the motor vehicle dealer.

Notice in good faith to a motor vehicle dealer of that dealer's violation of the terms or provisions of the franchise or contractual agreement does not constitute a violation of this chapter;

Sec. 9. 10 MRSA §1174, sub-§3, ¶C-1 is enacted to read:

C-1. To discriminate, directly or indirectly, against a dealer or to take any action to terminate a dealer's franchise based solely upon the results of a survey of a dealer's customers conducted on behalf of a manufacturer, distributor, distributor branch or division, factory branch or division, wholesale branch or division or officer or agent thereof that is intended or otherwise purports to measure the performance of a dealer, except a sales contest or other recognition program based on reasonable sales and service criteria;

Sec. 10. 10 MRSA §1174, sub-§3, ¶D, as repealed and replaced by PL 1981, c. 331, §5, is amended to read:

D. To resort to or use any false or misleading advertisement in connection with his the business as such a 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 or association of dealers formed to advertise the sale of new motor vehicles 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. 11. 10 MRSA §1174, sub-§3, ¶F, as enacted by PL 1975, c. 573, is amended to read:

F. To offer to sell, or lease or to sell or lease any a new motor vehicle to any person, except a wholesaler or distributor, at a lower actual price therefor than the actual price offered and charged

to a motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device which that results in such a lesser actual price;

Sec. 12. 10 MRSA §1174, sub-§3, ¶I, as enacted by PL 1975, c. 573, is amended to read:

I. To prevent or attempt to prevent by contract or otherwise any a motor vehicle dealer or any an officer, partner or stockholder of any a motor vehicle dealer from selling or transferring any part of the interest of any of them to any other person or persons or party or parties, provided, however, except that no a dealer, officer, partner or stockholder shall does not have the right to sell, transfer or assign the franchise or power of management or control thereunder under that franchise without the consent of the manufacturer, distributor or wholesaler except that such consent shall, which may not be unreasonably withheld.

A franchisor may not exercise a right of first refusal or other right to acquire a motor vehicle franchise from a franchisee as a means to influence the consideration or other terms offered by a person in connection with the acquisition of the franchise or to influence a person to refrain from entering into, or to withdraw from, negotiations for the acquisition of the franchise.

A franchisor may exercise a right of first refusal or other right to acquire a franchise from a franchisee if all of the following requirements are met.

(1) At the election of the franchisee, the franchisor assumes the lease for or acquires the real property on which the franchise is conducted on the same terms as those on which the real property or lease was to be sold or transferred to the acquiring transferee in connection with the sale of the franchise, unless otherwise agreed to by the franchisee and the franchisor;

(2) The franchisor assumes all of the obligations of the underlying agreement or proposal that entitles the franchisor to exercise the right of first refusal; and

(3) The franchisor reimburses the acquiring transferee of the motor vehicle franchise for the reasonable expenses paid or incurred by the transferee in evaluating and investigating the franchise and negotiating and pursuing the acquisition of the franchise prior to the franchisor's exercise of the right of first refusal or other right to acquire the franchise. For purposes of this subsection, expenses to evaluate and inves-

tigate the franchise include, in addition to any other expenses associated with the evaluation and investigation of the franchise, legal and accounting expenses and expenses associated with the evaluation and investigation of any real property on which the franchise is conducted, including, but not limited to, expenses associated with title examinations, environmental assessments and other expenses directly related to the acquisition or lease of the real property by the acquiring transferee. Upon reimbursement, any title reports or other reports or studies received by the acquiring transferee as a result of the evaluation or investigation of the franchise or the real property on which the franchise is conducted must be provided to the franchisor. The acquiring transferee shall submit an itemized list of the expenses to be reimbursed along with supporting documents, if any, to the franchisor no later than 30 days after receipt of a written request for an itemized list of the expenses from the franchisor. The franchisor shall make payment within 30 days after the exercise of the right of first refusal;

For purposes of this paragraph, "acquiring transferee" means the person who made the offer that entitles the franchisor to exercise a right of first refusal;

Sec. 13. 10 MRSA §1174, sub-§3, ¶K, as amended by PL 1981, c. 470, Pt. A, §23, is further amended to read:

K. To compete with a motor vehicle dealer operating under an agreement or franchise from the manufacturer, distributor or wholesaler in the relevant market area, the area to be determined exclusively by equitable principles; ~~provided, except that a manufacturer, or distributor or wholesaler shall~~ is not be deemed considered to be competing when operating a dealership either temporarily for a reasonable period, in any case not to exceed one year, or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions; ~~and provided and except that a distributor shall~~ is not be deemed considered to be competing when a wholly owned subsidiary corporation or the distributor sells motor vehicles at retail; if, for at least 3 years prior to January 1, 1975, the subsidiary corporation has been a wholly owned subsidiary of the distributor and engaged in the sale of motor vehicles at retail; ~~or~~

Sec. 14. 10 MRSA §1174, sub-§3, ¶M, as enacted by PL 1981, c. 331, §6, is amended to read:

M. To require ~~any new motor vehicle dealer, coerce or attempt to coerce a franchisee~~ to refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products as long as the franchisee maintains a reasonable line of credit for each franchise and the franchisee remains in substantial compliance with reasonable facilities requirements of the franchisor. The reasonable facilities requirements may not include any requirement that a franchisee establish or maintain exclusive facilities, personnel or display space when the requirements are unreasonable considering current economic conditions and are not otherwise justified by reasonable business considerations. The burden of proving that current economic conditions or reasonable business considerations justify exclusive facilities is on the franchisor;

Sec. 15. 10 MRSA §1174, sub-§3, ¶O, as enacted by PL 1981, c. 331, §6, is amended to read:

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~~ and 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;

The manufacturer has the burden of proof 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;

Sec. 16. 10 MRSA §1174, sub-§3, ¶P, as enacted by PL 1981, c. 331, §6, is amended to read:

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 may not be shown or based solely on the desire

of the manufacturer, distributor, distributor branch or division or officer, agent or other representative thereof for market penetration. Good cause ~~shall exist~~ exists 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 as long as~~ as long as 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:~~

When the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, the failure of the new motor vehicle dealer to effectively carry out the performance provisions of the franchise is good cause 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 that~~ 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;

Sec. 17. 10 MRSA §1174, sub-§3, ¶Q, as enacted by PL 1981, c. 331, §6, is amended to read:

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 that~~ would have the effect of the sale of the franchise without the manufacturer's or distributor's written consent. This consent ~~shall~~ may 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 ~~supersede~~ supersede any requirement of the franchise that dealers market a representative line of those motor vehicles ~~which that~~ 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 that 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~~ that have the effect of the sale of the franchise without the manufacturer's or distributor's written consent. This consent ~~shall~~ may not be unreasonably withheld. The burden of establishing the reasonableness is on the manufacturer or distributor; or

(4-A) The fact that there is a survey or surveys of a dealer's customers conducted by or on behalf of the manufacturer, distributor, distributor branch or distributor representative, factory branch or factory representative that is intended or otherwise purports to measure the performance of a dealer;

~~(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;~~

Sec. 18. 10 MRSA §1174, sub-§3, ¶S, as enacted by PL 1981, c. 331, §6, is amended to read:

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; and
- (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;~~

If the involuntary termination, cancellation or nonrenewal is due to a failure of performance of the new motor vehicle dealer in sales or service and 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, 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, prorated for each line make at the facility based on total sales volume of each line make at the facility for the calendar year prior to the involuntary termination, cancellation or nonrenewal.

~~Such~~ The fair and reasonable compensation for the items listed in subparagraphs ~~1 to 5~~ (1) to (4) ~~may~~ shall ~~must~~ be paid by the manufacturer when possible within 90 days of the effective date of the termination, cancellation or nonrenewal, provided that 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; or

Sec. 19. 10 MRSA §1174, sub-§3, ¶T is enacted to read:

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

Sec. 20. 10 MRSA §1174, sub-§4, ¶¶B and C, as amended by PL 1995, c. 269, §1, are further amended to read:

B. To represent and sell as a new motor vehicle, without disclosure, any motor vehicle that has been used and operated for demonstration purposes or is otherwise a used motor vehicle;

C. To resort to or use any false or misleading advertisement in connection with business as a motor vehicle dealer; ~~or~~

Sec. 21. 10 MRSA §1174, sub-§4, ¶D, as enacted by PL 1995, c. 269, §1, is amended to read:

D. To fail to disclose conspicuously in writing the motor vehicle dealer's policy in relation to the return of deposits received from any person. A dealer shall require that a person making a deposit sign the form on which the disclosure appears; ~~or~~

Sec. 22. 10 MRSA §1174, sub-§4, ¶E is enacted to read:

E. To fail to disclose in writing to a purchaser of a new motor vehicle before entering into a sales contract that the new motor vehicle has been damaged and repaired if the dealer has knowledge of the damage or repair or if the damage calculated at the retail cost of repair to the new motor vehicle exceeds 5% of the manufacturer's suggested retail price, except that a new motor vehicle dealer is not required to disclose to a purchaser that any glass, bumpers, audio system, instrument panel, communication system or tires were damaged at any time if the glass, bumpers, audio system, instrument panel, communication system or tires have been replaced with original or comparable equipment.

Sec. 23. 10 MRSA §1174-C, sub-§1, ¶A, as enacted by PL 1981, c. 331, §7, is amended to read:

A. ~~Any~~ A designated family member of a deceased or incapacitated new motor vehicle dealer, which family member has been designated under the will of the dealer or 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~~ if 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.

Sec. 24. 10 MRSA §1174-C, sub-§1, ¶C is enacted to read:

C. In addition to a designated family member, a person who has been a general manager or other employee with significant and varied managerial experience for a dealer for at least 5 years may be designated by that dealer to succeed in dealer ownership, and the designee has the same rights and status as a designated family member.

Sec. 25. 10 MRSA §1176, as amended by PL 1995, c. 65, Pt. A, §16 and affected by §153 and Pt. C, §15, is further amended by adding at the end a new paragraph to read:

It is unlawful for a franchisor, manufacturer, factory branch, distributor branch or subsidiary to own, operate or control, either directly or indirectly, a motor vehicle warranty or service facility located in the State except on an emergency or interim basis or if no qualified applicant has applied for appointment as a dealer in a market previously served by a new motor vehicle dealer of that manufacturer, factory branch, distributor branch or subsidiary's line make.

Sec. 26. 10 MRSA §1176-A is enacted to read:

§1176-A. Audits

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

Sec. 27. 10 MRSA §1182, as enacted by PL 1975, c. 573, is amended by adding at the end a new paragraph to read:

The Legislature finds that the manufacture, distribution and sale of motor vehicles in the State vitally affects the general economy of the State and the public interest and public welfare; that the manufacturers of motor vehicles whose physical manufacturing facilities are not located within the State and distributors are doing business in the State through their control over and relationship and transactions with their dealers in the State; that the geographical location of the State makes it necessary to ensure the availability of motor vehicles and parts and dependable service for motor vehicles throughout the State to

protect and preserve the transportation system, the public safety and welfare and the investments of its residents. The Legislature declares, on the basis of these findings, that it is necessary to regulate and to license motor vehicle manufacturers and distributors and their branches and representatives, motor vehicle dealers and any other person engaged in the business of selling or purchasing vehicles in the State in order to prevent frauds, impositions and other abuses against residents and to protect and preserve the economy, the investments of residents, the public safety and the transportation system of the State.

Sec. 28. 10 MRSA §1182-A is enacted to read:

§1182-A. Exemption for installation on previously assembled truck chassis

This chapter does not apply to a person, partnership, firm, association, corporation or trust, resident or nonresident, that manufactures, assembles, distributes, sells, leases, solicits or advertises the sale or lease of a motor vehicle that consists of the installation on a previously assembled truck chassis in excess of 25,000 pounds gross vehicle weight rating, as defined by Title 29-A, section 2351, subsection 3, special bodies or equipment that, when installed, form an integral part of the motor vehicle and constitute a major manufacturing alteration. This exemption applies only to entities that do not franchise in the State.

Sec. 29. 10 MRSA §1183, as enacted by PL 1975, c. 573, is amended by adding at the end a new paragraph to read:

Notwithstanding any provision in a franchise agreement, if a dispute covered by this chapter or any other law is submitted to mediation or arbitration, the time for the dealer to file a complaint, action, petition or protest is tolled until the mediation or arbitration proceeding is completed.

Sec. 30. Allocation. The following funds are allocated from the Highway Fund to carry out the purposes of this Act.

1998-99

**SECRETARY OF STATE,
DEPARTMENT OF THE**

**Administration - Motor
Vehicles**

Positions - Legislative Count	(1.0)
Personal Services	\$38,113
All Other	8,231

Provides funds for a confidential, unclassified Research and Planning Associate II position to provide assistance in regulating motor vehicle manufacturers, brokers and dealers.

**DEPARTMENT OF THE
SECRETARY
OF STATE**

TOTAL \$46,344

See title page for effective date.

CHAPTER 522

S.P. 455 - L.D. 1429

**An Act to Amend the Maine
Apprenticeship Program**

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

Sec. 1. 20-A MRSA §12706, sub-§17, as enacted by PL 1985, c. 695, §11, is repealed.

Sec. 2. 26 MRSA §1001, as amended by PL 1989, c. 483, Pt. A, §43, is further amended to read:

§1001. Definitions

~~When used in this chapter:~~ As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Apprentice. "Apprentice" ~~shall mean~~ means a person at least 16 years of age, employed under a written agreement to work at and learn a specific ~~trade~~ occupation and is registered with the State Apprenticeship and Training Council.

2. Apprentice agreement. "Apprentice agreement" ~~shall mean~~ means a written agreement entered into by an apprentice or organization of employees with an employer or with an association of employers or organizations of employees, which agreement provides for the apprentice's participation in a definite sequence of job training, and for such related and supplemental instruction as may be ~~deemed~~ determined necessary to qualify as a journeyman in the particular ~~trade~~ occupation affected.

3. Council. "Council" ~~shall mean~~ means the State Apprenticeship and Training Council.

4. Journeyman upgrading. "Journeyman upgrading" means continued related instruction ~~advo-~~