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An Act To Amend the Laws Relating to Motor Vehicle Dealers

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

Sec. 1. 10 MRSA §1174, sub-§3, ¶¶C-2 to C-5 are enacted to read:

C-2. To discriminate, directly or indirectly, or to use an unreasonable, arbitrary or unfair sales or other performance standard in determining a franchise motor vehicle dealer's compliance with a franchise agreement, including but not limited to a standard that does not include consideration of factors in the marketplace, including but not limited to local brand preferences, local and statewide geographic factors, local as well as statewide averages that measure sales and service performance and local and statewide variation based on particular market segments, including but not limited to pickup trucks, sport utility vehicles and compact, mid-size and full-size sedans, the area of responsibility and any changes in the area of responsibility and other factors that fail to adequately adjust and account for local conditions. The manufacturer has the burden of proving the reasonableness of its performance standards by clear and convincing evidence. Nothing in this paragraph is intended to limit in any way the rights of a dealer under section 1176;

C-3. To require any dealer, whether by agreement, program, incentive provision or provision for loss of incentive payments or other benefits, to refrain from selling a new motor vehicle subject to a stop sale directive, do not drive directive, technical service bulletin or other manufacturer notification or pursuant to federal law or to perform work on the new motor vehicle unless the manufacturer has a remedy and parts available to the dealer to remediate the basis for the coercion or requirement. If within 15 days of the date on which a stop sale directive, do not drive directive, technical service bulletin or other manufacturer notification takes effect or similar notification pursuant to federal law is issued there is no remedy or parts are not available from the manufacturer to remediate each affected new motor vehicle in the inventory of the dealer, the manufacturer shall compensate the dealer for any affected new motor vehicle in the inventory of the dealer in the amount of at least 1.7% a month, or any part thereof, of the cost of the new motor vehicle, based on the dealer invoice, including repairs based on the financial records of the dealer. The manufacturer shall establish a written procedure to compensate dealers under this paragraph and shall provide a copy of the written procedure to dealers subject to its coercion or requirement. Nothing in this paragraph is intended to limit in any way the rights of a dealer under section 1176;

C-4. To require any dealer, whether by agreement, program, incentive provision or provision for loss of incentive payments or other benefits, to refrain from selling, or selling pursuant to a do not drive directive, a used motor vehicle subject to a recall, stop sale directive, do not drive directive, technical service bulletin or other manufacturer notification or pursuant to federal law or to perform work on the used motor vehicle unless the manufacturer has a remedy and parts available to the dealer to remediate the basis for the coercion or requirement. If within 15 days of the date on which a recall, stop sale directive, do not drive directive, technical service bulletin or other manufacturer notification takes effect or similar notification pursuant to federal law is issued there is no remedy

or parts are not available from the manufacturer to remediate each affected used motor vehicle in the inventory of the dealer, the manufacturer shall, commencing on the 16th day, compensate the dealer for any affected used motor vehicle in the inventory of the dealer in the amount of at least 2.5% a month, or any part thereof, of the cost of the used motor vehicle, the cost to be based on the clean retail value of the used motor vehicle according to a publication of a national automobile dealers association, including repairs and reconditioning expenses based on the financial records of the dealer. The manufacturer shall establish a written procedure to compensate dealers under this paragraph and shall provide a copy of the written procedure to dealers subject to its coercion or requirement. Nothing in this paragraph is intended to limit in any way the rights of a dealer under section 1176;

C-5. A claim for compensation by a dealer under paragraph C-3 or C-4 must be submitted on a monthly basis. The manufacturer shall process and pay the claim in the same manner as for a claim for warranty reimbursement under section 1176. This paragraph does not prevent a manufacturer from requiring that a motor vehicle not be subject to an open recall or stop sale directive or do not drive directive in order to be qualified, remain qualified or be sold as a certified preowned vehicle or similar designation, from paying incentives for selling used vehicles with no unremedied recalls or from paying incentives for performing recall repairs on a vehicle in the dealer's inventory.

Nothing in this paragraph prevents a manufacturer from instructing a dealer to repair used vehicles of the line make for which the dealer holds a franchise with an open recall, as long as the instruction does not involve coercion that imposes a penalty or provision of loss of benefits on the dealer.

A manufacturer may not use any data, calculations or statistical determinations of the sales performance of a dealer for any purpose, including loss of incentive payments or other benefits, claim of breach or threats thereof or notice of termination or threats thereof, for the period of time that the manufacturer has established an agreement, program, incentive program or provision for loss of incentive payments or other benefits of any kind whatsoever that causes a dealer to refrain from selling any used motor vehicle subject to a recall, stop sale directive, do not drive directive, technical service bulletin or other manufacturer notification or pursuant to federal law to perform work on a dealer's used motor vehicles in its inventory when there is no remedy or parts are not available from the manufacturer to remediate each affected used motor vehicle and for 90 days after the termination of such an agreement, program, incentive program or provision for loss of incentive payments or other benefits of any kind whatsoever. The data on which the manufacturer seeks to rely under this paragraph may be for only a period or periods not excluded under this paragraph. A dealer is deemed to be in compliance with any performance standard or program requirements related to sales performance or sales or service customer satisfaction performance of the dealer during the period or periods excluded under this paragraph.

This paragraph does not prevent a manufacturer from requiring that a motor vehicle not be subject to an open recall or stop sale directive or do not drive directive, technical service bulletin, or other manufacturer notification or similar notification pursuant to federal law in order to be qualified, remain qualified or be sold as a certified preowned vehicle or similar designation; from paying

incentives for selling used vehicles with no unremedied recall; from paying incentives for performing recalled repairs on a vehicle in the dealer's inventory; or from instructing a dealer to repair used vehicles of the line make for which the dealer holds a franchise with an open recall as long as the instruction does not involve coercion that imposes a penalty or provision of loss of benefits on the dealer.

A dealer may apply to a manufacturer for adjustment to data, calculations or statistical determination of sales performance or sales and service customer satisfaction performance for any period of time during which the dealer has at least 5% of its new motor vehicle inventory subject to a recall, stop sale directive or do not drive directive and for 90 days after the end of such a period of time. Within 30 days of application for adjustment, the manufacturer shall use reasonable efforts to review and adjust the data, calculations or other statistical determinations back to the date the dealer was prevented from selling the new motor vehicles. The manufacturer has the burden of showing by clear and convincing evidence that the prevention of sale did not have a material, adverse effect on the dealer's new vehicle sales performance or sales and service customer satisfaction performance, and the adjustments by the manufacturer must remediate the effect shown on the data, calculations or statistical determinations of sales performance or sales and service customer satisfaction performance.

The manufacturer shall take into consideration any adjustments to a dealer's new vehicle sales performance or sales and service customer satisfaction performance made by the manufacturer under this paragraph in determining a dealer's compliance with a performance standard or program.

Nothing in this paragraph is intended to limit in any way the rights of a dealer under section 1176;

Sec. 2. 10 MRSA §1174, sub-§3-A, as corrected by RR 2013, c. 1, §20, is amended to read:

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

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

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

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

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

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

Sec. 3. 10 MRSA §1174, sub-§4, ¶F, as enacted by PL 2009, c. 53, §1, is amended to read:

F. To fail to disclose in writing to a potential purchaser or lessee of a motor vehicle that the motor vehicle had previously been returned to the manufacturer pursuant to either a lemon law arbitration decision or a lemon law settlement agreement in a state other than this State if known to the dealer. If that information is known to the dealer, this disclosure must be clear and conspicuous. For the purpose of this section, "lemon law" refers to any state's certified dispute settlement law that establishes a state-certified arbitration procedure to settle consumer complaints that the consumer had been sold a vehicle that did not conform to all manufacturer express warranties and that the manufacturer had not been able to repair or correct the defect or condition that impaired the vehicle; ~~and~~
and

Sec. 4. 10 MRSA §1174, sub-§5 is enacted to read:

5. Consumer notices. Manufacturer to prohibit a dealer from, or take any adverse action against a dealer for, providing to a consumer information given to the dealer by the manufacturer related to any condition that may substantially affect motor vehicle safety, durability, reliability or performance.

A. A manufacturer may not deny a claim, reduce the amount of compensation to a dealer or process a charge back to a dealer for performing covered warranty or required recall repairs on a vehicle:

(1) If the dealer resolved a condition covered by the manufacturer's original warranty or any extended warranty of the manufacturer;

(2) If the dealer remedied a safety-related defect that is subject to an outstanding recall under federal law;

(3) If the dealer performed the repairs and submitted the claim; or

(4) If the dealer discovered the need for repairs:

(a) During the course of a separate repair request by the customer; or

(b) Through notice of an outstanding recall under federal law for a safety-related defect.

B. Nothing in this subsection is intended to limit in any way the rights of a dealer under section 1176.

Sec. 5. 10 MRSA §1174-C, sub-§1, ¶A, as amended by PL 2003, c. 356, §9, is further amended to read:

A. A designated family member of a deceased, incapacitated or retiring 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~~, wholesaler, distributor branch or distributor representative, may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement if the designated family member gives the manufacturer, distributor, factory branch, factory representative ~~or importer~~, wholesaler, distributor branch or distributor representative of new motor vehicles written notice of the intention to succeed to the dealership within 120 days of the dealer's death, incapacity or retirement 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~~, wholesaler, distributor branch or distributor representative. The manufacturer has the burden of demonstrating good cause by clear and convincing evidence.

Sec. 6. 10 MRSA §1176-A, as amended by PL 2013, c. 534, §8, is further amended by adding at the end a new paragraph to read:

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

SUMMARY

This bill makes it an unfair and deceptive practice for a motor vehicle manufacturer to use unreasonable performance standards in assessing motor vehicle dealer compliance with franchise agreements, to require a dealer to refrain from selling a new or used motor vehicle when there is no remedy to a recall without the manufacturer's providing compensation or to prohibit a dealer from providing to a consumer information of a defective condition in a motor vehicle when the vehicle is being repaired under a manufacturer's warranty. It clarifies the standard of review in succession planning and in the analysis by a manufacturer of a dealer's sales and incentive performance.