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Legislative Document

No. 1463

S.P. 509

In Senate, April 18, 2017

An Act To Amend the Laws Relating to Motor Vehicle Dealers

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in black ink, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator VOLK of Cumberland.
Cosponsored by Representative HERBIG of Belfast and
Senators: JACKSON of Aroostook, President THIBODEAU of Waldo, Representatives:
FREDETTE of Newport, VACHON of Scarborough.

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

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

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

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

34 C-4. To require any dealer, whether by agreement, program, incentive provision or
35 provision for loss of incentive payments or other benefits, to refrain from selling, or
36 selling pursuant to a do not drive directive, a used motor vehicle subject to a recall,
37 stop sale directive, do not drive directive, technical service bulletin or other
38 manufacturer notification or pursuant to federal law or to perform work on the used
39 motor vehicle unless the manufacturer has a remedy and parts available to the dealer
40 to remediate the basis for the coercion or requirement. If within 15 days of the date
41 on which a recall, stop sale directive, do not drive directive, technical service bulletin
42 or other manufacturer notification takes effect or similar notification pursuant to
43 federal law is issued there is no remedy or parts are not available from the
44 manufacturer to remediate each affected used motor vehicle in the inventory of the
45 dealer, the manufacturer shall, commencing on the 16th day, compensate the dealer

1 for any affected used motor vehicle in the inventory of the dealer in the amount of at
2 least 2.5% a month, or any part thereof, of the cost of the used motor vehicle, the cost
3 to be based on the clean retail value of the used motor vehicle according to a
4 publication of a national automobile dealers association, including repairs and
5 reconditioning expenses based on the financial records of the dealer. The
6 manufacturer shall establish a written procedure to compensate dealers under this
7 paragraph and shall provide a copy of the written procedure to dealers subject to its
8 coercion or requirement. Nothing in this paragraph is intended to limit in any way
9 the rights of a dealer under section 1176;

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

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

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

41 This paragraph does not prevent a manufacturer from requiring that a motor vehicle
42 not be subject to an open recall or stop sale directive or do not drive directive,
43 technical service bulletin, or other manufacturer notification or similar notification
44 pursuant to federal law in order to be qualified, remain qualified or be sold as a
45 certified preowned vehicle or similar designation; from paying incentives for selling
46 used vehicles with no unremedied recall; from paying incentives for performing

1 recalled repairs on a vehicle in the dealer's inventory; or from instructing a dealer to
2 repair used vehicles of the line make for which the dealer holds a franchise with an
3 open recall as long as the instruction does not involve coercion that imposes a penalty
4 or provision of loss of benefits on the dealer.

5 A dealer may apply to a manufacturer for adjustment to data, calculations or
6 statistical determination of sales performance or sales and service customer
7 satisfaction performance for any period of time during which the dealer has at least
8 5% of its new motor vehicle inventory subject to a recall, stop sale directive or do not
9 drive directive and for 90 days after the end of such a period of time. Within 30 days
10 of application for adjustment, the manufacturer shall use reasonable efforts to review
11 and adjust the data, calculations or other statistical determinations back to the date the
12 dealer was prevented from selling the new motor vehicles. The manufacturer has the
13 burden of showing by clear and convincing evidence that the prevention of sale did
14 not have a material, adverse effect on the dealer's new vehicle sales performance or
15 sales and service customer satisfaction performance, and the adjustments by the
16 manufacturer must remediate the effect shown on the data, calculations or statistical
17 determinations of sales performance or sales and service customer satisfaction
18 performance.

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

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

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

27 **3-A. Successor manufacturer.** Successor manufacturer, for a period of 5 years
28 from the date of acquisition of control by that successor manufacturer, to offer a franchise
29 to any person for a line make of a predecessor manufacturer in any franchise market area
30 in which the predecessor manufacturer previously cancelled, terminated, noncontinued,
31 failed to renew or otherwise ended a franchise agreement with a franchisee who had a
32 franchise facility in that franchise market area without first offering the franchise to the
33 former franchisee at no cost, unless:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

