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LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

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**STATE OF MAINE
SENATE
128TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 509, L.D. 1463, Bill, “An Act To Amend the Laws Relating to Motor Vehicle Dealers”

Amend the bill by striking out all of section 1 and inserting the following:

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. The manufacturer has the burden of proving the reasonableness of its performance standards by clear and convincing evidence;

C-3. To fail to compensate a motor vehicle dealer for the reconditioning expenses and for all labor and parts the manufacturer requires a dealer to use to repair a new or used vehicle subject to a recall, if the dealer holds a franchise of the same line make as the vehicle. The manufacturer shall process and pay the claim in the same manner as for a claim for warranty reimbursement under section 1176;

C-4. To fail to compensate a motor vehicle dealer for a used motor vehicle that is subject to a do not drive order or stop sale order as required by this paragraph, if the dealer holds a franchise of the same line make as the vehicle.

(1) If a used motor vehicle is subject to a do not drive order or stop sale order and a remedy or part necessary to repair the used motor vehicle is not available within 30 days, the manufacturer shall compensate a motor vehicle dealer for each affected used motor vehicle in the inventory of the dealer at a prorated rate of at least 1.5% of the value of the used motor vehicle per month, commencing on the 30th day after the order was issued and ending on the date that the remedy and all parts necessary to repair or service the used motor vehicle are made available to the dealer. A manufacturer is not required by this subparagraph to pay more than the total value of the used motor vehicle to a motor vehicle dealer.

(2) A used motor vehicle is considered to be part of the inventory of the motor vehicle dealer under subparagraph 1 if the used motor vehicle is in the possession

COMMITTEE AMENDMENT

1 of the dealer on the date the do not drive order or stop sale order is issued or if
2 the dealer obtains the used motor vehicle as a result of a trade-in or a lease return
3 after the date that the order is issued but before the remedy and all parts
4 necessary to repair the used motor vehicle are made available to the dealer. The
5 manufacturer may establish the method by which a motor vehicle dealer
6 demonstrates that an affected motor vehicle is part of the inventory of the dealer
7 as described in this subparagraph. The method may not be unreasonable, be
8 unduly burdensome or require the motor vehicle dealer to provide information to
9 the manufacturer that is not necessary for payment.

10 (3) A manufacturer may not reduce compensation to a motor vehicle dealer,
11 process a charge back to a dealer, reduce the amount that the manufacturer owes
12 a dealer under an incentive program or remove a dealer from an incentive
13 program in response to the dealer submitting a claim or receiving compensation
14 pursuant to this paragraph. This subparagraph does not prohibit a manufacturer
15 from modifying or discontinuing an incentive program prospectively or from
16 making ordinary business decisions.

17 (4) As used in this paragraph, the following terms have the following meanings.

18 (a) "Do not drive order" means a notice issued by the Federal Government or
19 a manufacturer advising a motor vehicle dealer or owner of a motor vehicle
20 not to drive the vehicle until the vehicle has been repaired because the
21 vehicle has a safety defect, fails to comply with a federal motor vehicle
22 safety standard, fails to comply with a federal emissions standard or fails to
23 comply with an emissions standard adopted pursuant to Title 38, chapter 4.

24 (b) "Stop sale order" means a notice issued by the Federal Government or a
25 manufacturer prohibiting a motor vehicle dealer from leasing or selling and
26 delivering at wholesale or retail a motor vehicle in the inventory of the dealer
27 until the vehicle has been repaired because the vehicle has a safety defect,
28 fails to comply with a federal motor vehicle safety standard, fails to comply
29 with a federal emissions standard or fails to comply with an emissions
30 standard adopted pursuant to Title 38, chapter 4.

31 (c) "Value of the used motor vehicle" means the average trade-in value
32 indicated in an independent 3rd-party guide for a used motor vehicle of the
33 same year, make, model and mileage;

34 C-5. To use any data, calculations or statistical determinations of the sales
35 performance of a motor vehicle dealer for any purpose for any period of time during
36 which the dealer has at least 5% of its total new and used motor vehicle inventory
37 subject to a stop sale order or do not drive order. For purposes of this paragraph,
38 "stop sale order" and "do not drive order" have the same meaning as in paragraph C-
39 4;

40 **Sec. 2. 10 MRSA §1174, sub-§3, ¶K,** as amended by PL 1997, c. 521, §13, is
41 further amended to read:

42 K. To compete with a motor vehicle dealer ~~operating under an agreement or~~
43 ~~franchise from the manufacturer, distributor or wholesaler in the relevant market area,~~

1 the area to be by directly or indirectly through any subsidiary or affiliated entity
2 holding any ownership interest in or operating or controlling any motor vehicle
3 dealership of any line make, unless the board determines, after a hearing, that there is
4 no independent motor vehicle dealer available in the relevant market area to own and
5 operate a dealership of the same line make in a manner consistent with the public
6 interest and this chapter. For purposes of this paragraph, the relevant market area
7 must be determined exclusively by equitable principles, except that a A manufacturer
8 or distributor is not considered to be competing when does not violate this paragraph
9 by operating a dealership either temporarily for a reasonable period, in any case not
10 to exceed one year, or in a bona fide relationship in which an independent person has
11 made a significant investment subject to loss in the dealership and can reasonably
12 expect to acquire full ownership of the dealership on reasonable terms and conditions
13 and except that a distributor is not considered to be competing when a wholly owned
14 subsidiary corporation or the distributor sells motor vehicles at retail if, for at least 3
15 years prior to January 1, 1975, the subsidiary corporation has been a wholly owned
16 subsidiary of the distributor and engaged in the sale of motor vehicles at retail. The
17 provisions of this paragraph apply to a successor manufacturer or a distributor;'

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

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

20 **5. Discovered recall and warranty repairs.** Manufacturer to deny a claim by a
21 motor vehicle dealer for performing a covered warranty repair or required recall repair on
22 a vehicle if the dealer discovered the need for the repair during the course of a separate
23 repair request by the customer.'

24 Amend the bill by inserting after section 5 the following:

25 '**Sec. 6. 10 MRSA §1174-D** is enacted to read:

26 **§1174-D. Compensation for new vehicles with safety defect**

27 **1. Compensation required.** A manufacturer must compensate a motor vehicle
28 dealer pursuant to 49 United States Code, Section 30116 (2016). A manufacturer is not
29 required by this subsection to pay more than the total value of the affected new motor
30 vehicle to a dealer.

31 **2. Civil action; statute of limitations.** If a manufacturer refuses to comply with
32 subsection 1, the motor vehicle dealer may file a complaint with the board pursuant to
33 section 1188 or bring a civil action to recover damages, court costs and reasonable
34 attorney's fees. Notwithstanding section 1183, the action must be commenced within 3
35 years after the cause of action accrues.'

36 Amend the bill by inserting after section 6 the following:

37 '**Sec. 7. 10 MRSA §1183, first ¶**, as enacted by PL 1975, c. 573, is amended to
38 read:

39 Actions Except for an action arising out of section 1174-D, actions arising out of any
40 provision of this chapter shall must be commenced within 4 years next after the cause of
41 action accrues; provided, however, that if a person liable hereunder under this chapter
42 conceals the cause of action from the knowledge of the person entitled to bring it, the

1 period prior to the discovery of ~~his~~ the cause of action by the person so entitled ~~shall be~~ is
2 excluded in determining the time limited for commencement of the action. If a cause of
3 action accrues during the pendency of any civil, criminal or administrative proceeding
4 against a person brought by the United States, or any of its agencies under the antitrust
5 laws, the Federal Trade Commission Act, or any other Federal Act, or the laws of the
6 State related to antitrust laws or to franchising, such actions may be commenced within
7 one year after the final disposition of such civil, criminal or administrative proceeding.

8 **Sec. 8. 10 MRSA §1186**, as amended by PL 1979, c. 127, §58, is further amended
9 to read:

10 **§1186. Penalty**

11 Any person who violates any provision of this chapter ~~shall be guilty of other than~~
12 section 1174-D commits a Class E crime.'

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

15 **SUMMARY**

16 This amendment retains the provisions of the bill that clarify the standard of review
17 in succession planning for motor vehicle dealers and that prevent a manufacturer from
18 denying claims due to clerical errors or technicalities.

19 The amendment also makes it an unfair and deceptive trade practice for a motor
20 vehicle manufacturer to use unreasonable performance standards in assessing motor
21 vehicle dealer compliance with franchise agreements; to fail to compensate a motor
22 vehicle dealer for all of the reconditioning expenses and for all labor and costs associated
23 with performing a recall repair on a new or used vehicle; to fail to provide compensation
24 to dealers when a used motor vehicle in the dealer's inventory is subject to a do not drive
25 order or a stop sale order based on a safety defect or violation of an emissions standard
26 and no remedy exists or the parts are unavailable to remedy the defect or violation within
27 30 days; to compete with a motor vehicle dealer by opening a dealership of any line make
28 in the State without first obtaining a determination from the Maine Motor Vehicle
29 Franchise Board that there is no dealer within the relevant market area available to own
30 and operate a dealership of that line make; and to deny a claim for a warranty repair or a
31 recall repair on a vehicle when the need for the repair was discovered by the dealer during
32 the course of a separate repair requested by the customer.

33 The amendment also enacts a provision that mirrors federal law by requiring a
34 manufacturer to compensate a dealer when a new motor vehicle in the dealer's inventory
35 is subject to a do not drive order or a stop sale order based on a safety defect and there is
36 a delay before the necessary remedy and parts are made available to the dealer to repair
37 the vehicle.