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BY GOVERNOR | PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND SEVENTEEN

S.P. 509 - L.D. 1463

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. 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 of the dealer on the date the do not drive order or stop sale order is issued or if the dealer obtains the used motor vehicle as a result of a trade-in or a lease return

after the date that the order is issued but before the remedy and all parts necessary to repair the used motor vehicle are made available to the dealer. The manufacturer may establish the method by which a motor vehicle dealer demonstrates that an affected motor vehicle is part of the inventory of the dealer as described in this subparagraph. The method may not be unreasonable, be unduly burdensome or require the motor vehicle dealer to provide information to the manufacturer that is not necessary for payment.

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

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

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

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

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

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

Sec. 2. 10 MRSA §1174, sub-§3, ¶K, as amended by PL 1997, c. 521, §13, 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~~ by directly or indirectly through any subsidiary or affiliated entity holding any ownership interest in or operating or controlling any motor vehicle

dealership of any line make, unless the board determines, after a hearing, that there is no independent motor vehicle dealer available in the relevant market area to own and operate a dealership of the same line make in a manner consistent with the public interest and this chapter. For purposes of this paragraph, the relevant market area must be determined exclusively by equitable principles~~, except that a~~. A manufacturer or distributor ~~is not considered to be competing when~~ does not violate this paragraph by 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 except that a distributor is not 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. The provisions of this paragraph apply to a successor manufacturer or a distributor;

Sec. 3. 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. 4. 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

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

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

Sec. 6. 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. 7. 10 MRSA §1174-D is enacted to read:

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

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

2. Civil action; statute of limitations. If a manufacturer refuses to comply with subsection 1, the motor vehicle dealer may file a complaint with the board pursuant to

section 1188 or bring a civil action to recover damages, court costs and reasonable attorney's fees. Notwithstanding section 1183, the action must be commenced within 3 years after the cause of action accrues.

Sec. 8. 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.

Sec. 9. 10 MRSA §1183, first ¶, as enacted by PL 1975, c. 573, is amended to read:

~~Actions~~ Except for an action arising out of section 1174-D, actions arising out of any provision of this chapter ~~shall~~ must be commenced within 4 years ~~next~~ after the cause of action accrues; ~~provided, however, that~~ if a person liable ~~hereunder~~ under this chapter conceals the cause of action from the knowledge of the person entitled to bring it, the period prior to the discovery of ~~his~~ the cause of action by the person so entitled ~~shall be~~ is excluded in determining the time limited for commencement of the action. If a cause of action accrues during the pendency of any civil, criminal or administrative proceeding against a person brought by the United States, or any of its agencies under the antitrust laws, the Federal Trade Commission Act, or any other Federal Act, or the laws of the State related to antitrust laws or to franchising, such actions may be commenced within one year after the final disposition of such civil, criminal or administrative proceeding.

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

§1186. Penalty

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