Bill as Introduced

SB 375- AS AMENDED BY THE SENATE

3/9/00 3491s

2000 SESSION

00-2623
05/01

SENATE BILL ***375***

AN ACT relative to motor vehicle dealerships.

SPONSORS: Sen. F. King, Dist 1; Rep. Taylor, Straf 11

COMMITTEE: Transportation

ANALYSIS

This bill restricts the circumstances whereby a motor vehicle manufacturer or distributor may operate a dealership in the state without engaging in unfair competition with area dealers or franchisees.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 375- AS AMENDED BY THE SENATE

3/9/00 3491s

00-2623
05/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

AN ACT relative to motor vehicle dealerships.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Unfair Methods of Competition; Motor Vehicle Manufacturers or Distributors Prohibited from Acting As Dealers or Franchisees. RSA 357-C:3, III(k) is repealed and reenacted to read as follows:

(k) Act as a dealer or franchisee, or, either directly or indirectly, or through any subsidiary, affiliated entity or person, to own, operate or control, in full or in part, a motor vehicle dealership in this state for the sale or service of motor vehicles in this state. However, no such manufacturer, distributor, distributor branch or division, factory branch or division, subsidiary or affiliated entity or any agent thereof, shall be deemed to be in violation of this section:

(1) When operating a motor vehicle dealership for a temporary period, not to exceed 2 years, during the transition from one owner of the motor vehicle dealership to another;

(2) When operating a motor vehicle dealership temporarily under a plan with an independent individual that has made a significant investment in the dealership that is subject to loss and has an ownership interest or expects to acquire full ownership in a reasonable period under reasonable terms and conditions; or

(3) If the New Hampshire motor vehicle industry board determines, after a hearing, at the request of any person, that there is no independent person available in the community or territory to own and operate the motor vehicle dealership in a manner consistent with the public interest. In any such case, the manufacturer and others shall continue to make the motor vehicle dealership available for sale to an independent person at a fair and reasonable price. Approval of the sale of such a motor vehicle dealership to a proposed motor vehicle dealer shall not be unreasonably withheld.

2 Effective Date. This act shall take effect January 1, 2001.

Amendments

Commerce
May 3, 2000
2000-4371h
09/01

Amendment to SB 375

Amend the bill by replacing all after the enacting clause with the following:

1 Unfair Methods of Competition; Motor Vehicle Manufacturers or Distributors Prohibited from Acting As Dealers or Franchisees. RSA 357-C:3, III(k) is repealed and reenacted to read as follows:

(k) Compete with a motor vehicle dealer operating under an agreement or franchise from such manufacturer or distributor in the relevant market area; provided, however:

(1) If any manufacturer, distributor, distributor branch or division, or factory branch or division, either directly or indirectly, or through any subsidiary, affiliated entity or person, owns, operates or controls, in full or in part, a motor vehicle dealership in this state for the sale or service of motor vehicles in this state, the relevant market area shall be the area within the entire state of New Hampshire and, except for circumstances in which subparagraph (3) may apply, the New Hampshire motor vehicle industry board shall find good cause under RSA 357-C:9 before any such ownership, operation, or control shall be permitted. In addition to those factors listed in RSA 357-C:9, II, the board in such circumstances shall also consider in its determination of good cause whether the proposed dealership will create an unfair method of competition to other franchisees of the same manufacturer, distributor, distributor branch or division, factory branch or division, subsidiary or affiliated entity;

(2) That a manufacturer or distributor shall not be deemed to be competing when operating a dealership either temporarily, for a reasonable period in any case not to exceed 2 years. If a manufacturer or distributor shows good cause, the board may extend this time limit. Extensions may be granted for a period of up to 12 months; and

(3) A manufacturer that has no more than 5 franchised new motor vehicle dealers licensed to do business in this state and that directly or indirectly owns one or more of them shall not be deemed to be competing with any unaffiliated new motor vehicle dealer trading in the manufacturer's line make at a distance of 18 miles or greater provided that:

(A) All the new motor vehicle dealerships selling such manufacturer's motor vehicles trade exclusively in the manufacturer's line make;

(B) As of March 1, 2000, the manufacturer shall have directly or indirectly owned one or more new motor vehicle dealers in this state for a continuous period of at least 1 year; and

(C) Neither the manufacturer nor any entity in which the manufacturer has a majority ownership interest shall acquire, operate, or control any dealership that the manufacturer

did not directly or indirectly own as of March 1, 2000.

2 Chargebacks; Audits. Amend RSA 357-C:5, II (d)(5) to read as follows:

(5) Any chargeback resulting from any audit shall not be made until a final order is issued by the New Hampshire motor vehicle industry board if a protest to the proposed chargeback is filed within 30 days of the notification of the ***final*** amount claimed by the manufacturer, distributor, branch, or division to be due ***after exhausting any procedure established by the manufacturer, distributor, branch, or division to contest the chargeback, other than arbitration***. If the chargeback is affirmed by a final order of the board, the dealer shall be liable for interest on the amount set forth in the order at a rate of the prime rate effective on the date of the order plus one percent per annum from the date of the filing of the protest. In the absence of fraud, the board may order, based on the equities and circumstances of the parties, that the chargeback plus applicable interest be paid in installments not exceeding 12 months. If the board finds that a warranty chargeback is the result of a fraudulent warranty claim, no installment payments shall be allowed by the board.

3 Appeals; Enforcement. Amend RSA 357-C:12, VII to read as follows:

VII. Within 20 days after any order or decision of the board, any party to the proceeding may apply for a rehearing with respect to any matter determined in the proceeding, or covered or included in the order or decision. The application for rehearing shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the board shall be taken unless the appellant makes an application for rehearing as provided in this paragraph, and when such application for rehearing has been made, no ground not set forth in the application shall be urged, relied on, or given any consideration by a court unless the court for good cause shown allows the appellant to specify additional grounds. Any party to the proceeding may appeal ***the final order, including all interlocutory orders or decisions,*** to the superior court within 30 days after the date the board rules on the application for reconsideration ***of the final order or decision***. All findings of the board upon all questions of fact properly before the court shall be prima facie lawful and reasonable. The order or decision appealed from shall not be set aside or vacated except for errors of law. No additional evidence shall be heard or taken by the superior court on appeals from the board.

4 Effective Date. This act shall take effect January 1, 2001.

2000-4371h

AMENDED ANALYSIS

This bill restricts the circumstances whereby a motor vehicle manufacturer or distributor may operate a dealership in the state without engaging in unfair competition with area dealers or franchisees.

The bill also makes certain changes regarding chargebacks from audits and appeals from decisions and orders of the New Hampshire motor vehicle industry board.

Commerce
May 3, 2000
2000-4371h
09/01

Amendment to SB 375

NOT USED

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(k) Compete with a motor vehicle dealer operating under an agreement or franchise from such manufacturer or distributor in the relevant market area; provided, however:

(1) If any manufacturer, distributor, distributor branch or division, or factory branch or division, either directly or indirectly, or through any subsidiary, affiliated entity or person, owns, operates or controls, in full or in part, a motor vehicle dealership in this state for the sale or service of motor vehicles in this state, the relevant market area shall be the area within the entire state of New Hampshire and, except for circumstances in which subparagraph (3) may apply, the New Hampshire motor vehicle industry board shall find good cause under RSA 357-C:9 before any such ownership, operation, or control shall be permitted. In addition to those factors listed in RSA 357-C:9, II, the board in such circumstances shall also consider in its determination of good cause whether the proposed dealership will create an unfair method of competition to other franchisees of the same manufacturer, distributor, distributor branch or division, factory branch or division, subsidiary or affiliated entity;

(2) That a manufacturer or distributor shall not be deemed to be competing when operating a dealership either temporarily, for a reasonable period in any case not to exceed 2 years. If a manufacturer or distributor shows good cause, the board may extend this time limit. Extensions may be granted for a period of up to 12 months; and

(3) A manufacturer that has no more than 5 franchised new motor vehicle dealers licensed to do business in this state and that directly or indirectly owns one or more of them shall not be deemed to be competing with any unaffiliated new motor vehicle dealer trading in the manufacturer's line make at a distance of 18 miles or greater provided that:

(A) All the new motor vehicle dealerships selling such manufacturer's motor vehicles trade exclusively in the manufacturer's line make;

(B) As of March 1, 2000, the manufacturer shall have directly or indirectly owned one or more new motor vehicle dealers in this state for a continuous period of at least 1 year; and

(C) Neither the manufacturer nor any entity in which the manufacturer has a majority ownership interest shall acquire, operate, or control any dealership that the manufacturer

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2000-4371h

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This bill restricts the circumstances whereby a motor vehicle manufacturer or distributor may operate a dealership in the state without engaging in unfair competition with area dealers or franchisees.

The bill also makes certain changes regarding chargebacks from audits and appeals from decisions and orders of the New Hampshire motor vehicle industry board.

Rep. Hunt, Ches. 10
May 8, 2000
2000-4396h
09/10

Amendment to SB 375

Amend the bill by replacing all after the enacting clause with the following:

1 Unfair Methods of Competition; Motor Vehicle Manufacturers or Distributors Prohibited from Acting As Dealers or Franchisees. RSA 357-C:3, III(k) is repealed and reenacted to read as follows:

(k) Compete with a motor vehicle dealer operating under an agreement or franchise from such manufacturer or distributor in the relevant market area; provided, however:

(1) If any manufacturer, distributor, distributor branch or division, or factory branch or division, either directly or indirectly, or through any subsidiary, affiliated entity or person, owns, operates or controls, in full or in part, a motor vehicle dealership in this state for the sale or service of motor vehicles in this state, the relevant market area shall be the area within the entire state of New Hampshire and, except for circumstances in which subparagraph (3) may apply, the New Hampshire motor vehicle industry board shall find good cause under RSA 357-C:9 before any such ownership, operation, or control shall be permitted. In addition to those factors listed in RSA 357-C:9, II, the board in such circumstances shall also consider in its determination of good cause whether the proposed dealership will create an unfair method of competition to other franchisees of the same manufacturer, distributor, distributor branch or division, factory branch or division, subsidiary or affiliated entity;

(2) That a manufacturer or distributor shall not be deemed to be competing when operating a dealership either temporarily, for a reasonable period in any case not to exceed 2 years; provided that if a manufacturer or distributor shows good cause, the board may extend this time limit and extensions may be granted by the board for periods of up to 12 months; or unless the manufacturer or dealer through 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 such dealership on reasonable terms and conditions; and

(3) A manufacturer that has no more than 5 franchised new motor vehicle dealers licensed to do business in this state and that directly or indirectly owns one or more of them shall not be deemed to be competing with any unaffiliated new motor vehicle dealer trading in the manufacturer's line make at a distance of 18 miles or greater provided that:

(A) All the new motor vehicle dealerships selling such manufacturer's motor vehicles trade exclusively in the manufacturer's line make;

(B) As of March 1, 2000, the manufacturer shall have directly or indirectly owned one or more new motor vehicle dealers in this state for a continuous period of at least 1 year;

and

(C) Neither the manufacturer nor any entity in which the manufacturer has a majority ownership interest shall acquire, operate, or control any dealership that the manufacturer did not directly or indirectly own as of March 1, 2000.

2 Chargebacks; Audits. Amend RSA 357-C:5, II (d)(5) to read as follows:

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The bill also makes certain changes regarding chargebacks from audits and appeals from decisions and orders of the New Hampshire motor vehicle industry board.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # SB 375 Date 4-5-00

Committee Commerce

**** Please Print All Information ****

Name	Address	Phone	Representing	(check one) Pro	Con
John J. Platek	50 N Main St.	434.1546	Bethlehem Chamber	X	
David Hammer	320 Elm St Milford 72 Mount Vernon St Milford	673-5511 673-1700	Contemporary Doctor Milford	✓	
Thomas Fiermonte	6 Rockne Dr. Nashua	888-8868		X	

Hearing Minutes

HOUSE COMMITTEE ON COMMERCE

PUBLIC HEARING ON SB 375

BILL TITLE: relative to motor vehicle dealerships.

DATE: April 5, 2000

LOB ROOM: 302 **Time Public Hearing Called to Order:** 1:50 pm

Time Adjourned: 3:15 pm

(please circle if present)

Committee Members: Reps. (Hunt), Francoeur, (Herman), Tsiros, Belanger, (McGough), Kenney, Langley, Pappas, (Avery), Dalianis, DiFruscia, (Marshall), M. Clark, Crosby, (R. Russell), T. Reardon, Vachon, Taylor, Curran, (Garrish) and (Keye)

Bill Sponsors: Sen. King and Rep. Taylor

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Sen. King – sponsor. Sorry that he feels this legislation is necessary. Dealers are local citizens that serve on boards and are members of the community. Are dealers now so greedy they now want to skim an extra $200 off the sale? Manufacturers now get all info on dealers. There are presently no manufacturers in NH. Prevention bill. Several states have already enacted similar legislation. Would this prevent manufacturers from selling directly through the Internet? The purpose of the bill is to prevent manufacturers from selling automobiles except through dealers. The issue may have receded somewhat but it will come back.

Rep. Taylor – Co-sponsor. She heard that GM was planning to operate 600 Factory-owned dealerships in the best prime markets squeezing out local dealers. Pass the bill so that there is competition.

Dan McLeod & Gregory A. Holmes, NHADA - Forty-nine states are considering similar legislation. Unfair method of competition. Exceptions are ub place for starting a dealership or replacing a dealer who has left. Saturn has two stores in NH that are company owned. Internet sales are a challenge. No prohibition of Internet sales as in present law. Wouldn't this be better for competition if this law does not pass? Restricting free enterprise!

Q: Rep. Avery – Under this bill would I, as a new auto manufacturer, be required to go through some dealer?

A: Yes.

Q: I couldn't sell or distribute it myself?

A: No.

Ken Plante & Peggy Proko, NHADA – Support the bill. K. Plante supports the present system, best for competition, sales and service. P.Proko supports the present system. Wants her children to be able to carry on the family business. Thinks factory ownership will be bad for individual dealers.

David Philipkoski, David Ford Lincoln Mercury, Keene, NH – Worked for Ford as did his wife – six pages financial statement. As a dealer, Ford will not tell me how much it costs to manufacture a Ford. Telephone used to cost 20 cents a minute. Now with competion only costs 5 cents a minute.

***Ed Dupont, Alliance of Automobile Manufacturers** – Opposes the bill. What does the consumer really want? Franchise act. Read off a list of a dozen automakers that were not players 10 years ago. Relevant market areas. One out of every four cars are sold by 5 dealers. There is currently a board in state government – a board to take grievances too. You don't have to go to court. We already have the remedy system in place. Offered amendments and suggested we might put this bill into study.

Respectfully Submitted:

Stephen G. Avery, Clerk

HOUSE COMMITTEE ON COMMERCE

PUBLIC HEARING ON SB 375

BILL TITLE: relative to motor vehicle dealerships.

DATE: April 5, 2000

LOB ROOM: 302 **Time Public Hearing Called to Order:** 1:50 PM

Time Adjourned: _____

(please circle if present)

Committee Members: Reps. Hunt, Herman, Tsiros, Belanger, Francoeur, McGough, Pappas, Avery, Kenny, Langley, Dalianis, DiFruscia, Marshall, M. Clark, Crosby, Russell, T. Reardon, Vachon, Garrish, Taylor, Curran and Keye.

Bill Sponsors: {Type SPONSORS' NAMES} Sen. King

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Sen. King – Sponsor - Sorry that he feels this legislation is necessary. Dealers are local citizens that serve on boards and are members of the community.
Are dealers now so greedy they now want $ an extra $200 off the sale.
Manufacture now gets all info on dealers.
There are presently no manufactures in NH.
Prevention Bill - several states have already enacted similar legislation.

Sen. King (Cont.)
Would this prevent manufacturers from selling directly through the internet. The purpose of the bill is to prevent man. from selling automobiles except through dealers. The issue may have receded somewhat but it will come back.

Rep. Taylor - Sponsor - She heard that GM was planning to operate 600 factory owned dealerships ~~and~~ in the best prime markets squeezing out local dealers. Pass the bill so that there is competition.

Dan McLeod/Greg A. Holmes - Support.
49 States are considering similar legislation. Unfair method of competition. Exceptions are in place for starting a dealership or replacing a dealer who has left. Saturn has two stores in NH that are company owned. - Internet Sales are a challenge. no ~~st~~ prohibition of internet sales. as in present law.

SB 375

McLeod - Cont. - wouldn't this be better for competition if this law does not pass.

Restricting free enterprise!!!

Avery: Q under this bill would I as a new auto manufacturer be required to go through some dealer. Yes.

I couldn't sell a distribute it myself? NO

Ken Plante / Peggy Pkoko - NHADA - Support the bill.

(KP) Supports the present system - best for competition - sales. + ~~Son~~ Service: ~~good~~

(PP) Supports the present system - wants her children to be able to carry on the family business. Thinks Factory ownership will be bad for individual dealers.

Dania Philipkosh. = David Ford - Supports.

Worked for Ford as did his wife.
6 Pages financial Statement.
~~As~~ a dealer - Ford will not tell me how much it cost's to manufacture a Ford.

SB 375

David - cont.

Telephone used to cost. 20¢ a minute now with competition only costs 5¢ a minute

Ed Dupont. - Alliance of Auto Manufacturers opposed to the bill.

What does the consumer really want? Franchise act.
Read off a list of a dozen auto makers that were not players 10 years ago. Relevant Market Areas.
1 out every 4 cars are sold by 5 dealers. There is currently a board in State Government a board to take grevieness to. You don't have to go to Court. We already have the remedy system in place.
Offered amendments and suggested we might post this bill into study. (written testimony)

Sub-Committee Actions

HOUSE COMMITTEE ON COMMERCE

SUBCOMMITTEE WORK SESSION ON SB 375

BILL TITLE: relative to motor vehicle dealerships.

DATE: May 3, 2000

Subcommittee Members: Reps. Hunt, Keye, and Marshall

Comments and Recommendations: Took up the motor dealers' amendment with one change from the auto manufacturers.

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, (OTP/A,) ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. Marshall

Seconded by Rep. Keye

Vote: 3-0

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. John B. Hunt
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON COMMERCE

SUBCOMMITTEE WORK SESSION ON SB 375

BILL TITLE: **relative to motor vehicle dealerships.**

DATE: **May 3, 2000**

Subcommittee Members: Reps. Hunt Keye Marshall

Comments and Recommendations:

took up the Motor Dealers amdmt with one chge from the Auto Manufacturers

Amendments:

Sponsor: Rep. Marshall OLS Document #: _____ Adopted/Failed

Sponsor: Rep. _____ OLS Document #: _____ Adopted/Failed

Sponsor: Rep. _____ OLS Document #: _____ Adopted/Failed

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. Marshall

Seconded by Rep. Keye

Vote: 3-0

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. _____

Seconded by Rep. _____

Vote: _____

Respectfully submitted

Rep. _____
Subcommittee Chairman/Clerk

Sub-Committee Minutes

HOUSE COMMITTEE ON COMMERCE

SUBCOMMITTEE WORK SESSION ON SB 375

BILL TITLE: relative to motor vehicle dealerships.

DATE: April 25, 2000

Subcommittee Members: Reps. Hunt, Marshall and Keye

Comments and Recommendations: Scheduled another subcommittee meeting for May 3 at 1:30 pm.

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. John B. Hunt
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON COMMERCE

SUBCOMMITTEE WORK SESSION ON SB 375

BILL TITLE: **relative to motor vehicle dealerships.**

DATE: ~~[Type DATE here]~~ April 25, 2000

Subcommittee Members: Reps. Marshall, Keye

Comments and Recommendations: S

May 3 - 1:30 pm

Amendments:

Sponsor: Rep. _____ OLS Document #: _____ Adopted/Failed

Sponsor: Rep. _____ OLS Document #: _____ Adopted/Failed

Sponsor: Rep. _____ OLS Document #: _____ Adopted/Failed

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. _____

Seconded by Rep. _____

Vote: _____

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. _____

Seconded by Rep. _____

Vote: _____

Respectfully submitted,

Rep. _____
Subcommittee Chairman/Clerk

Testimony

SB 375 (an act relative to motor vehicle dealerships)
vs.
Current State Law (RSA 357-C)

- The NH State Legislature has already chosen to significantly involve NH Law in the relationship between manufacturers and dealers.

- Protections for dealers are already in place in NH law, RSA 357-C, regulating most of the everyday activities and interactions between dealers and the respective manufacturers.

Consider the following:

357-C:3 I It is unlawful for a person not a new motor vehicle dealer to represent that he is a new motor vehicle dealer, to advertise a vehicle for sale as a new motor vehicle, or to sell a vehicle as a new motor vehicle.

357-C:3 II It is illegal for a manufacturer to:

Refuse to deliver in reasonable quantities, and within a reasonable time after receipt of dealer's order

Terminate or cancel the franchise or selling agreement of any such dealer without good cause

Offer to sell or to sell any new motor vehicle at a lower actual price than the actual price offered to any other motor vehicle dealer for the same model vehicle similarly equipped

Offer, sell, or lease any new motor vehicle to any person, except a distributor, at a lower actual price than the actual price offered and charged a motor vehicle dealer for the same model vehicle similarly equipped

Compete with a motor vehicle dealer operating under an agreement or franchise from such manufacturer or distributor in the relevant market area; provided, however, that a manufacturer or distributor shall not be deemed to be competing when operating a dealership either temporarily, for a reasonable period in any case not to exceed 2 years, or through 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 such dealership on reasonable terms and conditions; and, provided further, that a distributor shall not be deemed to be competing when a wholly owned subsidiary corporation of such distributor sells motor vehicles at retail, if, since prior to January, 1970, such subsidiary corporation has been a wholly owned subsidiary of such distributor and engaged in the sale of motor vehicles at retail;

Grant a competitive franchise in the relevant market area previously granted to another franchise other than in accordance with the provisions of this chapter;

Change the relevant market area set forth in the franchise agreement without good cause.

357-C:9 I. In the event that a manufacturer seeks to enter into a franchise establishing an additional new motor vehicle dealership or relocating an existing new motor vehicle dealership within a relevant market area where the same line make is then represented, the manufacturer shall first give written notice to the New Hampshire motor vehicle industry board and each new motor vehicle dealer of such line make in the relevant market area of the intention to establish an additional dealership or to relocate an existing dealership within that market area. Within 15 days of receiving such notice or within 15 days after the end of any appeal procedure provided by the manufacturer, any such new motor vehicle dealership may file a protest with the New Hampshire motor vehicle industry board to the establishing or relocating of the new motor vehicle dealership. A copy shall be served on the manufacturer within the 15-day period. When such protest is filed, the manufacturer may not establish or relocate the proposed new motor vehicle dealership until the board has held a hearing, nor thereafter if the board determines that there is good cause for not permitting such new motor vehicle dealership. For purposes of this paragraph, the reopening in a relevant market area of a new motor vehicle dealership that has not been in operation for one year or more shall be deemed the establishment of an additional new motor vehicle dealership.

At any hearing conducted by the New Hampshire motor vehicle industry board under this section, the manufacturer seeking to establish an additional new motor vehicle dealership or relocate an existing new motor vehicle dealership shall have the burden of proof in establishing that good cause exists.

- SB 375, for the first time, would involve the consumer in New Hampshire law where it comes to automobile sales.
- Should state government tell consumers where they have to buy a car?
- In our new economy, would the state tell consumers they had to buy books from Borders bookstore and not from *Amazon.com*?

NH Business Review "Book of Lists" 12/99

N.H.'s Largest Auto Dealers

Dealer Location	Top Management	Phone/Fax E-mail/Web Address # Employees	Sales Sales Prev FY FY	Total Units New Retail Used Retail	Makes # Locations
1. AutoFair Automotive Corp. 33 Autocenter Road Manchester, NH 03103	Dan Prior, chmn. Scott Orlosk, pres./coo Kari Stone, cfo	624-1800/625-1337 sorlosk@autofairusa.com/autofairusa.com 389	$304 million $291 million 12/31/98	12,511 7,808 4,703	Ford/Toyota/Lexus/Honda/Jaguar Chrysler/Plymouth/Hyundai 5
2. Berlin City Dealerships 485 Main Street Gorham, NH 03581	Daniel Dagesse, pres. Steve Roach, gen. mgr. Andrew Bradford, contr.	752-6644/752-6374 eblais@berlincity.com/www.berlincity.com 410	$221 million $203 million 12/31/98	9,593 6,251 3,342	Toyota/Dodge/Jeep/Ford/Honda/Isuzu Mercury/Lincoln/Mazda & More 2
3. Merchants Automotive Group 1278 Hooksett Road Hooksett, NH 03106	Stephen Singer, pres. Robert Singer, v.p. Bob Coffey, cfo	669-4100/669-2031 www.mrac.com 300	$140 million $125 million 12/31/98	2,800 1,000 1,800	11
4. Colonial Imports Corp. 10 Marmon Drive Nashua, NH 03060	Wilfrid Piekarski, pres. Christopher Piekarski, dir. op. Arthur Lopes, contr.	888-3555/891-5956 181	$98 million $98 million 12/31/98	4,964 2,036 2,026	Toyota of Nashua Car Center Toyota of Nashua Truck Ctr. 2
5. Dobles Chevrolet-Buick, Inc. 1250 South Willow Street Manchester, NH 03103	Gerard J. Montembeault, pres. Edward M. Zimmerman, sec/treas	669-2450/622-2413 156	$79.9 million $74.4 million 12/31/98	2,856 1,928 928	1
6. Bournival, Inc. 720 Lafayette Road Portsmouth, NH 03801	R. D. Bournival, pres. C.L. Casey, compt.	431-8900/431-6255 89	$68.4 million $69.9 million 12/31/98	3,586 1,775 1,811	Jeep/Kia 2
7. Foss Motors, Inc. 133 Portsmouth Avenue Exeter, NH 03833	Laurence E. Foss	772-3702/772-9767 foss@ttic.net/www.fossmotorsinc.com 48	$62 million $54 million 12/31/98	3,200 2,081 1,119	Chrysler/Plymouth/Dodge Dodge Truck/Dodge Conversion Vans 1
8. Bonneville & Son, Inc. 337 Hooksett Road Manchester, NH 03104	Edward Bonneville, pres. Edward A. Bonneville, v.p. John Xiggoros, gen sales mgr.	624-9280/624-1142 sales@bonneville-son-auto.com/www.bonneville-auto-son.com 95	$57.2 million $51 million 12/31/98	2,731 1,509 1,222	Dodge/Dodge Truck Kia/Jeep/Prime Time Conversion Vans 2
9. International Cars Ltd. dba Dover Autoworld 5 Dover Point Road Dover, NH 03820	Edward J. Byrnes, pres. Philip M. Cassette, corp. aud. Norman Fitzgerald, gen. mgr.	742-1676/742-9836 80	$50 million $36.6 million 12/31/98	1,992 1,476 516	Chevrolet/Honda Porsche/Audi 1
10. McFarland Ford Sales, Inc. 151 Portsmouth Avenue Exeter, NH 03833	Henry O. McFarland, pres. Susan McFarland Moynahan, v.p. Nancy Brewer, system admin.	772-5953/772-1144 nuford@aol.com/www.mcfarlandford.com 88	$46 million $34.9 million 12/31/98	2,401 1,445 956	Ford Hyundai 2
11. Betley Chevrolet Buick, Inc. 50 North Main St., PO Box 248 Derry, NH 03038	John T. Platek, pres. John J. Platek, v.p. Jay Gangloff, contr.	434-1546/434-1336 betley@tiac.net/www.betley.com 60	$41.629 million $42.4 million 12/31/98	2,442 1,119 1,323	1
12. Gladstone Ford Chrysler Plymouth Inc. Rte. 102 Londonderry, NH 03053	Paul Gladstone, owner/pres. E.J. Diozzi, gen. mgr. Vicki D. Gelardi, controller	434-4141/434-7309 GladstoneAuto.com 75	$39.3 million $38.4 million 12/31/98	2,065 351 1,169	Ford Chrysler/Plymouth 1
13. Poulin Auto Country 401 No. Main St. PO Box 1330 Rochester, NH 03866-1330	Richard Poulin, pres. Jack Hayes, gen. mgr. Ron Poulin, gen. sales mgr.	332-2010/330-3849 poulin@nh.ultranet.com/www.autocountry.com 68	$28.7 million $31.4 million 12/31/98	1,241 669 572	Chev/Olds/ Chrysler/Plymouth/Jeep 2
14. Fairfield's Pontiac, Cadillac, Buick, Inc. 434 Winchester Street Keene, NH 03431	David J. Gale, pres. Christian D. McCauley, v.p.	352-7700/352-8870 34	$22.9 million $19.7 million 12/31/98	1,081 425 656	Buick/Cadillac Pontiac/Mitsubishi 2
15. Merrimack St. Garage Inc. 40-56 Merrimack St. Manchester, NH 03108	Raymond Saidel, pres. Alex Saidel, v.p. oper. Mark Saidel, v.p. sales	623-8015/623-5141 45	$22.09 million $20.2 million 12/31/98	768 406 362	Oldsmobile Volvo 2
16. Sunnyside Acura 482 Amherst St. Nashua, NH 03063	James F. Powers, Jr., pres.	880-6550/882-6330 32	$21.9 million $19.7 million 12/31/98	536 243 293	Acura 1
17. Allen Motors 19 Manchester Road Derry, NH 03038	Troy Allen, pres. B. Powell Allen, cfo	434-0391/434-0252 amotors@metro2000.net 35	$21.069 million $24.006 million 12/31/98	821 573 248	Dodge/Jeep 1
18. Subaru of Nashua, Inc. 107 Daniel Webster Highway Nashua, NH 03060	Daniel J. Ewing, pres.	888-9999/888-9284 19	$18 million $18 million 12/31/98	950 600 350	Subaru 1
19. Dartmouth Motor Sales, Inc. 320 John Stark Highway Newport, NH 03773	J. Marshall Friedman, pres.	863-2800/863-4572 sales@dtmotors.com 35	$16.4 million $16.7 million 12/31/98	695 402 293	Chevrolet/GMC Truck Buick/Pontiac/Oldsmobile 1

SB 375 Commerce Committee LOB302 1:30pm 3/5/2000

For the record, I am Rep. Kathy Taylor, representing Strafford, District #11. I co-sponsored this bill as a result of a conversation I had with Dan McLeod last fall. He told me of the late September announcement made by General Motors and their intention to own and operate 700 to 800 dealerships in 130 of the biggest markets in the United States. I felt that this would have a ~~significant~~ negative impact on our local auto dealers. Just think of it, General Motors, a huge corporation with all of its vast resources, would compete with its own dealers! From my point of view, this would not be fair competition. Independent, locally owned car dealerships would ~~be a thing of the past~~ disappear and manufacturer owned dealerships would be the first step in controlling the motor vehicle marketplace. Eventually with this marketplace control, the ability of consumers to shop and negotiate with different dealers selling the same car, would be lost and would lead to uniform pricing, which is in effect, price control. I think the consumer would lose if we don't take some action to prevent this from becoming the practice in New Hampshire. It is now my understanding that General Motors has announced they have pulled back from their announcement and do not intend to own dealerships. While this is good news, I still believe this bill is important for the future in case they change their minds again. By our passage of SB 375, we will insure that there will continue be high levels of competition amongst our many local auto dealers and this will, in the end, benefit New Hampshire consumers.

This concludes my testimony and I thank the committee for your consideration. I will be happy to work with the sub-committee and I will defer any questions to the experts who are to follow me. Thank you.

Memo to: Chairman Hunt, Representatives Keye and Marshall.
From: Dan McLeod
Date: 4/27/00
Below is the amendment to SB 375 that accomplishes the issues discussed at the subcommittee meeting on 4/25.
All language, excluding DOS amendment, has been incorporated in 357-C: 3,III,(k).
Section 1 defines the entire state as the relevant market area for a manufacturer and includes the NHMVIB in the good cause process.
Section 2 allows a manufacturer to operate a dealership for 2 years and another 12-month extension.
Section 3 is the current law that allows a dealer development situation.
Section 4 is the language that was re-worded for the Saturn situation.

PROPOSED AMENDMENT TO SB 375

357-C:3, III, (k) Compete with a motor vehicle dealer operating under an agreement or franchise from such manufacturer or distributor in the relevant market area.
1. Provided, however, if any manufacturer, distributor, distributor branch or division, factory branch or division, either directly or indirectly, or through any subsidiary, affiliated entity or person, owns, operates or controls, in full or in part, a motor vehicle dealership in this State for the sale or service of motor vehicles in this State, the relevant market area shall be the area within the entire State of New Hampshire, and, except for circumstances in which paragraph 4 may apply, the New Hampshire Motor Vehicle Industry Board shall find good cause under RSA 357-C: 9 before any such ownership, operation, or control shall be permitted. In addition to those factors listed in Paragraph II of RSA 357-C: 9, the Board in such circumstances shall also consider in its determination of good cause whether the proposed dealership will create an unfair method of competition to other franchisees of the same manufacturer, distributor, distributor branch or division, factory branch or division, subsidiary or affiliated entity;
2. provided, however, that a manufacturer or distributor shall not be deemed to be competing when operating a dealership either temporarily, for a reasonable period in any case not to exceed 2 years, **provided however, upon a showing by a manufacturer or distributor of good cause, the Board may extend the time limit set forth above for up to twelve months;**
3. or unless the manufacturer or dealer through 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 such dealership on reasonable terms and conditions;
4. and provided further, a manufacturer that has no more than 5 franchised new motor vehicle dealers licensed to do business in this state and that directly or indirectly owns one or more of them shall not be deemed to be competing with any unaffiliated new motor vehicle dealer trading in the manufacturer's line make at a distance of 18 miles or greater provided that, 1) all the new motor vehicle dealerships selling such manufacturer's motor vehicles trade exclusively in the manufacturer's line make, 2) as of March 1, 2000 the manufacturer shall have directly or indirectly owned one or more new motor vehicle dealers in this state for a continuous period of at least 1 year, and 3) neither the manufacturer nor any entity in which the manufacturer has a majority ownership interest shall acquire, operate, or control any dealership that the manufacturer did not directly or indirectly own as of March 1, 2000;

Suggested changes by the Department of Safety, New Hampshire Motor Vehicle Industry Board

357 – C: 5, Warranty Obligations, Transportation Damage and Indemnification.

II. If any franchisor shall require or permit franchisees to perform services or provide parts in satisfaction of a warranty issued by the franchisor:

(d) (5) Any chargeback resulting from any audit shall not be made until a final order is issued by the New Hampshire motor vehicle industry board if a protest to the proposed chargeback is filed within 30 days of the notification of the **final** amount claimed by the manufacturer, distributor, branch, or division to be due **after exhausting any procedure established by the manufacturer, distributor, branch, or division to contest the chargeback, other than arbitration.** If the chargeback is affirmed by a final order of the board, the dealer shall be liable for interest on the amount set forth in the order at a rate of the prime rate effective on the date of the order plus one percent per annum from the date of the filing of the protest. In the absence of fraud, the board may order, based on the equities and circumstances of the parties, that the chargeback plus applicable interest be paid in installments not exceeding 12 months. If the board finds that a warranty chargeback is the result of a fraudulent warranty claim, no installment payments shall be allowed by the board.

357 – C: 12 Enforcement; New Hampshire Motor Vehicle Industry Board; Fund Established.

VII. Within 20 days after any order or decision of the board, any party to the proceeding may apply for a rehearing with respect to any matter determined in the proceeding, or covered or included in the order or decision. The application for rehearing shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the board shall be taken unless the appellant makes an application for rehearing as provided in this paragraph, and when such application for rehearing has been made, no ground not set forth in the application shall be urged, relied on, or given any consideration by a court unless the court for good cause shown allows the appellant to specify additional grounds. Any party to the proceeding may appeal **the final order, including all interlocutory orders or decisions,** to the superior court within 30 days after the date the board rules on the application for reconsideration **of the final order or decision**. All findings of the board upon all questions of fact properly before the court shall be prima facie lawful and reasonable. The order or decision appealed from shall not be set aside or vacated except for errors of law. No additional evidence shall be heard or taken by the superior court on appeals from the board.

Edward Dupont

From: Edward Dupont [edupont@dupontgroup.com]
Sent: Monday, May 01, 2000 3:53 PM
To: 'jbhunt@prodigy.net'
Cc: 'dmcleod@nhada.com'; 'kashton@autoalliance.org'
Subject: SB375

I had my weekly conference call with the Alliance today, with the exception of two issues we appear to be okay with the proposed amendment. The first issue is to clean up the language in the section 1.

The new language is italicized. The deleted language is in [~~brackets and struckthrough~~]

1. Provided, however, if any manufacturer, distributor, distributor branch or division, factory branch or division, either directly or indirectly, or through any subsidiary, affiliated entity or person, owns, operates or controls, in full or in part, a motor vehicle dealership in this State for the sale [~~or~~] ***and*** service of ***new*** motor vehicles in this State, the relevant market area shall be the area within the entire State of New Hampshire, and, except for circumstances in which paragraph 4 may apply, the New Hampshire Motor Vehicle Industry Board shall find good cause under RSA 357-C: 9 before any such ownership, operation, or control shall be permitted. In addition to those factors listed in Paragraph II of RSA 357-C: 9, the Board in such circumstances shall also consider in its determination of good cause whether the proposed dealership will create an unfair method of competition to other franchisees of the same manufacturer, distributor, distributor branch or division, factory branch or division, subsidiary or affiliated entity;

As I previously indicated, we would like to see the language in section 2 changed to give the discretion to the Motor Vehicle Industry Board to grant additional extensions for up to twelve months as it deems necessary. I have suggested we go back to the language submitted in our amendment. Section 2 is redrafted below to reflect this change.

2. provided, however, that a manufacturer or distributor shall not be deemed to be competing when operating a dealership either temporarily, for a reasonable period in any case not to exceed 2 years, provided however,- ~~upon a showing by a manufacturer or distributor of good cause, the Board may extend the time limit set forth above for up to twelve months~~]; ***upon showing by a manufacturer or distributor of good cause, the Board may extend the time limit set forth above; extensions may be granted for periods of up to twelve months;***

Testimony of the

Alliance of Automobile Manufacturers

SB 375

House Commerce Committee

April 5, 2000

the Dupont Group

Testimony of the

Alliance of Automobile Manufacturers

SB 375

House Commerce Committee

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1. *Alliance Testimony*

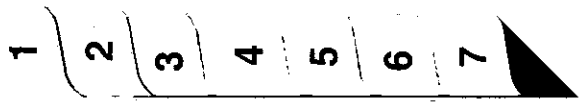
2. *RSA 357-C and Summary*

3. *SB375 as Amended by the Senate*

4. *Proposed Alliance Amendments*

5. *Industry News Clips*

6. *Senate Hearing*


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Edward Dupont
Testimony on SB375
House Commerce Committee
April 5, 2000

Mr. Chairman and Members of the Committee:

My name is Edward Dupont. I am here representing the Alliance of Automobile Manufacturers. The Alliance is a coalition of car and light truck manufacturers that represents the following companies: General Motors, Ford, DaimlerChrysler, Isuzu, Toyota, Nissan, Mazda, Fiat, BMW, Porsche, Mitsubishi, Volkswagen and Volvo.

We are here today to discuss with you the proposed changes to RSA 357-C: The Regulation of Business Practices Between Motor Vehicle Manufacturers, Distributors, and Dealers. A copy of the current statute as well as an outline of the statute is in the package we handed out. I would ask that you review the complete statute so that you have the full sense of what has already been legislated in the relationship between dealers and manufacturers.

I would like to start off by saying that nowhere in the NH RSA's will you find legislation serving the interests of private businesses such as you will find in RSA 357-C. While the Franchise Act was originally written to protect dealers on issues related to their franchise agreement and their assigned territory, over the years it has been amended a number of times and now regulates a number of other issues such as parts and labor pricing on warranty work, delivery charges, pricing on vehicles sold to state and local government, and even the rights of dealers to associate with other dealers. We ask all other businesses in the state to settle these issues through normal business negotiations or to fight it out in court. In the automobile business in New Hampshire these issues have been resolved legislatively.

Now lets' talk about what the changes proposed in SB375 would do. In the existing statute you will find three pages of definitions; one of the defined terms is relevant market area. In the old days, virtually every town had at least one new car dealer and most towns had several. For the most part, each dealer only represented one new car manufacturer. Today, most dealership organizations hold multiple franchises from multiple manufacturers, selling both cars and trucks. The business of selling cars in NH has changed

dramatically. Today, one in every four cars sold in NH is sold by five of the state's largest dealers. The market for most dealers today is not just their town but the whole region. One of the state's five largest dealers that I mentioned earlier, is not located in Nashua or Manchester, but in Berlin. Through aggressive pricing, regional advertising and the ability to offer purchasers several different makes of cars and trucks, this organization sells more vehicles than all but two of the state's dealerships. It does this from a remote location like Berlin. Relevant market area today is only a contractual and legislative term that has no relationship to today's retail marketplace.

I mention this because today's amendments to 357-C are really an attempt to keep the NH marketplace looking like it did 20 years ago. SB375 continues the history of legislating the relationship between these two business entities -- but it also takes this intrusion to the next step. That next step is to define who has access to consumers in New Hampshire when it comes to the sale of automobiles. It would prohibit the ownership of any NH automobile dealership by a manufacturer. If you look at 357-C, you will see that no one can sell a new car in NH unless they are a new car dealer as defined by the statute. This would be the last change needed to make sure that every new car sold in NH would have to be sold through one of the state's existing new car franchises.

It is not the NH Legislature's responsibility to protect business from marketplace pressures or change, nor do NH consumers want the Legislature telling them who they should buy from or where they can buy certain products. Yet this change would do just that. With a whole new world economy emerging driven by technology, it is impossible for you or I to determine how any product will be sold or marketed in the future, yet this legislation is an attempt to do so.

SB375 does nothing for consumers -- in fact, it is bad for consumers. It defines the NH marketplace by what the dealers need to protect their interests, rather than protecting the interest of consumers and a free marketplace. If this legislation sought to protect local bookstores from competition brought on by Amazon.com we would laugh them out of this room. This is bad legislation because it tells the manufacturers that no matter what consumers want, no matter what the marketplace dictates, you can't sell directly to consumers in NH. If we are going to do this, then let's close down all manufacturer-run stores in NH. This would shut down the outlet malls in Conway and Tilton, plus half the stores at NH's major malls. None

of the businesses competing against the outlet stores have asked for your protection. They don't fear the competition and neither should the dealers.

At the request of the NH Automobile Dealers Association over the last several years, the NH Legislature has adopted legislation defining the marketplace for automobiles in New Hampshire. NH's dealerships today are very sophisticated businesses enjoying unparalleled prosperity in this strong economy. Yet they are again asking you to protect them from marketplace forces that are changing the way consumers buy products.

In fact, this legislation is part of a national effort to pass legislation in every state to prevent any direct sales to consumers. In many states, the battle includes limiting the sale of new vehicles over the Internet. The discussion centers not on whether people should be able purchase a vehicle online but whether the vehicle can be delivered to a consumer without first going through an in-state dealer. Franchise laws are supposed to provide dealerships and manufacturers clear direction on their rights in their franchise agreement. They were not designed to protect the dealers from changes taking place in the marketplace, whether these changes are driven by consumer buying habits, the advent of the Internet, or the emergence of a better way to sell or distribute cars.

For example, what happens if a new car company is formed and decides to sell its cars directly to consumers via the Internet? To provide better pricing to consumers they would use a different model than today to deliver and service their online customers. With the passage of SB375 this would be a prohibited activity because in order to sell a new car in New Hampshire you must meet the requirements set out in RSA 357-C, and this new manufacturer probably would not.

Now, having said all that, I have included in your packet, an amendment that accomplishes what the NH Automobile Dealers Association set out to accomplish with SB375. The wording is a little different and has some flexibility not found in the original version. We are asking you to adopt this amendment. For the time being, this would give the dealers the protections they seek. Over the last year, GM and Ford have made announcements about changes in their policies toward retail dealerships and this has driven the current legislative frenzy by dealership organizations. The dealers today are an important part of the current business model and the manufacturers are not here today to pick a fight.

While adopting this amendment is our first request, the second is really more important. I have included language establishing a study committee, which over the next year would look at the existing provisions of RSA 357-C and make a determination whether the current statute is in fact in the public interest. The following two paragraphs frame the need for the legislative study committee.

The declaration of purpose for this statute when it was written in 1981 stated the following:

"The general court finds that the distribution and sale of vehicles within this state vitally affects the general economy of the state and the public interest and welfare, and that in order to promote the public interest and welfare it is necessary to regulate vehicle manufacturers, distributors, factory or distributor representatives, and dealers of vehicles doing business in this state in order to prevent frauds, impositions, and other abuses and ***to protect and preserve the investments and properties of the citizens of this state."***

In a case before the NH Supreme Court in 1994, Roberts vs. General Motors, the court found the following:

This chapter contains provisions protecting automobile consumers and has purpose in part to protect public interest and welfare; ***primarily however, it is a comprehensive statute governing relationships between automobile manufacturers and their dealers and clear intent of non-consumer-oriented provision is to protect investment and property interests of those who are already dealers. Roberts v. General Motors Corp.,*** *138 N.H. 532, 643 A.2d 956 (1994).*

In closing, we would like to offer the two amendments and have the opportunity to work with the committee on the final language of the bill. I know it is a little bit unusual to give the committee all the reasons it needs to kill a bill and then asked for its passage. While our approach today may seem unusual, we sincerely believe this is the best way to proceed to find something that works for both sides.

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SB 375 (an act relative to motor vehicle dealerships)
vs.
Current State Law (RSA 357-C)

- SB 375 would prohibit an automobile manufacturer from owning a new car dealership.

RSA 357-C:3 (k) as currently written would not allow a manufacturer to:

"Compete with a motor vehicle dealer operating under an agreement or franchise from such manufacturer or distributor in the relevant market area; provided, however, that a manufacturer or distributor shall not be deemed to be competing when operating a dealership either temporarily, for a reasonable period in any case not to exceed 2 years, or through 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 such dealership on reasonable terms and conditions; and, provided further, that a distributor shall not be deemed to be competing when a wholly owned subsidiary corporation of such distributor sells motor vehicles at retail, if, since prior to January, 1970, such subsidiary corporation has been a wholly owned subsidiary of such distributor and engaged in the sale of motor vehicles at retail;"

SB 375 would re-write paragraph (k) as follows:

"Act as a dealer or franchisee, or, either directly or indirectly, or through any subsidiary, affiliated entity or person, to own, operate or control, in full or in part, a motor vehicle dealership in this state for the sale or service of motor vehicles in this state. However, no such manufacturer, distributor, distributor branch or division, factory branch or division, subsidiary or affiliated entity or any agent thereof, shall be deemed to be in violation of this section:

(1) When operating a motor vehicle dealership for a temporary period, not to exceed 2 years, during the transition from one owner of the motor vehicle dealership to another;

(2) When operating a motor vehicle dealership temporarily under a plan with an independent individual that has made a significant investment in the dealership that is subject to loss and has an ownership interest or expects to acquire full ownership in a reasonable period under reasonable terms and conditions; or

(3) If the New Hampshire motor vehicle industry board determines, after a hearing, at the request of any person, that there is no independent person available in the community or territory to own and operate the motor vehicle dealership in a manner consistent with the public interest. In any such case, the manufacturer and others shall continue to make the motor vehicle dealership available for sale to an independent person at a fair and reasonable price. Approval of the sale of such a motor vehicle dealership to a proposed motor vehicle dealer shall not be unreasonably withheld."

- Protections for dealers are already in place in NH law, RSA 357-C, regulating most of the everyday activities and interactions between dealers and the respective manufacturers.

Consider the following:

357-C:3 I It is unlawful for a person not a new motor vehicle dealer to represent that he is a new motor vehicle dealer, to advertise a vehicle for sale as a new motor vehicle, or to sell a vehicle as a new motor vehicle.

357-C:3 II It is illegal for a manufacturer to:

Refuse to deliver in reasonable quantities, and within a reasonable time after receipt of dealer's order

Terminate or cancel the franchise or selling agreement of any such dealer without good cause

Offer to sell or to sell any new motor vehicle at a lower actual price than the actual price offered to any other motor vehicle dealer for the same model vehicle similarly equipped

Offer, sell, or lease any new motor vehicle to any person, except a distributor, at a lower actual price than the actual price offered and charged a motor vehicle dealer for the same model vehicle similarly equipped

Compete with a motor vehicle dealer operating under an agreement or franchise from such manufacturer or distributor in the relevant market area; provided, however, that a manufacturer or distributor shall not be deemed to be competing when operating a dealership either temporarily, for a reasonable period in any case not to exceed 2 years, or through 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 such dealership on reasonable terms and conditions; and, provided further, that a distributor shall not be deemed to be competing when a wholly owned subsidiary corporation of such distributor sells motor vehicles at retail, if, since prior to January, 1970, such subsidiary corporation has been a wholly owned subsidiary of such distributor and engaged in the sale of motor vehicles at retail;

Grant a competitive franchise in the relevant market area previously granted to another franchise other than in accordance with the provisions of this chapter;

Change the relevant market area set forth in the franchise agreement without good cause.

357-C:9 I. In the event that a manufacturer seeks to enter into a franchise establishing an additional new motor vehicle dealership or relocating an existing new motor vehicle dealership within a relevant market area where the same line make is then represented, the manufacturer shall first give written notice to the New Hampshire motor vehicle industry board and each new motor vehicle dealer of such line make in the relevant market area of the intention to establish an additional dealership or to relocate an existing dealership within that market area. Within 15 days of receiving such notice or within 15 days after the end of any appeal procedure provided by the manufacturer, any such new motor vehicle dealership may file a protest with the New Hampshire motor vehicle industry board to the establishing or relocating of the new motor vehicle dealership. A copy shall be served on the manufacturer within the 15-day period. When such protest is filed, the manufacturer may not establish or relocate the proposed new motor vehicle dealership until the board has held a hearing, nor thereafter if the board determines that there is good cause for not permitting such new motor vehicle dealership. For purposes of this paragraph, the reopening in a relevant market area of a new motor vehicle dealership that has not been in operation for one year or more shall be deemed the establishment of an additional new motor vehicle dealership.

At any hearing conducted by the New Hampshire motor vehicle industry board under this section, the manufacturer seeking to establish an additional new motor vehicle dealership or relocate an existing new motor vehicle dealership shall have the burden of proof in establishing that good cause exists.

CHAPTER 357-C. REGULATION OF BUSINESS PRACTICES BETWEEN MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS AND DEALERS

Sec.

357-C:1. Definitions.
357-C:2. Applicability.
357-C:3. Prohibited Conduct.
357-C:4. Delivery and Preparation Obligations.
357-C:5. Warranty Obligations, Transportation Damage and Indemnification.
357-C:6. Agreements Governed.
357-C:7. Limitations on Cancellations, Terminations and Nonrenewals.
357-C:8. Survivorship.
357-C:9. Limitations On Establishing Or Relocating Dealerships.
357-C:10. Franchisee's Right To Associate.
357-C:11. Discounts And Other Inducements.
357-C:11-a. Sale of New Motor Vehicles Manufactured to California Emission Standards.
357-C:12. Enforcement; New Hampshire Motor Vehicle Industry Board; Fund Established.
357-C:13. Statute of Limitations.
357-C:14. Construction.
357-C:15. Penalty.
357-C:16. Severability.

Declaration of purpose. 1981, 477:1, eff. Aug. 25, 1981, provided: "The general court finds that the distribution and sale of vehicles within this state vitally affects the general economy of the state and the public interest and welfare, and that in order to promote the public interest and welfare it is necessary to regulate vehicle manufacturers, distributors, factory or distributor representatives, and dealers of vehicles doing business in this state in order to prevent frauds, impositions, and other abuses and to protect and preserve the investments and properties of the citizens of this state."

CROSS REFERENCES

Dealer's bond requirement, see RSA 261:98 et seq.

Distributorship disclosure requirements generally, see RSA 358-E.

New motor vehicle arbitration, see RSA 357-D.

Registration of motor vehicles by manufacturers or dealers, see RSA 261:103 et seq.

Regulation of business practices for consumer protection generally, see RSA 358-A.

Regulation of manufacturers, distributors and dealers of new trucks, see RSA 357-E.

Annotations

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Analysis

1. Purpose.
2. Construction.
3. Construction with other laws.
4. Enforcement.

1. Purpose..

This chapter contains provisions protecting automobile consumers and has purpose in part ot protect public interest and welfare; primarily however, it is a comprehensive statute governing relationships between automobile manufacturers and their dealers and clear intent of non-consumer-oriented provision is to protect investment and property interests of those who are already dealers. Roberts v. General Motors Corp., 138 N.H. 532, 643 A.2d 956 (1994).

2. Construction.

This chapter does not prohibit the exercise of a right of first refusal on the part of a franchisor, nor does statutory language suggest an intent by legislature to limit or regulate franchisor's discretion to select new dealers. Roberts v. General Motors Corp., 138 N.H. 532, 643 A.2d 956 (1994).

3. Construction with other laws.

Where conduct in which automobile manufacturer was alleged to have engaged, if proved, was violative of both this chapter and State consumer protection act, dealership was not precluded as a matter of law from availing itself of remedies set forth in consumer protection act. Nault's Automobile Sales, Inc. v. American Honda Motor Co., 148 F.R.D. 25 (D.N.H. 1993).

In action by retail automobile dealers against manufacturer alleging unfair methods of competition and unfair and deceptive acts and practices resulting from fleet purchase programs, under which fleet purchasers were granted certain privileges, such as "drop shipment" of vehicles purchased through the manufacturer's dealer, the right to conduct predelivery inspection and servicing of its fleet vehicles, and the right to provide warranty repairs to it's fleet vehicles, the plaintiffs were not entitled to seek relief under RSA 358-A, regulating business practices for consumer protection, but were confined to the provisions of this chapter; this chapter, being the more specific of the two statutes, governed the action. New Hampshire Automobile Dealers Association, Inc. v. General Motors Corp., 620 F. Supp. 1150 (D.N.H. 1985), modified, 801 F.2d 528 (1st Cir. 1986).

4. Enforcement.

Trial court properly denied claim for intentional interference with contractual relations arising out of refusal by automobile manufacturer to transfer automobile dealership; plaintiff had no statutory right to become franchisee or to enforce the provisions of this chapter, nor was plaintiff an intended third party beneficiary who could enforce dealership agreement. Roberts v. General Motors Corp., 138 N.H. 532, 643 A.2d 956 (1994).

Cited. Jay Edwards, Inc. v. New England Toyota Distributor, 708 F.2d 814 (1st Cir. 1983).

Library References

CJS Agency § 212.

Sales § 305.

Trade-Marks, Trade-Names and Unfair Competition § 237.

ALR Fraud in connection with franchise or distributorship relationship. 64 ALR3d 6.

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Liability for interference with franchise. 97 ALR3d 890.

Validity and construction of statute regulating dealings between automobile manufacturers, distributors, and dealers. 7 ALR3d 1173.

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 ALR4th 624.

Validity, construction, and effect of clause in franchise contract prohibiting transfer of franchise or contract. 59 ALR3d 244.

§ 357-C:1. Definitions.

As used in this chapter:

I. "Motor vehicle" means every self-propelled vehicle manufactured and designed primarily for use and operation on the public highways and required to be registered and titled under the laws of New Hampshire, not including farm tractors and other machines and tools used in the production, harvesting, and care of farm products.

II. "Manufacturer" means any person who manufactures or assembles new motor vehicles or any partnership, firm, association, joint venture, corporation or trust which is controlled by the manufacturer.

III. "Factory branch" means a branch office maintained by a manufacturer for the purpose of selling or offering to sell vehicles to a distributor, wholesaler, or new motor vehicle dealer, or for directing or supervising, in whole or in part, factory or distributor representatives, and shall include any sales promotion organization which is engaged in promoting the sale of a particular make of new motor vehicles in this state to new motor vehicle dealers.

IV. "Distributor branch" means a branch office maintained by a distributor which sells or distributes new or used motor vehicles to motor vehicle dealers.

V. "Factory representative" means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or promoting the sale of its new motor vehicles or for supervising, servicing, instructing or contracting with its new motor vehicle dealers or prospective dealers.

VI. "Distributor representative" means a representative employed by a distributor branch or distributor.

VII. "Distributor" means any person who sells or distributes new or used motor vehicles to motor vehicle dealers or who maintains distributor representatives within this state.

VIII. (a) "Motor vehicle dealer" means any person engaged in the business of selling, offering to sell, soliciting or advertising the sale of new or used motor vehicles or possessing motor vehicles for the purpose of resale either on his own account or on behalf of another, either as his primary business or incidental thereto. However, "motor vehicle dealer" shall not include:

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(1) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under judgment, decree or order of any court; or

(2) Public officers while performing their duties as such officers.

(b) "New motor vehicle dealer" means a motor vehicle dealer who holds a valid sales and service agreement, franchise or contract granted by the manufacturer or distributor for the sale of its new motor vehicles.

IX. "Franchise" means one or more oral or written agreements under or by which:

(a) The franchisee is granted the right to sell new motor vehicles manufactured or distributed by the franchisor;

(b) The franchisee as an independent business is a component of the franchisor's distribution or service system;

(c) The franchisee is granted the right to be substantially associated with the franchisor's trademark, tradename or commercial symbol;

(d) The franchisee's business is substantially reliant for the conduct of its business on the franchisor for a continued supply of motor vehicles, parts, and accessories; or

(e) Any right, duty, or obligation granted or imposed under this chapter is affected.

X. "Franchisor" means a manufacturer or distributor who grants a franchise to a motor vehicle dealer.

XI. "Franchisee" means a motor vehicle dealer to whom a franchise is granted.

XII. "Sale" means the delivery, issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, or mortgage in any form of motor vehicle or interest therein or of any related franchise; and any option, subscription or other contract, or solicitation in contemplation of a sale, offer or attempt to sell, whether spoken or written.

XIII. "Fraud" includes, in addition to its common law connotation, the misrepresentation, in any manner, of a material fact; a promise or representation not made honestly and in good faith, and an intentional failure to disclose a material fact.

XIV. "Person" means a natural person, corporation, partnership, trust or other entity, and, in case of an entity, it shall include any other entity in which it has a majority interest or effectively controls as well as the individual officers, directors and other persons in active control of the activities of each such entity.

XV. "New motor vehicle" means a vehicle which is in the possession of the manufacturer or distributor, or has been sold only to the holders of a valid sales and service agreement, franchise or contract granted by the manufacturer or distributor for the sale of that make of new motor vehicle and which is in fact new and on which the original title has not been issued from the

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franchised dealer.

XVI. "Good faith" means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade as is defined and interpreted in RSA 382-A:2-103(1)(b).

XVII. "Established place of business" means a permanent, enclosed commercial building located within this state easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning, and other land-use regulatory ordinances.

XVIII. "Designated family member" means the spouse, child, grandchild, parent, brother or sister of the owner of a new motor vehicle dealership who has been designated in writing to the manufacturer, and, in the case of the owner's death, is entitled to inherit the ownership interest in the new motor vehicle dealership under the terms of the owner's will or under the rights of inheritance by intestate succession, or who, in the case of an incapacitated owner of a new motor vehicle dealership, has been appointed by a court as the legal representative of the new motor vehicle dealer's property.

XIX. "Dealer organization" means a state or local trade association, the membership of which is comprised predominantly of motor vehicle dealers.

XX. "Coerce" means the failure to act in a fair and equitable manner in performing or complying with any terms or provisions of a franchise or agreement; provided, however, that recommendation, persuasion, urging or argument shall not be synonymous with "coerce" or lack of "good faith."

XXI. "Relevant market area" means any area within the town or city where the motor vehicle dealer maintains his place of business or the area, if any, set forth in a franchise or agreement, whichever is larger. Relevant market areas shall be determined in accordance with the principles of equity.

XXII. "Direct import vehicle" has the same meaning as that of RSA 259:19-a.

History

Source. 1981, 477:2. 1986, 117:6. 1990, 84:1, eff. Jan. 1, 1991.

Amendments--1990. Paragraph IX: Amended generally.

--1986. Paragraph XXII: Added.

Annotations

1. Construction.

The phrase "any . . . solicitation in contemplation of a sale" in paragraph XII of this section refers to a solicitation by a seller (i.e., a dealer) in contemplation of a sale by such seller, and not to a solicitation by a

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third party (i.e., a manufacturer) in contemplation of sales by its dealers. New Hampshire Automobile Dealers Association, Inc. v. General Motors Corp., 620 F. Supp. 1150 (D.N.H. 1985), modified, 801 F.2d 528 (1st Cir. 1986).

§ 357-C:2. Applicability.

Any person who engages directly or indirectly in purposeful contacts within this state in connection with the offering or advertising for sale of, or has business dealings with respect to, a motor vehicle within the state shall be subject to the provisions of this chapter and the jurisdiction of the courts of this state.

History

Source. 1981, 477:2, eff. Aug. 25, 1981.

§ 357-C:3. Prohibited Conduct.

It shall be deemed an unfair method of competition and unfair and deceptive practice for any:

I. Manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative or motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of such parties or to the public;

I-a. Person not a new motor vehicle dealer to represent that he is a new motor vehicle dealer, to advertise a vehicle for sale as a new motor vehicle, or to sell a vehicle as a new motor vehicle;

I-b. Distributor or motor vehicle dealer, in offering for sale a direct import vehicle, not to disclose to the prospective buyer in writing the following:

(a) That the motor vehicle is a direct import vehicle;

(b) Whether modifications were performed on the vehicle to comply with federal or state law;

(c) The names and addresses of the persons who performed such modifications and the dates the modifications were made;

(d) A list and description of all such modifications;

(e) Whether and to what extent the manufacturer's original warranty applies to the vehicle; and,

(f) If such manufacturer's original warranty applies and whether and to what extent New Hampshire's New Motor Vehicle Arbitration law, RSA 357-D, applies to the vehicle.

II. Manufacturer; distributor; distributor branch or division; factory branch or division; or officer, agent or other representative of any such entity, to coerce or attempt to coerce, any motor vehicle dealer to:

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(a) Order or accept delivery of any motor vehicle or vehicles, appliances, equipment, parts or accessories therefor, or any other commodity not required by law, which such motor vehicle dealer has not voluntarily ordered, or order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by their manufacturer; except that this subparagraph shall not modify or supersede any terms or provisions of a franchise requiring new motor vehicle dealers to market a representative line of those motor vehicles which the manufacturer or distributor is publicly advertising.

(b) Order for any person any parts, accessories, equipment, machinery, tools, appliances, or any commodity whatsoever;

(c) Refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicles or related products;

(d) Change the location of the new motor vehicle dealership or, during the course of the agreement, make any substantial alterations to the dealership premises when to do so would be unreasonable;

(e) Pay or assume, directly or indirectly, any part of the cost of any advertising initiated by the manufacturer or distributor, unless voluntarily agreed to by such dealer, except such signs, brochures and promotional literature as are reasonably required by the manufacturers at each dealer's place of business; or

(f) Pay or assume, directly or indirectly, any part of the cost of any refund, rebate, discount, or other financial adjustment made by or lawfully imposed upon the manufacturer or distributor to, or in favor of, any customer of a motor vehicle dealer or other consumer, unless voluntarily agreed to by such dealer;

III. Manufacturer; distributor; distributor branch or division; factory branch or division; or any agent thereof to:

(a) Refuse to deliver in reasonable quantities, and within a reasonable time after receipt of 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 manufacturer, distributor, distributor branch or division, or factory branch or division, any motor vehicles covered by such franchise or contract and specifically advertised by such manufacturer, distributor, distributor branch or division, or factory branch or division to be available for immediate delivery; provided, however, that the failure to deliver any motor vehicle shall not be considered a violation of this subparagraph if such failure is due to an act of God, work stoppage or delay due to strike or labor difficulty, shortage of materials, freight embargo, or other cause over which the manufacturer, distributor, or any agent thereof, shall have no control;

(b) Coerce, or attempt to coerce, any motor vehicle dealer to enter into any agreement with such manufacturer, distributor, distributor branch or division, factory branch or division, or any agent thereof, or do any other act prejudicial to the dealer by threatening to cancel any franchise

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or any contractual agreement existing between such manufacturer, distributor, distributor branch or division, or factory branch or division, and the dealer provided, however, that notice in good faith to any motor vehicle dealer of that dealer's violation of any terms or provisions of such franchise or contractual agreement shall not constitute a violation of this chapter;

(c) Terminate or cancel the franchise or selling agreement of any such dealer without good cause;

(d) Resort to or use any false or misleading advertisement in connection with his business as manufacturer, distributor, distributor branch or division, factory branch or division, or agent thereof;

(e) Offer to sell or to sell any new motor vehicle at a lower actual price than the actual price offered to any other motor vehicle dealer for the same model vehicle similarly equipped or utilize any device including, but not limited to, sales promotion plans or programs which result in a lesser actual price. However, the provisions of this subparagraph shall not apply to sales to a motor vehicle dealer for resale to any unit of government; to sales made directly to a unit of government; nor to sales to a motor vehicle dealer of any motor vehicle ultimately sold, donated or used by such dealer in a driver education program. The provisions of this subparagraph shall not apply so long as a manufacturer, distributor, or any agent thereof, offers to sell or sells new motor vehicles to all motor vehicle dealers at an equal price;

(f) Offer, sell, or lease any new motor vehicle to any person, except a distributor, at a lower actual price than the actual price offered and charged a motor vehicle dealer for the same model vehicle similarly equipped or utilize any device which results in such lesser actual price;

(g) Offer or sell parts or accessories to any new motor vehicle dealer for use in his own business for the purpose of replacing or repairing the same or comparable part or accessory at a lower actual price than the actual price charged to any other new motor vehicle dealer for similar parts or accessories for use in his own business; provided, however, that, where motor vehicle dealers operate as distributors of parts and accessories to retail outlets, nothing in this subparagraph shall be construed to prevent a manufacturer, distributor, or any agent thereof, from selling to a motor vehicle dealer who operates as a distributor of parts and accessories such parts and accessories as may be ordered by such motor vehicle dealer for resale to retail outlets at a lower price than the actual price charged a motor vehicle dealer who does not operate or serve as a distributor of parts and accessories;

(h) Prevent or attempt to prevent any motor vehicle dealer from changing the capital structure of his dealership or the means by which he finances the operation of his dealership, provided the dealer at all times meets any reasonable capital standards agreed to between the dealership and the manufacturer or distributor and that such change by the dealer does not result in a change in the executive management control of the dealership;

(i) Prevent or attempt to prevent any motor vehicle dealer or any officer, partner or stockholder of any motor vehicle dealer from transferring any part of the interest of any of them to any other person; provided, however, that no dealer, officer, partner or stockholder shall have

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the right to sell, transfer or assign the franchise or power of management or control without the consent of the manufacturer or distributor unless such consent is unreasonably withheld. Failure to respond within 60 days of receipt of a written request for consent to a sale, transfer or assignment shall be deemed consent to the request;

(j) Obtain any benefit from any other person with whom the motor vehicle dealer does business on account of or in relation to the transactions between the dealer and such other person, unless such benefit is promptly accounted for and transmitted to the motor vehicle dealer;

(k) Compete with a motor vehicle dealer operating under an agreement or franchise from such manufacturer or distributor in the relevant market area; provided, however, that a manufacturer or distributor shall not be deemed to be competing when operating a dealership either temporarily, for a reasonable period in any case not to exceed 2 years, or through 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 such dealership on reasonable terms and conditions; and, provided further, that a distributor shall not be deemed to be competing when a wholly owned subsidiary corporation of such distributor sells motor vehicles at retail, if, since prior to January, 1970, such subsidiary corporation has been a wholly owned subsidiary of such distributor and engaged in the sale of motor vehicles at retail;

(*l*) Grant a competitive franchise in the relevant market area previously granted to another franchise other than in accordance with the provisions of this chapter;

(m) Require a motor vehicle dealer to assent to a release assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this chapter;

(n) Impose unreasonable restrictions on the motor vehicle dealer or franchisee relative to transfer, sale, right to renew, termination, discipline, noncompetition covenants, site-contract, right of first refusal to purchase, option to purchase, compliance with subjective standards, or assertion of legal or equitable rights;

(o) Change the relevant market area set forth in the franchise agreement without good cause. For purposes of the subparagraph, good cause shall include, but not be limited to, changes in the dealer's registration pattern, demographics, customer convenience, and geographic barriers.

IV. It shall be deemed a violation for a motor vehicle dealer to require a purchaser of a new motor vehicle, as a condition of sale and delivery, to also purchase special features, appliances, equipment, parts or accessories not desired or requested by the purchaser; provided, however, that this paragraph shall not apply to special features, appliances, equipment, parts or accessories which are already installed on the car when received by the dealer and; provided further, that the motor vehicle dealer, prior to the consummation of the purchase, reveals to the purchaser the substance of this paragraph.

History

Source. 1981, 477:2. 1986, 117:7. 1990, 84:2. 1994, 33:3, eff. April 22, 1994. 1996, 263:1, eff.

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July 10, 1996.

Amendments--1996. Paragraph III: Deleted "or" following "chapter" in subpar. (m) and added subpar. (o).

--1994. Paragraph I-a: Added "to advertise a vehicle for sale as a new motor vehicle, or to sell a vehicle as a new motor vehicle" following "dealer".

--1990. Paragraph II: Deleted "or" at the end of subpar. (c) and added subpars. (e) and (f).

--1986. Paragraph I-a: Added.

Paragraph I-b: Added.

Revision note--1995. In subpar. I-b(f), substituted "New Motor Vehicle Arbitration law" for "Consumer Motor Vehicle Warranty law" for purposes of conformity with RSA 357-D, as reenacted by 1991, 222:1.

Revision note---1984. In par. IV, substituted "this paragraph" for "this subparagraph" for purposes of clarity.

CROSS REFERENCES

Cancellation, termination and nonrenewal of franchises, see RSA 357-C:7.

Penalties, see RSA 357-C:15.

Rights of association of franchisees, see RSA 357-C:10.

Unfair methods of competition and unfair or deceptive acts or practices generally, see RSA 358-A:2.

Annotations

Analysis

1. Factors considered.
2. Distinctions between dealers.
3. Granting of competitive franchises.
4. Utilization of price discrimination devices.

1. Factors considered.

In determining whether a business practice is unfair within the meaning of paragraph I of this section, the following factors may be considered: (1) whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise - whether, in other words, it is within at least the penumbra of some common-law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers (or competitors or other businessmen). New Hampshire Automobile Dealers Association, Inc. v. General Motors Corp., 620 F. Supp. 1150 (D.N.H. 1985), modified, 801 F.2d 528 (1st Cir. 1986).

2. Distinctions between dealers.

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Automobile manufacturer's imposition of more rigorous requirements upon franchised car dealers who also bought fleet cars for their own separate fleets than upon ordinary fleet buyers, requiring the former to keep new fleet cars for at least four to six months before reselling them while requiring the latter to keep new fleet cars for a period of at least three months, was not arbitrary and, therefore, violative of paragraph I of this section where the evidence supported the manufacturer's explanation that the rules were designed to ensure that fleet buyers actually purchased fleet cars for their own use, rather than for resale, and that the longer holding period for franchised dealers was based upon the fact that a franchised dealer who also operated a rent-a-car business might find it easier than a pure rental dealer to evade the basic agreement that the fleet dealer was purchasing the cars for its own use by juggling cars between its new-car sales stock and its rental fleet. New Hampshire Automobile Dealers Association, Inc. v. General Motors Corp., 801 F.2d 528 (1st Cir. 1986).

Where the evidence indicated that fleet buyers only rarely violated the terms of their agreement with automobile manufacturer not to resell new cars to the general public; that fleet dealers rarely abused the program; and that few complaints of violations of the fleet buyers program were received by the manufacturer, the manufacturer had not, as a general matter, provided an inadequate system of safeguard against fleet buyers reselling new cars to the general public, resulting in a breach of its duty under paragraph I of this section not to engage in any action which is arbitrary, in bad faith or unconscionable. New Hampshire Automobile Dealers Association, Inc. v. General Motors Corp., 801 F.2d 528 (1st Cir. 1986).

In enacting this chapter, the legislature acknowledged the distinction between retail sales and those intended for fleet use; legislative recognition of the distinction appears in subparagraph III(e) of this section and RSA 357-C:11, which refer to sales to motor vehicles dealers for resale to units of government and sales made directly to a unit of government. New Hampshire Automobile Dealers Association, Inc. v. General Motors Corp., 620 F. Supp. 1150 (D.N.H. 1985), modified, 801 F.2d 528 (1st Cir. 1986).

Automobile manufacturer's practice of imposing stricter guidelines on dealers engaged in fleet sales than those imposed on dealers engaged in retail sales did not constitute a violation of paragraph I of this section; in enacting this chapter, the legislature recognized the necessity of a different approach to fleet sales of motor vehicles, and manufacturer's distinctions between fleet and retail dealers were based on the exercise of a reasonable business judgment. New Hampshire Automobile Dealers Association, Inc. v. General Motors Corp., 620 F. Supp. 1150 (D.N.H. 1985), modified, 801 F.2d 528 (1st Cir. 1986).

Complaint that automobile manufacturer violated subparagraph III(a) of this section in discriminating against retail dealers by allocating more vehicles to fleet dealers than to retail dealers at the start of the model year, when the retail demand was greatest, was insufficient to avoid grant of motion for summary judgment, since the plaintiffs' proffer of evidence contained no evidence that the manufacturer "specifically advertised" its vehicles to be "available for immediate delivery." New Hampshire Automobile Dealers Association, Inc. v. General Motors Corp., 620 F. Supp. 1150 (D.N.H. 1985), modified, 801 F.2d 528 (1st Cir. 1986).

3. Granting of competitive franchises.

Granting by automobile manufacturer to rental car company participating in fleet programs of privileges such as "drop shipment" of vehicles purchased through the manufacturer's dealers, the right to conduct predelivery inspection and servicing of its fleet vehicles, and the right to provide warranty repairs to its fleet vehicles did not constitute the granting of a competitive franchise in violation of subparagraph III(l) of this section, and 357-C:9; these provisions are limited to a franchise establishing an additional new motor vehicle dealership. New Hampshire Automobile Dealers Association, Inc. v. General Motors Corp., 620 F. Supp. 1150 (D.N.H. 1985), modified, 801 F.2d 528 (1st Cir. 1986).

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4. Utilization of price discrimination devices.

A fleet program, which places cheaper cars in fleet buyers' hands on the basis of prices which are more favorable than those given regular dealers, does not constitute a "device" to sell at illegally low prices within the meaning of subparagraphs III(e) or (f) of this section when a fleet buyer in fact resells new cars and thereby engages in price discriminatory competition since the statute focuses upon the actions of the manufacturer, rather than those of the fleet buyer; a manufacturer who intended a fleet buyer to resell new cars in competition with existing regular dealers might be accused of using a "device" to circumvent the statute, but a manufacturer who was occasionally neglectful, or even arbitrary, in enforcement of restrictions against resale of new cars by fleet dealers, without an element of intent or desire, could not be said to have used a "device" to unlawfully discriminate within the meaning of subparagraphs III(e) or (f) of this section. New Hampshire Automobile Dealers Association, Inc. v. General Motors Corp., 801 F.2d 528 (1st Cir. 1986).

Cited. Merrimack Street Garage, Inc. v. General Motors Corp., 667 F. Supp. 41 (D.N.H. 1987); Roberts v. General Motors Corp., 138 N.H. 532, 643 A.2d 956 (1994).

Library References

ALR Constitutional right to jury trial in cause of action under state unfair or deceptive trade practices law. 54 ALR5th 631.

§ 357-C:4. Delivery and Preparation Obligations.

Every manufacturer shall specify to the dealer, the delivery and preparation obligations of its motor vehicle dealers prior to delivery of new motor vehicles to retail buyers. A copy of the delivery and preparation obligations of its motor vehicle dealers and a schedule of the compensation to be paid by it to its motor vehicle dealers for the work and services they shall be required to perform in connection with such delivery and preparation obligations shall be filed with the New Hampshire motor vehicle industry board by every motor vehicle manufacturer. The compensation as set forth on such schedule shall be reasonable in the same manner as provided in RSA 357-C:5, II(b). No dealer shall charge any purchaser for work or services paid for by the manufacturer.

History

Source. 1981, 477:2, eff. Aug. 25, 1981. 1996, 263:2, eff. July 10, 1996.

Amendments--1996. Substituted "New Hampshire motor vehicle industry board" for "attorney general" preceding "by every motor" in the second sentence.

§ 357-C:5. Warranty Obligations, Transportation Damage and Indemnification.

I. Every manufacturer, distributor, or branch or division thereof shall fulfill the terms of any express or implied warranty it makes concerning the sale of a new motor vehicle to the public or

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ultimate purchaser of the line make which is the subject of a contract or franchise agreement. If it is determined by the court in an action at law that the manufacturer has violated its express or implied warranty, the court shall add to any award or relief granted an additional award for reasonable attorney's fees and other necessary expenses for maintaining the litigation.

II. If any franchisor shall require or permit franchisees to perform services or provide parts in satisfaction of a warranty issued by the franchisor:

(a) The franchisor shall specify in writing to each of its new motor vehicle dealers licensed in this state, the dealers' obligations for warranty service on its products, shall compensate the new motor vehicle dealer for warranty service required of the dealer by the manufacturer, and shall provide the dealer the schedule of compensation to be paid such dealer for parts, work and service in connection with warranty services, and the time allowance for the performance of such work and service.

(b) In no event shall a schedule of compensation for parts, work and service in connection with warranty services fail to include reasonable compensation for diagnostic work, as well as repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In no event shall any manufacturer or distributor pay its dealers an amount of money for warranty work that is less than that charged by the dealer to the retail customers of the dealer for non-warranty work of like kind. No claim which has been approved and paid by the manufacturer or distributor may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or that the dealer failed to reasonably substantiate that the claim was in accordance with the written requirements of the manufacturer or distributor in effect at the time the claim arose.

(c) No new motor vehicle manufacturer shall fail to perform any warranty obligations, including tires, whether or not such tires placed on the new motor vehicle by the manufacturer are excluded under the motor vehicle manufacturer's warranty; fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of such defects; or fail to compensate any of the new motor vehicle dealers in this state for repairs effected by such recall.

(d) (1) All claims made by new motor vehicle dealers pursuant to this section for labor and parts shall be paid within 30 days following their approval. All such claims shall be either approved and paid or disapproved within 30 days after their receipt, and any claim not specifically disapproved in writing within such period shall be deemed approved. Notice of rejection of any claim shall be accompanied by a specific statement of the grounds on which the rejection is based.

(2) A manufacturer, distributor, branch, or division shall retain the right to audit warranty claims for a period of one year after the date on which the claim is paid and charge back any amounts paid on claims that are false or unsubstantiated.

(3) A manufacturer, distributor, branch, or division shall retain the right to audit all incentive

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and reimbursement programs for a period of 2 years after the date on which the claim is paid and charge back any amounts paid on claims that are false or unsubstantiated.

(4) Any new motor vehicle dealer who is audited by a manufacturer, distributor, branch, or division shall have the right to be present or represented by counsel or other designated representative.

(5) Any chargeback resulting from any audit shall not be made until a final order is issued by the New Hampshire motor vehicle industry board if a protest to the proposed chargeback is filed within 30 days of the notification of the amount claimed by the manufacturer, distributor, branch, or division to be due. If the chargeback is affirmed by a final order of the board, the dealer shall be liable for interest on the amount set forth in the order at a rate of the prime rate effective on the date of the order plus one percent per annum from the date of the filing of the protest. In the absence of fraud, the board may order, based on the equities and circumstances of the parties, that the chargeback plus applicable interest be paid in installments not exceeding 12 months. If the board finds that a warranty chargeback is the result of a fraudulent warranty claim, no installment payments shall be allowed by the board.

(6) A manufacturer, distributor, branch, or division shall retain the right to charge back a fraudulent warranty claim, subject to any limitation period established in the franchise agreement but in no event longer than the limitation period provided in RSA 508:4, I. The applicable limitation period shall commence on the date a fraudulent warranty claim is paid.

(e) The franchisor shall not in any way restrict the nature or extent of services to be rendered or parts to be provided so that such restriction prevents the franchisee from satisfying a warranty in a workmanlike manner with all required or necessary parts.

III. (a) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, a new motor vehicle dealer shall be solely liable for damages to new motor vehicles after acceptance from the carrier and before delivery to the ultimate purchaser.

(b) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, a manufacturer shall be liable for all damages to motor vehicles before delivery to a carrier or transporter.

(c) A new motor vehicle dealer shall be liable for damages to new motor vehicles after delivery to the carrier only if the dealer selects the method of transportation, mode of transportation, and the carrier; in all other instances, the manufacturer shall be liable for carrier-related new motor vehicle damage.

(d) On any new motor vehicle, any uncorrected damage or any corrected damage exceeding 6 percent of the manufacturer's suggested retail price, as defined in 15 U.S.C.A. sections 1231-33, as measured by retail repair costs, shall be disclosed in writing by the manufacturer or distributor to the dealer and shall be disclosed in writing by the dealer to the ultimate purchaser prior to delivery. Damage to glass, tires, and bumpers shall be excluded from the calculation required in this subparagraph when replaced by identical manufacturer's original equipment.

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(e) Repaired damage to a customer-ordered new motor vehicle less than the amount requiring disclosure in subparagraph (d) shall not constitute grounds for revocation of the customer order. The customer's right of revocation shall cease upon his acceptance of delivery of the vehicle, provided disclosure is made prior to delivery.

(f) If damage to a vehicle exceeds the amount requiring disclosure in subparagraph (d) at either the time the new motor vehicle is accepted by the new motor vehicle dealer, or whenever the risk of loss is shifted to the dealer, whichever occurs first, then the dealer may reject the vehicle within a reasonable time.

(g) If a new motor vehicle dealer determines the method of transportation, as defined in subparagraph (c), then the risk of loss during transit shall pass to the dealer upon delivery of the vehicle to the carrier. In every other instance, the risk of loss shall remain with the manufacturer until such time as the new motor vehicle dealer accepts the vehicle from the carrier.

IV. (a) A franchisor shall indemnify its franchisees from any and all reasonable claims, losses, damages, and costs, including attorney's fees resulting from or related to complaints, claims or suits against the franchisee by third parties, including but not limited to those based upon strict liability, negligence, misrepresentation, warranty and revocation of acceptance or rescission, where an action alleges fault due to: (1) the manufacture, assembly, or design of the vehicle, parts, or accessories, or the selection or combination of parts or components; (2) service systems, procedures or methods required, recommended or suggested to the franchisee by the franchisor; or (3) damage to the vehicle in transit to the franchisee where the carrier is designated by the manufacturer.

(b) The franchisor shall not be liable to the franchisee by virtue of this section for any claims, losses, costs or damages arising as a result of negligence or willful malfeasance by the franchisee in its performance of delivery, preparation, or warranty obligations required by the franchisor, or other services performed; provided, however, that the franchisor shall be liable for damages arising from or in connection with any services rendered by a franchisee in accordance with any service, system, procedure or method suggested or required by the franchisor.

(c) In any action where there are both allegations for which the franchisor is required to indemnify the franchisee and claims of negligence in the performance of services by the franchisee, the percentage of fault of each shall be determined and the franchisor's duty to indemnify the franchisee against all damages and expenses, including attorney's fees, shall be limited to that percentage of fault found to be of the type set forth in subparagraph (a).

History

Source. 1981, 477:2. 1987, 159:1. 1990, 84:3, eff. Jan. 1, 1991. 1996, 263:3, eff. July 10, 1996.

Amendments--1996. Paragraph II(d): Designated the existing provisions of the subparagraph as subpar. (1) and added subpars. (2) through (6).

--1990. Paragraph II(b): Rewrote the third sentence and added the fourth sentence.

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--1987. Paragraph III(d): Inserted "sections" following "U.S.C.A." and "by the manufacturer or distributor to the dealer and shall be disclosed in writing by the dealer to the ultimate purchaser" following "in writing" in the first sentence.

Revision note--1984. In par. II(c), inserted "fail" preceding "to include in written notices of factory recalls" for purposes of clarity.

In the second sentence of par. III(d), substituted "this subparagraph" for "this subdivision" for purposes of clarity.

CROSS REFERENCES

Enforcement of new motor vehicle warranties, see RSA 357-D:3.

Warranties generally, see RSA 382-A:2-313 to 2-318.

Library References

ALR Products liability: automobile manufacturer's liability for injuries caused by repairs made under manufacturer's warranty. 40 ALR4th 1218.

Validity of disclaimer of warranty clauses in sale of new automobile. 54 ALR3d 1217.

§ 357-C:6. Agreements Governed.

I. All written or oral agreements of any type between a manufacturer or distributor and a motor vehicle dealer shall be subject to the provisions of this chapter, and provisions of such agreements which are inconsistent with this chapter shall be void as against public policy and unenforceable in the courts or the motor vehicle industry board of this state.

II. Before any new selling agreement or amendment to an agreement involving a motor vehicle dealer and such party becomes effective, the manufacturer, distributor, distributor branch or division, factory branch or division, or agent thereof shall, 90 days prior to the effective date thereof, forward a copy of such agreement or amendment to the New Hampshire motor vehicle industry board and to the dealer.

III. Every new selling agreement or amendment made to such agreement between a motor vehicle dealer and a manufacturer or distributor shall include, and if omitted, shall be presumed to include, the following language: "If any provision herein contravenes the valid laws or regulations of the state of New Hampshire, such provision shall be deemed to be modified to conform to such laws or regulations; or if any provision herein, including arbitration provisions, denies or purports to deny access to the procedures, forums, or remedies provided for by such laws or regulations, such provision shall be void and unenforceable; and all other terms and provisions of this agreement shall remain in full force and effect."

History

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Source. 1981, 477:2. 1990, 84:4, eff. Jan. 1, 1991. 1996, 263:4, eff. Jan. 1, 1997.

Amendments--1996. Paragraph I: Inserted "or the motor vehicle industry board" following "chapter" and made a minor stylistic change.

Paragraph II: Substituted "to an agreement" for "thereto" preceding "involving a motor" and "New Hampshire motor vehicle industry board" for "attorney general" following "amendment to the".

--1990. Paragraph III: Added.

§ 357-C:7. Limitations on Cancellations, Terminations and Nonrenewals.

I. Notwithstanding the terms, provisions, or conditions of any agreement or franchise, and notwithstanding the terms or provision to any waiver, no manufacturer shall cancel, terminate, fail to renew, or refuse to continue any franchise relationship with a licensed new motor vehicle dealer unless:

(a) The manufacturer has satisfied the notice requirement of paragraph V;

(b) The manufacturer has acted in good faith;

(c) The manufacturer has good cause for the cancellation, termination, nonrenewal, or noncontinuance; and

(d) (1) The New Hampshire motor vehicle industry board finds after a hearing that there is good cause for cancellation, termination, failure to renew, or refusal to continue any franchise relationship. The new motor vehicle dealer may file a protest with the board within 45 days after receiving the 90-day notice. A copy of the protest shall be served by the new motor vehicle dealer on the manufacturer. When a protest is filed, the manufacturer may not cancel, terminate, fail to renew, or refuse to continue dealing with the new motor vehicle dealer in the ordinary course of business until the board makes its findings; or,

(2) The manufacturer has received the written consent of the new motor vehicle dealer; or

(3) The appropriate period for filing a protest has expired.

II. Notwithstanding the terms, provisions, or conditions of any agreement or franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation, nonrenewal, or noncontinuance when:

(a) 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 compliance on the part of the new motor vehicle dealer is reasonably possible; and that the manufacturer first acquired actual or constructive knowledge of such failure not more than 180 days prior to the date on which notification is given pursuant to paragraph V.

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(b) If the failure by the new motor vehicle dealer, in subparagraph (a), relates to his performance in sales or service, then good cause, as used in subparagraph I(c), shall be defined as the failure of the new motor vehicle dealer to effectively carry out the performance provisions of the franchise if:

(1) The new motor vehicle dealer was apprised by the manufacturer in writing of such failure, the notification stated that notice was provided of failure of performance pursuant to this law, and the new motor vehicle dealer was afforded a reasonable opportunity to exert good faith efforts to correct his failures;

(2) Such failure thereafter continued within the period which began not more than 180 days before the date notification of termination, cancellation, or nonrenewal was given pursuant to paragraph V; and

(3) The new motor vehicle dealer has not substantially complied with reasonable performance criteria established by the manufacturer and communicated to the dealer. Among those factors determining performance criteria shall be the relevancy of the manufacturer's sales within the state and the particular market area.

III. Notwithstanding the terms, provisions, or conditions of any agreement or franchise or the terms or provisions of any waiver, the following shall be construed as examples of what do not constitute good cause for the termination, cancellation, nonrenewal, or noncontinuance of a franchise:

(a) The change of ownership of the new motor vehicle dealer's dealership, excluding any change in ownership which would have the effect of the sale of the franchise without the manufacturer's or distributor's reasonable consent;

(b) The fact that the new motor vehicle dealer 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;

(c) 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 any reasonable facilities' requirements of the manufacturer; and

(d) 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. The manufacturer shall give effect to such change in ownership 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.

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IV. The manufacturer shall bear the burden of proof for showing that it has acted in good faith, that all notice requirements have been satisfied, and that there was good cause for the franchise termination, cancellation, nonrenewal or noncontinuance.

V.

V. (a) Notwithstanding the terms, provisions, or conditions of any agreement or franchise or the terms or provisions of any waiver, prior to the termination, cancellation, or nonrenewal of any franchise, the manufacturer shall furnish notification of such action to the new motor vehicle dealer and the board in the manner described in subparagraph (b) not less than 90 days prior to the effective date of such termination, cancellation, or nonrenewal, except that the notice required of a controlled financing company of a manufacturer shall be that period set forth in its contract with the dealer.

(b) Notification under this paragraph shall be in writing; shall be by certified mail, or personally delivered to the new motor vehicle dealer; and shall contain:

(1) A statement of intention to terminate the franchise, cancel the franchise, or not to renew the franchise; and

(2) A statement of the reasons for the termination, cancellation, or nonrenewal; and

(3) The date on which such termination, cancellation, or nonrenewal takes effect.

VI. Within 90 days of the valid termination or nonrenewal with notice, in good faith, and for good cause, of any franchise, and notwithstanding any terms therein to the contrary, the manufacturer or distributor shall pay to the new motor vehicle dealer:

(a) The dealer cost plus any charges by the manufacturer or distributor for distribution, delivery, and taxes paid by the dealer, less all allowances paid to the dealer by the manufacturer, distributor, or representative, for new, unsold, undamaged and complete motor vehicles of current or one-year-prior model year in the dealer's inventory;

(b) The dealer cost of each new, unused, undamaged, and unsold part or accessory if such part or accessory is in the current parts catalog and is still in the original, resalable merchandising package and in unbroken lots, except that in the case of sheet metal, a comparable substitute for the original package may be used;

(c) The fair market value of each undamaged sign owned by the dealer which bears a trademark, trade name or commercial symbol used or claimed by the manufacturer or distributor if such sign was purchased from or at the request of the manufacturer or distributor;

(d) The fair market value of all special tools and automotive service equipment owned by the dealer which were recommended in writing and designated as special tools and equipment by the manufacturer or distributor, and purchased from or at the request of the manufacturer or distributor, if the tools and equipment are in usable and good condition, normal wear and tear excepted; and

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(e) The cost of transporting, handling, packing, and loading of motor vehicles, parts, signs, tools, and special equipment subject to repurchase by the manufacturer or distributor.

VII. Within 90 days of a termination or nonrenewal without good cause or good faith by the manufacturer or distributor of any franchise, and notwithstanding any terms therein to the contrary, the manufacturer or distributor shall pay to the new motor vehicle dealer the fair market value of the dealership facilities if such facilities were required to be purchased or constructed as a precondition to obtaining the franchise or to its renewal; provided that if such facilities were leased and the lease was required as a precondition to obtaining the franchise or to its renewal, then the manufacturer or distributor shall be liable for one year's payment of the rent or the remainder of the term of the lease, whichever is less.

History

Source. 1981, 477:2. 1990, 84:5, 6, eff. Jan. 1, 1991. 1996, 263:5, 6, eff. Jan. 1, 1997.

Amendments--1996. Paragraph I: Deleted "the manufacturer has" following "dealer unless" in the introductory paragraph, inserted "the manufacturer has" in subpars. (a) and (b), "the manufacturer" preceding "has" and "and" following "noncontinuance" in subpar. (c) and added subpar. (d).

Paragraph V(a): Inserted "and the board" following "vehicle dealer."

--1990. Paragraph VI: Amended generally.

Paragraph VII: Added.

CROSS REFERENCES

Limitation on establishment or relocation of dealerships, see RSA 357-C:9.

Unfair methods of competition and unfair and deceptive practices generally, see RSA 357-C:3.

Annotations

1. Cause for termination of franchise.

A franchise owner's consistent failure to meet sales quotas for new cars set by the manufacturer and failure to submit financial statements as required by a terms sales agreement, making it impossible for the manufacturer to determine if the franchise owner maintained net working capital required by the agreement, was due cause to terminate the agreement. Russ Thompson Motors, Inc. v. Chrysler Corp., 425 F. Supp. 1218 (D.N.H. 1977).

Cited. Nault's Automobile Sales, Inc. v. American Honda Motor Co., 148 F.R.D. 25 (D.N.H. 1993).

§ 357-C:8. Survivorship.

I. Any designated family member of a deceased or incapacitated new motor vehicle dealer

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may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement provided the designated family member gives the manufacturer, distributor, factory branch or factory representative or importer of new motor vehicles written notice of his 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 such succession on the part of the manufacturer, factory branch, factory representative, distributor or importer. The manufacturer, distributor, factory branch or factory representative or importer may request, and the designated family member shall provide, upon request, personal and financial data that is reasonably necessary to determine whether the succession should be honored.

II. If a manufacturer, distributor, factory branch, or factory representative or importer believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a family member of a deceased or incapacitated new motor vehicle dealer under the existing franchise agreement, the manufacturer, distributor, factory branch, or factory representative or importer may, within 30 days of receipt of notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, serve notice upon the designated family member of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 90 days from the date such notice is served. The required notice shall state the specific grounds for refusal to honor the succession. If notice of refusal and discontinuance is not timely served upon the family member, the franchise agreement shall continue in effect subject to termination only as otherwise permitted by this chapter.

III. This chapter shall not preclude a new motor vehicle dealer from designating any person as his successor by written instrument filed with the manufacturer, distributor, factory branch, factory representative or importer.

History

Source. 1981, 477:2, eff. Aug. 25, 1981.

CROSS REFERENCES

Sale or transfer of ownership of dealership to spouse, son or daughter as grounds for cancellation, termination or nonrenewal of franchise, see RSA 357-C:7.

§ 357-C:9. Limitations On Establishing Or Relocating Dealerships.

I. In the event that a manufacturer seeks to enter into a franchise establishing an additional new motor vehicle dealership or relocating an existing new motor vehicle dealership within a relevant market area where the same line make is then represented, the manufacturer shall first give written notice to the New Hampshire motor vehicle industry board and each new motor vehicle dealer of such line make in the relevant market area of the intention to establish an additional dealership or to relocate an existing dealership within that market area. Within 15 days

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of receiving such notice or within 15 days after the end of any appeal procedure provided by the manufacturer, any such new motor vehicle dealership may file a protest with the New Hampshire motor vehicle industry board to the establishing or relocating of the new motor vehicle dealership. A copy shall be served on the manufacturer within the 15-day period. When such protest is filed, the manufacturer may not establish or relocate the proposed new motor vehicle dealership until the board has held a hearing, nor thereafter if the board determines that there is good cause for not permitting such new motor vehicle dealership. For purposes of this paragraph, the reopening in a relevant market area of a new motor vehicle dealership that has not been in operation for one year or more shall be deemed the establishment of an additional new motor vehicle dealership.

II. In determining whether good cause has been established for not entering into or relocating an additional franchise for the same line make, the board shall consider the existing circumstances, including, but not limited to:

(a) The permanency of the investment;

(b) Any effect on the retail new motor vehicle business and the consuming public in the relevant market area;

(c) Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealership to be established;

(d) Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the line make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;

(e) Whether the establishment of an additional new motor vehicle dealership would increase competition, and therefore be in the public interest; and

(f) Growth or decline in population and new car registration in the relevant market area.

III. At any hearing conducted by the New Hampshire motor vehicle industry board under this section, the manufacturer seeking to establish an additional new motor vehicle dealership or relocate an existing new motor vehicle dealership shall have the burden of proof in establishing that good cause exists.

History

Source. 1981, 477:2, eff. Aug. 25, 1981. 1996, 263:7, eff. Jan. 1, 1997.

Amendments--1996. Paragraph I: Amended generally.

Paragraph II: Substituted "board" for "attorney general" preceding "shall consider" in the introductory paragraph.

Paragraph III: Amended generally.

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CROSS REFERENCES

Limitations on cancellation, termination and nonrenewal of franchises, see RSA 357-C:7.

Annotations

1. Competitive franchises.

The action of an automobile manufacturer in continuing to sell cars to a fleet dealer after it had discovered that the dealer was reselling new fleet cars to the general public in violation of its agreement did not have the effect of making the dealer a franchised dealer without meeting the requirements prescribed by subparagraph III(*l*) of this section since the arrangement between the manufacturer and the dealer specifically provided that the dealer was not granted any right to use the manufacturer's "trade name" or "service mark" - a requirement under the statutory definition of a franchise. New Hampshire Automobile Dealers Association, Inc. v. General Motors Corp., 801 F.2d 528 (1st Cir. 1986).

Granting by automobile manufacturer to rental car company participating in fleet programs of privileges such as "drop shipment" of vehicles purchased through the manufacturer's dealers, the right to conduct predelivery inspection and servicing of its fleet vehicles, and the right to provide warranty repairs to its fleet vehicles did not constitute the granting of a competitive franchise in violation of RSA 357-C:3, III(*l*), and this section; these provisions are limited to a franchise establishing an additional new motor vehicle dealership. New Hampshire Automobile Dealers Association, Inc. v. General Motors Corp., 620 F. Supp. 1150 (D.N.H. 1985), affirmed, 801 F.2d 528 (1st Cir. 1986).

§ 357-C:10. Franchisee's Right To Associate.

Any franchisee shall have the right of free association with other franchisees for any lawful purpose.

History

Source. 1981, 477:2, eff. Aug. 25, 1981.

§ 357-C:11. Discounts And Other Inducements.

In connection with a sale of any motor vehicle to the state or to any political subdivision thereof, no manufacturer or distributor shall offer any discounts, refunds or other similar inducement to any dealer without making the same offer to all other dealers of the same line make within the relevant market area.

History

Source. 1981, 477:2, eff. Aug. 25, 1981.

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Annotations

1. Distinctions between dealers.

In enacting this chapter, the legislature acknowledged the distinction between retail sales and those intended for fleet use; legislative recognition of the distinction appears in RSA 357-C:3, III(e) and this section, which refer to sales to motor vehicles dealers for resale to units of government and sales made directly to a unit of government. New Hampshire Automobile Dealers Association, Inc. v. General Motors Corp., 620 F. Supp. 1150 (D.N.H. 1985), modified, 801 F.2d 528 (1st Cir. 1986).

§ 357-C:11-a. Sale of New Motor Vehicles Manufactured to California Emission Standards.

No person shall refuse or refrain from selling, delivering or distributing any new motor vehicle manufactured to the emissions standards required by the California air resources board.

History

Source. 1994, 33:2, eff. April 22, 1994.

Legislative intent. 1994, 33:1, eff. April 22, 1994, provided: "The purpose of this legislation is to correct an apparent inequity that exists under the current policy of the United States Environmental Protection Agency (U.S.E.P.A.) relative to automobiles which are manufactured to comply with California motor vehicle emissions standards. According to the U.S.E.P.A. policy, 1994 model year California vehicles may be sold by dealers in California and states which adopt California vehicle emission standards under section 177 of the Clean Air Act, known as section 177 states. New York is the only section 177 state for the 1994 model year. Vehicles may also be sold in the states contiguous to section 177 states. This would include Arizona, Oregon, Nevada, Pennsylvania, Vermont, Massachusetts, New Jersey and Connecticut. Such vehicles, however, may not be sold by New Hampshire dealers. An exception to this policy will be made to allow for the sale of California vehicles outside of California and section 177 states when a dealer in any state sells a vehicle that is to be titled, registered or principally used in California or a section 177 state. Although Massachusetts intends to put California vehicle emission standards into effect for the 1995 model year, thereby making New Hampshire contiguous to a section 177 state, current U.S.E.P.A. policy precludes New Hampshire dealers from selling California cars in New Hampshire. Therefore, it is the intent of the general court to allow New Hampshire dealers to sell California cars to New Hampshire consumers."

§ 357-C:12. Enforcement; New Hampshire Motor Vehicle Industry Board; Fund Established.

I. (a) There is established a New Hampshire motor vehicle industry board for the purpose of enforcing the provisions of this chapter. The board shall consist of the commissioner of the department of safety or designee who shall serve as the board's chairperson and 6 members appointed by the governor and council. Four members of the board shall constitute a quorum. No member of the board shall:

(1) Have an ownership interest in or be employed by a manufacturer, factory branch,

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distributor, or distributor branch.

(2) Have an ownership interest in or be a motor vehicle dealer or an employee of a motor vehicle dealer.

(3) Be employed by an association of motor vehicle dealers, manufacturers, or distributors.

(b) The board shall be administratively attached to the department of safety.

(c) The board shall adopt rules, pursuant to RSA 541-A, to implement the provisions of this chapter.

(d) Appointments shall be for terms of 4 years, and no person shall be eligible to serve more than 2 successive 4-year terms. Vacancies shall be filled by appointment by the governor and council for the unexpired term. Any person appointed to fill a vacancy may serve 2 additional successive terms. The members shall be at-large members, and insofar as practical, should reflect fair and equitable statewide representation.

(e) Terms of the initial board members shall be staggered with 2 members serving a term of 2 years, 2 members serving a term of 3 years, and 2 members serving a term of 4 years.

(f) Appointed members of the board may be paid a $50 per diem for each day actually engaged in the performance of their duties and may be reimbursed their actual and necessary expenses incurred in carrying out their duties as may be authorized by the governor and council.

II. Except for civil actions filed in superior court pursuant to paragraph IX of this section, the board shall have the following exclusive powers:

(a) Any person may file a written protest with the board complaining of conduct governed by and violative of this chapter. The board shall hold a public hearing in accordance with the rules adopted by the board pursuant to RSA 541-A.

(b) The board shall issue written decisions and may issue orders to any person in violation of this chapter.

III. The parties to protests filed pursuant to RSA 357-C:7, RSA 357-C:8, and RSA 357-C:9 shall be permitted to conduct and use the same discovery procedures as are provided in civil actions in the superior court.

IV. The board shall be empowered to determine the location of hearings, appoint persons to serve at the deposition of out-of-state witnesses, administer oaths, and authorize stenographic or recorded transcripts of proceedings before it. Prior to the hearing on any protest, but no later than 45 days after the filing of the protest, the board shall require the parties to the proceeding to attend a prehearing conference where the chairperson or designee shall have the parties address the possibility of settlement. If the matter is not resolved through the conference, the matter shall be placed on the board's calendar for hearings. Conference discussions shall remain confidential and shall not be disclosed or used as an admission in any subsequent hearing.

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V. Compliance with the discovery procedures authorized by paragraph III may be enforced by application to the board. Obedience to subpoenas issued to compel witnesses or documents may be enforced by application to the superior court in the county where the hearing is to take place.

VI. Any party to any proceeding under this chapter who recklessly or knowingly fails, neglects, or refuses to comply with an order issued by the board shall be fined a civil penalty not to exceed $2,500. Each day of noncompliance shall be considered a separate violation of such order.

VII. Within 20 days after any order or decision of the board, any party to the proceeding may apply for a rehearing with respect to any matter determined in the proceeding, or covered or included in the order or decision. The application for rehearing shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the board shall be taken unless the appellant makes an application for rehearing as provided in this paragraph, and when such application for rehearing has been made, no ground not set forth in the application shall be urged, relied on, or given any consideration by a court unless the court for good cause shown allows the appellant to specify additional grounds. Any party to the proceeding may appeal to the superior court within 30 days after the date the board rules on the application for reconsideration. All findings of the board upon all questions of fact properly before the court shall be prima facie lawful and reasonable. The order or decision appealed from shall not be set aside or vacated except for errors of law. No additional evidence shall be heard or taken by the superior court on appeals from the board.

VIII. (a) The New Hampshire motor vehicle industry board fund is established as a special fund in the state treasury. The fund shall be revolving, continually appropriated and nonlapsing. Except as otherwise provided in this chapter, all fees and civil penalties collected as provided in this chapter shall be paid into the state treasury immediately upon collection and credited to the motor vehicle industry board fund.

(b) To fund the New Hampshire motor vehicle industry board fund and to pay the start-up expenses of administration and enforcement of this chapter, the board shall impose an initial one-time fee upon each new motor vehicle dealer of $100 for each vehicle make represented by that dealer, and an initial one-time fee of $1,000 for each manufacturer which sells or distributes new motor vehicles within the state. However, in no case shall the start-up fee imposed upon any new motor vehicle dealer exceed $500 per year. Upon the filing of a protest under this chapter, the protesting party shall pay into the fund a fee of $1,500.

(c) The commissioner of safety may draw upon the fund, established in subparagraph (a), to pay the expenses of administration and enforcement of this chapter.

(d) The board shall establish all fees, in addition to the start-up fees, required under this chapter in accordance with RSA 357-C:12, I(c).

IX. Notwithstanding the terms, provisions, or conditions of any agreement or franchise or the terms or provisions of any waiver, any person whose business or property is injured by a

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violation of this chapter, or any person so injured because such person refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of this chapter, may bring a civil action in the superior court to recover the actual damages sustained by such person together with the costs of the suit, including a reasonable attorney's fee.

History

Source. 1981, 477:2. 1985, 300:21, 22, eff. Jan. 1, 1986; 300:30, eff. July 1, 1987. 1996, 263:8, eff. Jan. 1, 1997.

Amendments--1996. Amended section generally.

--1985. Paragraph I: Amended generally by ch. 300:21.

Repealed by ch. 300:30.

Paragraph I-a: Added by ch. 300:22.

Effective date of amendments-- 1985, 300:21 amendment. 1985, 300:33, IV, provided that the provisions of the act amending this subdivision would take effect when the department of justice became operational on the date set according to 1983, 372:5, II. Pursuant to 1983, 372:5, II, the joint committee on implementation of reorganization and the governor determined the effective date upon which the department became operational to be Jan. 1, 1986.

Revision note--1984. In par. II, substituted "superior court" for "county court" to correct an error in the reference. Jurisdiction to issue injunctions is conferred upon the superior court by RSA 498:2; issuance of injunctions is governed by Rules 161-163 of the Superior Court. See also similar provisions of RSA 358-A:4, 358-B:4 and 358-C:4.

CROSS REFERENCES

Criminal penalties, see RSA 357-C:15.

Unlawful acts and practices generally, see RSA 357-C:3.

Annotations

Analysis

1. Construction.
2. Standing.
3. Attorney's fees.

1. Construction.

Legislature's use of word "any" generally evidences that statute should include a broad array of potential plaintiffs. Roberts v. General Motors Corp., 138 N.H. 532, 643 A.2d 956 (1994).

2. Standing.

Provision of statute pertaining to standing must not be isolated from the rest of the statute, but rather must be read in conjunction with the statute as a whole. Roberts v. General Motors Corp., 138 N.H. 532,

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643 A.2d 956 (1994).

Plaintiff seeking automobile dealership had no independent right under dealership statute to be approved as franchisee, and could not stand upon rights of prior dealership in order to gain standing under statute. Roberts v. General Motors Corp., 138 N.H. 532, 643 A.2d 956 (1994).

3. Attorney's fees.

Award of attorney's fees under this section was error where plaintiff sued in three counts, alleging (1) violation of this chapter, (2) violation of defendant's contractual obligation of good faith and fair dealing, and (3) negligent misrepresentation, but jury returned a general verdict. Poulin Corp. v. Chrysler Corp., 861 F.2d 5 (1st Cir. 1988).

Library References

NH Admin Injunctions generally, see Rules 161-163, Rules of the Superior Court.

ALR Damages for wrongful termination of automobile dealership contracts. 54 ALR3d 324.

§ 357-C:13. Statute of Limitations.

Actions arising out of any provision of this chapter shall be commenced within 4 years of the date the cause of action accrues; provided, however, that if a person conceals the cause of action from the knowledge of the person entitled to bring it, the period prior to the discovery of his cause of action by the person so entitled shall be 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, 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.

History

Source. 1981, 477:2, eff. Aug. 25, 1981.

References in text. The federal antitrust laws, referred to in this section, are classified to 15 U.S.C. § 1 et seq.

The Federal Trade Commission Act, referred to in this section, is classified to 15 U.S.C. § 41 et seq.

§ 357-C:14. Construction.

In construing the provisions of this chapter, the courts may be guided by the interpretations of the Federal Trade Commission Act, as amended.

History

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Source. 1981, 477:2, eff. Aug. 25, 1981.

References in text. The Federal Trade Commission Act, referred to in this section, is classified to 15 U.S.C. § 41 et seq.

Annotations

Cited. New Hampshire Automobile Dealers Association, Inc. v. General Motors Corp., 620 F. Supp. 1150 (D.N.H. 1985), modified 801 F.2d 528 (1st Cir. 1986).

§ 357-C:15. Penalty.

Any violation of this chapter shall constitute a misdemeanor.

History

Source. 1981, 477:2, eff. Aug. 25, 1981.

CROSS REFERENCES

Civil penalties, see RSA 357-C:12.

Classification of crimes, see RSA 625:9.

Sentences, see RSA 651.

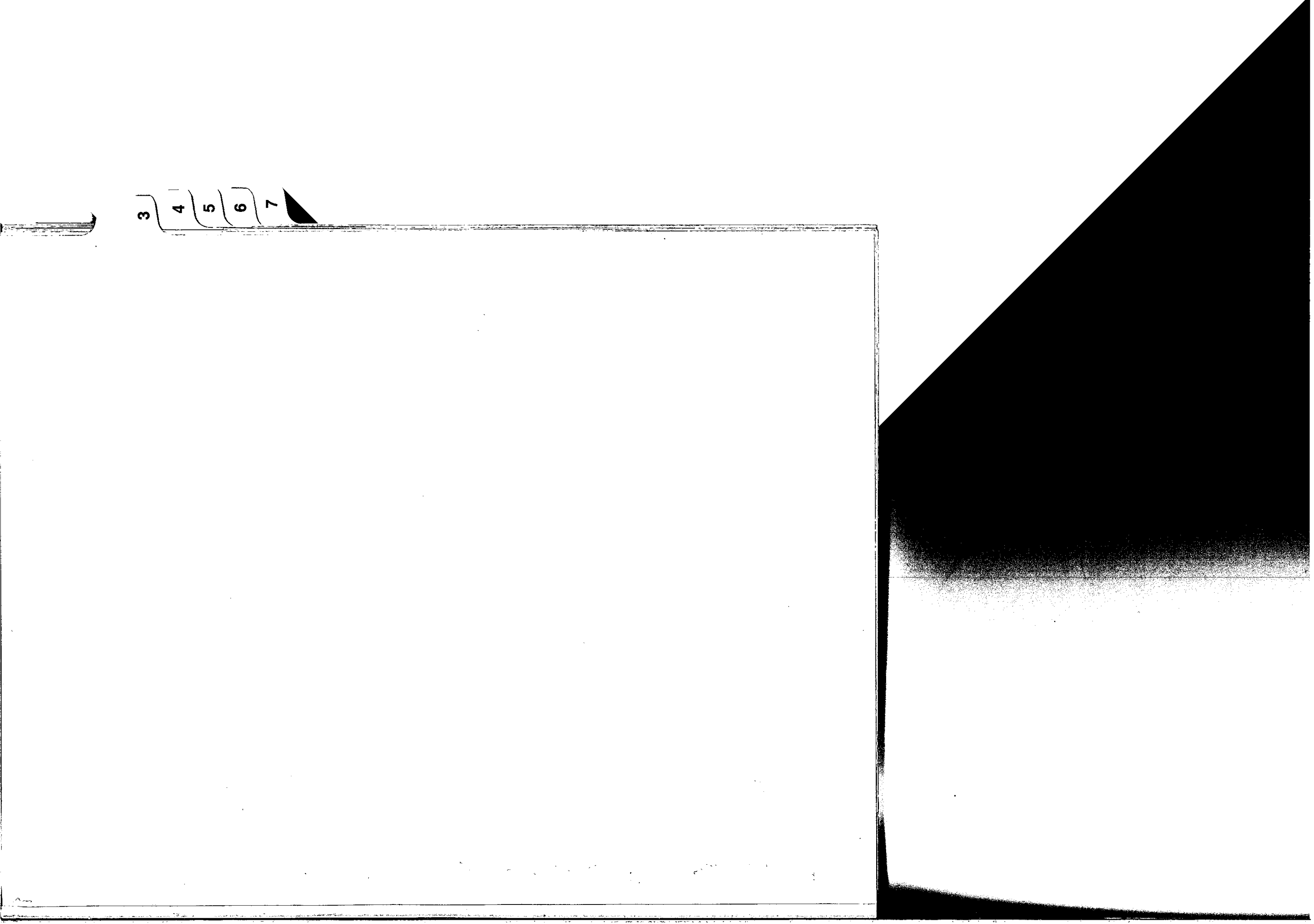
§ 357-C:16. Severability.

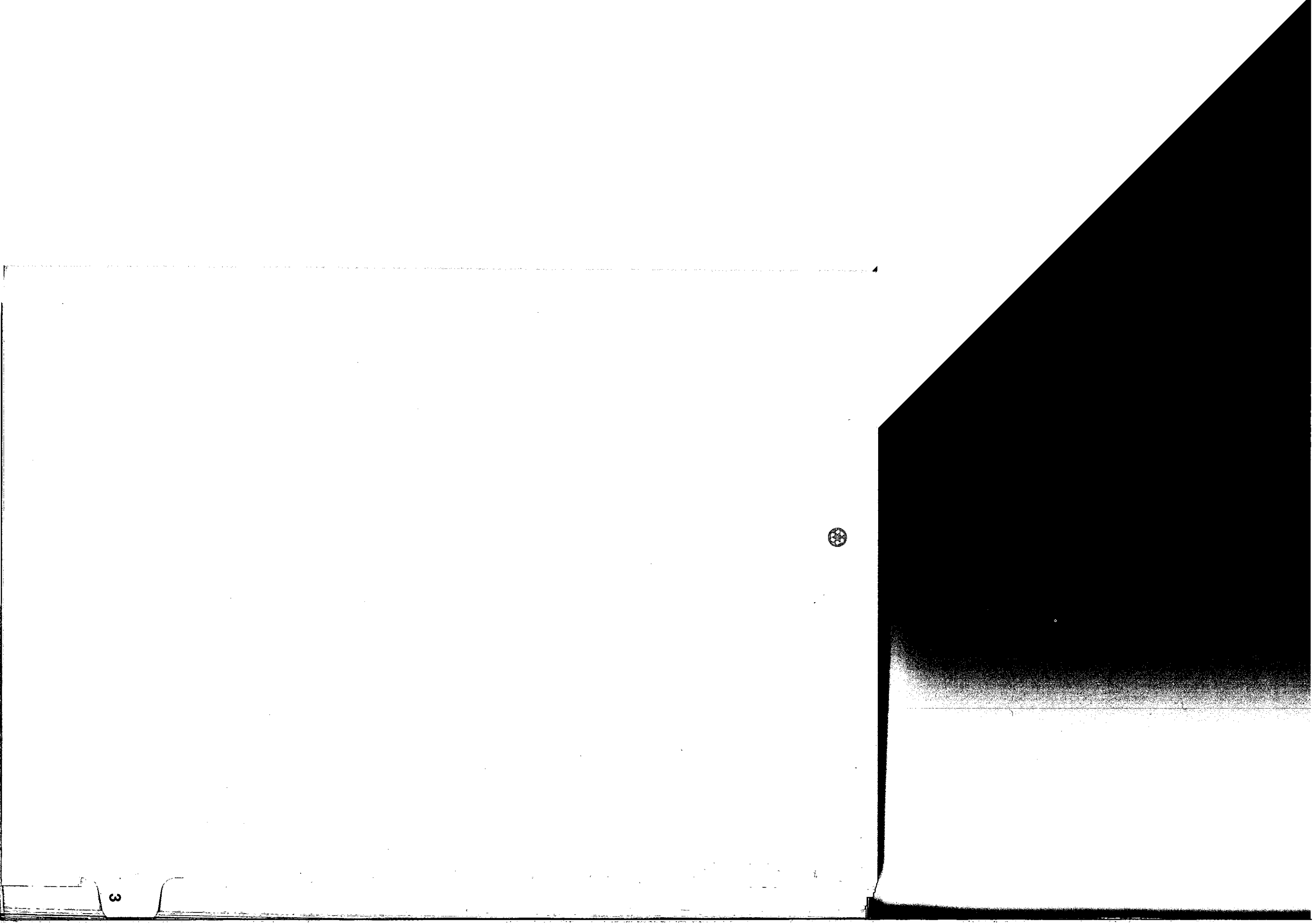
If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.

History

Source. 1986, 117:8, eff. July 19, 1986.

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SB 375- AS AMENDED BY THE SENATE

3/9/00 3491s

2000 SESSION

00-2623

05/01

SENATE BILL *375*

AN ACT relative to motor vehicle dealerships.

SPONSORS: Sen. F. King, Dist 1; Rep. Taylor, Straf 11

COMMITTEE: Transportation

ANALYSIS

This bill restricts the circumstances whereby a motor vehicle manufacturer or distributor may operate a dealership in the state without engaging in unfair competition with area dealers or franchisees.

- -

Explanation: Matter added to current law appears in ***bold italics.***

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

3/9/00 3491s

00-2623

05/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

AN ACT relative to motor vehicle dealerships.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Unfair Methods of Competition; Motor Vehicle Manufacturers or Distributors Prohibited from Acting As Dealers or Franchisees. RSA 357-C:3, III(k) is repealed and reenacted to read as follows:

(k) Act as a dealer or franchisee, or, either directly or indirectly, or through any subsidiary, affiliated entity or person, to own, operate or control, in full or in part, a motor vehicle dealership in this

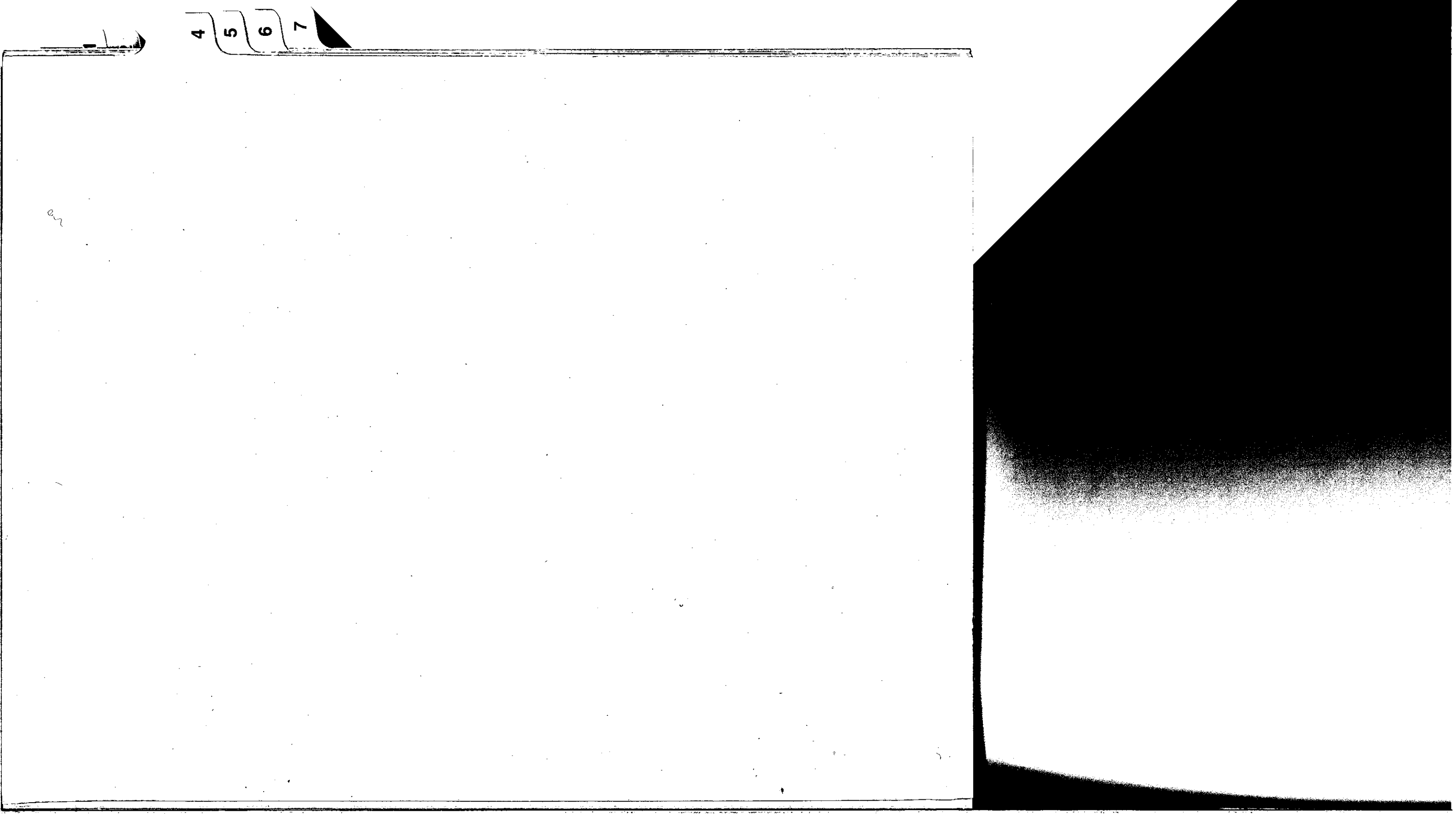
state for the sale or service of motor vehicles in this state. However, no such manufacturer, distributor, distributor branch or division, factory branch or division, subsidiary or affiliated entity or any agent thereof, shall be deemed to be in violation of this section:

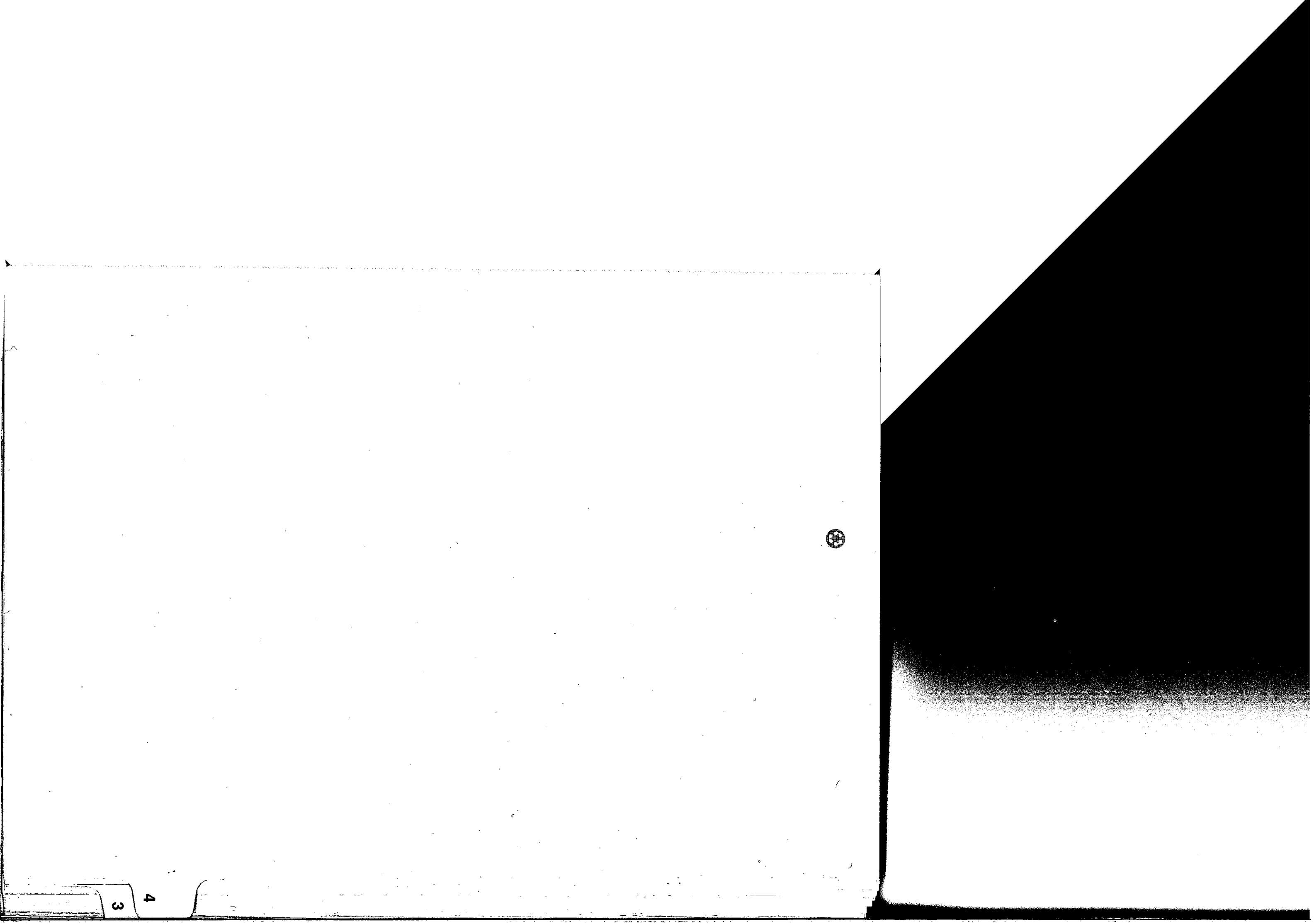
(1) When operating a motor vehicle dealership for a temporary period, not to exceed 2 years, during the transition from one owner of the motor vehicle dealership to another;

(2) When operating a motor vehicle dealership temporarily under a plan with an independent individual that has made a significant investment in the dealership that is subject to loss and has an ownership interest or expects to acquire full ownership in a reasonable period under reasonable terms and conditions; or

(3) If the New Hampshire motor vehicle industry board determines, after a hearing, at the request of any person, that there is no independent person available in the community or territory to own and operate the motor vehicle dealership in a manner consistent with the public interest. In any such case, the manufacturer and others shall continue to make the motor vehicle dealership available for sale to an independent person at a fair and reasonable price. Approval of the sale of such a motor vehicle dealership to a proposed motor vehicle dealer shall not be unreasonably withheld.

2 Effective Date. This act shall take effect January 1, 2001.


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The Alliance of Automobile Manufactures
Ownership Amendment
4/03/00

MANUFACTURER OWNERSHIP

The Alliance believes that further regulation of the industry, including prohibitions on manufacturer investment in automotive dealerships, is bad public policy and detrimental to the best interests of the consumer. Nonetheless, we offer this substitute language only to ensure that necessary business-related programs would not be prohibited under this section. We do, therefore, reserve our rights to challenge its legality in the future.

1. A factory shall be prohibited from owning or operating a new motor vehicle dealership in this State. It is not a violation of this section for a factory to own or operate a new motor vehicle dealership:

   (1) for a temporary period of not more than twenty-four months during the transition from one dealer to another dealer if the dealership is for sale at a reasonable price and on reasonable terms and conditions to an independent qualified buyer. On showing by a factory of good cause, the Board may extend the time limit set forth above; extensions may be granted for periods of up to twelve months; or

   (2) in a bona fide relationship with an independent person (i) who is required to make a significant investment in the new motor vehicle dealership subject to loss and (ii) operates the dealership and can reasonably expect to acquire full ownership of the dealership within a reasonable time and under reasonable terms and conditions.

Alliance of Automobile Manufactures
Study Committee Amendment
4/03/00

Amend SB375 by adding the following new section

1 Committee Established. There is established a committee to study RSA 357-C. the regulation of business practices between motor vehicle manufacturers, distributors and dealers.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the house of representatives, appointed by the speaker of the house. One shall be a member from the commerce committee and one shall be a member of the judiciary committee.

(b) Three members of the senate, appointed by the president of the senate. One shall be a member of the transportation committee and one shall be a member of the judiciary committee

(c) The attorney general or his designee.

II. Legislative members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall study and report on the following:

(a) Are the protections and restrictions imposed by RSA 357-C in the public interest? Or as the purpose statements reads, designed to protect and preserve the investments of certain citizens.

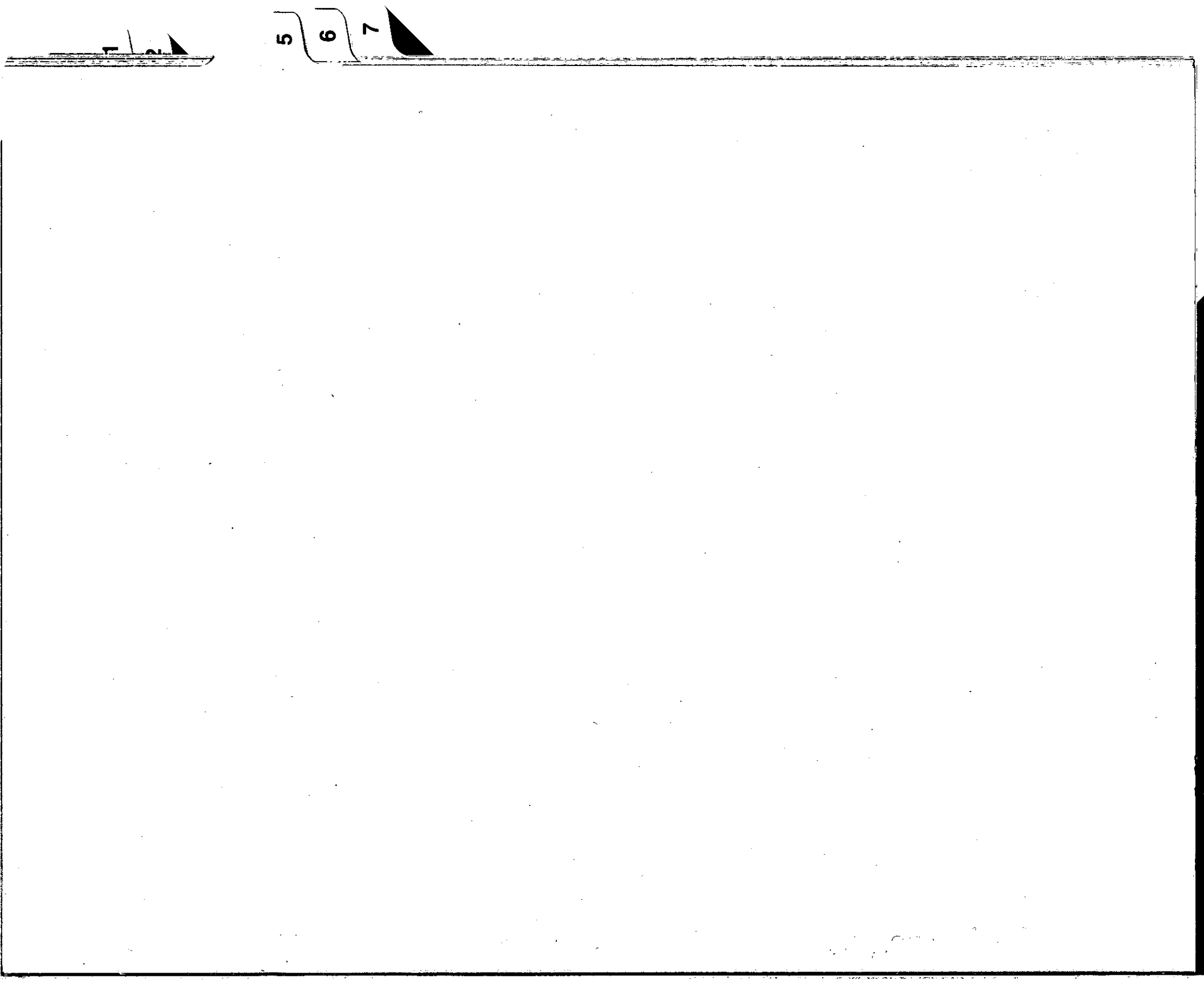
(b) Is RSA 357-C a barrier to additional consumer choice in the purchase of automobiles in New Hampshire.

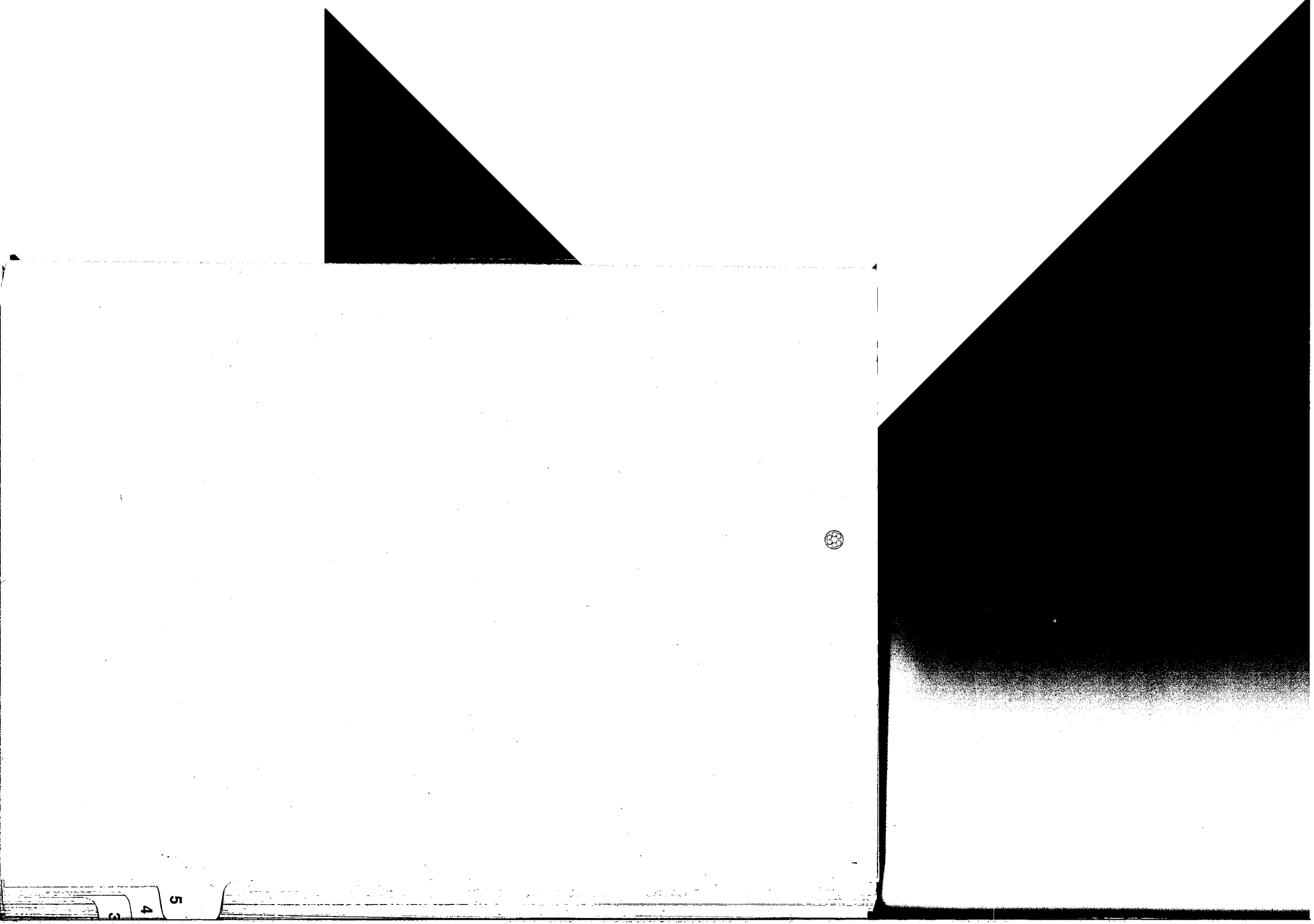
(c) Is RSA 357-C a barrier to new businesses seeking access to the NH marketplace.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2001.

6 Effective Date. This act shall take effect upon its passage.


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GM settles argument with dealerships

By Earle Eldridge
USA TODAY

ORLANDO — It took 14 months, but General Motors and its dealers say they have settled feuds over factory-owned dealerships, GM selling directly to consumers and efforts to change state dealer franchise laws.

The disputes centered on GM's efforts to sell directly to consumers via the Internet and by owning dealerships.

The moves angered dealers. Some publicly blasted GM, and others refused to spend money to upgrade their dealerships.

But a series of meetings that culminated Sunday with a joint news conference have eased tensions, largely because GM has backed down.

"We kissed and made up," says Roy Roberts, GM's outgoing vice president of North American sales and marketing.

James Willingham, outgoing president of the National Automobile Dealers Association, says GM has done more to get dealers' views.

In an unprecedented gesture to appease dealers, GM Chairman Jack Smith addressed GM dealers during the National Automobile Dealers Association's Convention and Exposition here. It was the first time a GM chairman has addressed dealers at their convention.

Willingham says Smith's speech and dealer talks with GM "have done more to energize franchised dealers."

GM reached agreements on three key issues:

▶ GM won't buy dealerships to own and operate. But it will partner in joint ownership with dealers in markets such as San Fernando Valley, Calif., where sales are weak.

In September, GM created GM Retail Holding to buy and own about 10% of its more than 7,000 dealerships. In those markets, GM will be a temporary partner, with the dealer eventually buying GM's share of the partnership. Dealers feared the factory-owned stores would get more hot products and special deals, making it difficult for independent dealers to survive.

"General Motors Retail Holding is dead," Roberts said.

▶ GM won't use its GM Web site to sell cars directly to consumers. "We don't want to go without our dealers," Roberts said. He said GM will not team with auto-buying Web sites, such as AutobyTel.com or Autoweb.com, to bypass dealers and sell directly to consumers.

▶ GM won't try to persuade state legislatures to adopt laws allowing manufacturers to own dealerships. At the urging of dealers, many states have adopted laws prohibiting the automakers from owning dealerships. GM says in some states it can't control who can buy a dealership, and it is worried a Web auto-buying service might buy a small dealership and use it to sell cars nationwide.

"We have a great deal of trust now," Willingham says.

* Weekend of 1/23

GM moves to mend fences with dealers

JOE MILLER
Staff Reporter

General Motors last week made healing the relationship between GM and its dealers a top priority for 2000.

"I'd characterize it as we kissed and made up today," said Roy Roberts, GM group vice president of North American vehicle sales, service and marketing, following GM's make meeting at the NADA convention.

"Today's meeting has done more to energize the GM franchise dealers of America. You're going to see a big difference in the attitudes of those dealers. We now know we're counted as a partner again," said outgoing NADA Chairman Jim Willingham, a GM dealer in Long Beach, Calif.

"You are going to see market share increase just because of this meeting today," Willingham said.



JOE WILSSENS

GM's Ron Zarrella, right, and Fred Poe, center, outgoing president of the General Motors Minority Dealers Association, chat with Mike Johnson, president of Michael Chevrolet in Richmond, Mich., at the GM minority dealer group's reception.

MISTRUST DIES HARD

Despite the optimistic rhetoric and promises made by GM Chairman Jack Smith and other executives, many dealers are finding it hard to shed the mistrust that reached a climax in 1999.

GM's already strained relationship with its dealers deteriorated further last year when GM reorganized its field staff, disbanded local dealer advertising groups and announced plans to own and operate up to 770 dealerships.

"Don't tell me, show me," said dealer Denny Fitzpatrick, owner of Fitzpatrick Chevrolet-Buick in Concord, Calif., a day before the make meeting. Fitzpatrick was this year's NADA convention chairman.

"We'll see," said another GM dealer as he left the make meeting.

GM has a history of rocky relationships. In summer of 1998, problems between the company and the UAW cost GM two months of production and $2.5 billion in profits. Then, led by new chief negotiator Gary Cowger, GM achieved labor peace last year with a new four-year contract. Last year, GM's antagonistic relationship with its dealers came to the forefront. Over the years "it's cost us market share and it's cost us good dealers going to other brands," Willingham said.

GM made the problem worse by creating GM Retail Holdings last fall to own and operate up to 770 GM dealerships. After a month of dealers' complaints, Smith put an end to the project.

Bob Maguire, a NADA official and GM dealer in Bordentown, N.J., said he and other dealers feared competing directly with GM. "When I first heard about (GM Retail Holdings), I seriously considered getting out of the business," he said.

Instead, Maguire increased his involvement in NADA to fight against factory-owned dealerships.

Last week, Smith and Ron Zarrella, president of GM North America, vowed not to operate factory-owned stores. They also said GM would not sell to customers over the Internet without dealer involvement.

"We're going to put the same kind of energy into our dealer relationships that we put into our UAW-GM relationships. We've got to make sure the entire team is solid and we're going in the same direction," said Roberts, who retires April 1. His successor, Bill Lovejoy, attended the make meeting but did not speak.

Smith "committed everybody in this corporation to working this relationship," Roberts said.

LINGERING PROBLEMS

Still, other problems remain. Many dealers feel the elimination of dealer ad groups has pulled marketing dollars away from their local markets. Two groups of dealers in Illinois and Indiana have gone as far as suing GM to reinstate the ad groups. Both lawsuits are pending.

In a joint GM-NADA press conference after the make meeting, Willingham said GM has promised to reinstate some local dealer ad groups to give GM input in developing marketing and ad programs.

"We will be able to localize and utilize the massive amounts of money that General Motors and dealers spend and become a lot more effective," Willingham said.

Roberts nodded in agreement, but did not say how GM would accomplish that.

GM's goals for 2000 are to boost U.S. market share and improve its dealer relationship. "And those two goals are not mutually exclusive; they come together," Roberts said.

Frank Ursomarso, president of Union Park Automotive Group in Wilmington, Del., said, "I think they've turned substantially in their thinking." AN

Pass the peace pipe

General Motors promised to:

- Listen to dealers, just as it started listening to the UAW in 1998
- Improve local advertising
- Not buy and operate dealerships

NADA CONVENTION

Smith, Zarrella: We'll do better in 2000

GM uses meeting to mend fences

JOE MILLER
Staff Reporter

In their first-ever speeches at a General Motors make meeting, Jack Smith and Ron Zarrella took personal responsibility for communicating poorly with dealers. They promised to do better in 2000.

During the meeting Smith, GM's chairman, and Zarrella, president of GM North America, promised to:

- End all efforts to own and operate dealerships.
- Include dealers in all vehicle sales over the Internet.
- Work with dealers to change franchise laws in some states.
- Restructure groups of dealerships in select markets in partnership with dealers.

Outgoing NADA Chairman Jim Willingham, in a joint press conference with GM officials after the meeting, said the make meeting marks the start of a better relationship with GM.

"We had that partnership when (GM) had over 50 percent of the market," he said. "We can have that (relationship) again." Willingham is a GM dealer in Long Beach, Calif.

The press conference was led by Roy Roberts, GM group vice president of North America vehicle sales, service and marketing, who will retire April 1. Smith and Zarrella left after the make meeting and did not attend the press conference.

NO MORE FACTORY STORES

Dealers' chief complaint in 1999 concerned GM's attempt to buy up to 10 percent of its 7,700 dealerships through a new business unit, GM Retail Holdings. GM, under pressure from the NADA and its dealers, later said it would scale back that effort. At the Jan. 23 make meeting it went a step further.

"Ron Zarrella made it absolutely clear, (GM Retail Holdings) is dead," said Jon Agresta, owner of Agresta Oldsmobile-Pontiac-GMC in Williamston, N.J. He called the make meeting a "watershed moment."

Roberts said GM should have talked to dealers before it moved forward with GM Retail Holdings. "Maybe if we had had dealer input, there might have been a way to do it," he said.

GM Retail Holdings and GM's Internet activities also stirred up suspicions that GM would try to sell vehicles directly to customers over the Internet, bypassing its dealers.

Roberts dismissed those suspicions, pointing out that e-GM, the automaker's new electronic commerce unit, "from day one started with dealer input."



JOE WILSSENS

Pressing the flesh

The NADA convention provides a chance each winter for dealers and factory folks to rub shoulders and hear each other's concerns. Edsel Ford II, left, a Ford Motor Co. director, chats with Lincoln Mercury Dealer Council members Gary Lessuisp, center, and Ed Damico before the Lincoln Mercury make meeting. For a full report on make meeting highlights, see Pages 22-36

Highlights

General Motors make meeting highlights

- Jack Smith and Ron Zarrella take personal responsibility for poor relationship with dealers
- GM will sell back all six GM Retail Holdings factory-owned dealerships
- GM promises it will not sell directly over the Internet

The mood after the crowded make meeting, held in a 3,000-plus-seat auditorium, was noticeably upbeat. GM and dealers found some common ground on previously unpopular issues, such as GM's efforts to change state franchise laws and the expansion of GM's initiative in the San Fernando Valley in Los Angeles to other markets.

NADA officials and top GM dealers approved GM's attempts to change franchise laws in some states, as long as GM fulfills its promise to work with dealers. Willingham said some states' franchise laws are too strong and limit GM dealers' ability to compete, and still others are too weak.

In the San Fernando Valley, GM bought a number of dealerships and consolidated them into five locations. The company brought in dealer Wes Rydell as a partner to operate the stores. Rydell eventually will buy out GM.

SMALL AREA, MANY STORES

"I have no problem with San Fernando Valley," Willingham said. "They had 13 dealers in that small area operating. They couldn't make enough money to hire the best people, to rebuild and remodel, because they were all struggling to stay alive. You can't split that much market up by that many dealers."

By combining them into five locations, with GM financing and $1 million from Rydell, "that's how you can help fix a weak marketplace," Willingham said.

Roberts said GM will invest in dealerships in other markets where there are too many dealerships and GM's market share is ailing. Roberts would not identify those markets.

Michael Grimaldi, GM vice president of field sales, service and parts, added: "Some of these major (market) reconstructions require substantial investment, and it's really a form of us and our dealers going in with the understanding that the vision is for the dealer ultimately to be the operator and owner." AN

Ford scraps Va. auto collection plan

MARY CONNELLY
Staff Reporter

Unwilling to slug it out with angry dealers, Ford Motor Co. has abandoned a planned Auto Collection in Richmond, Va.

Ford's retreat is a victory for the Virginia Automobile Dealers Association, a battle-ready group with the clout and grass-roots organization to enforce its dealer-rights agenda.

Ford's withdrawal in Virginia is another sign that the company is trying to repair fractured relations with its dealers. Last fall, Ford began retreating from its ambitious strategy to consolidate markets around the world into Auto Collections. Now, Ford plans merely to test new retailing practices in a handful of Auto Collection stores.

NO APPETITE

In Virginia, Ford had no appetite for a protracted legislative or court battle with the dealer association to open a Richmond Auto Collection.

Last spring, Virginia dealers vowed to fight a Ford dealership consolidation. They argued that auto manufacturers cannot own or operate dealerships under Virginia law. In Auto Collections, Ford invests with dealers to consolidate sales and service in a market.

"Despite our assurances to the State of Virginia that we would comply with all aspects of the law, they still did not feel comfortable with our presence there," said Ford's Barry Merrill. "We are not going to do an Auto Collection there."

Merrill is regional director of North American East operations for Ford Investment Enterprises Corp., the Ford subsidiary that oversees the Auto Collections.

Ford did not want to make a well-known and respected dealer a casualty in a protracted battle over factory involvement in retailing, Merrill said.

In November, Ford agreed to purchase Dick Strauss Ford in Richmond. Owner Dick Strauss has been a dealer-rights crusader for three decades. Strauss is a former president of the National Automobile Dealers Association and remains active in both the Virginia dealer association and NADA. Both groups oppose Auto Collections.



Strauss: Had agreed to sell store to Ford.

> 'Dick Strauss would have been the loser, and I didn't want to do that to him.'
>
> BARRY MERRILL
> FORD MOTOR CO.

"Dick Strauss would have been the loser, and I didn't want to do that to him," Merrill said. "We can't enter into a transaction with Dick Strauss until we have a license to be a dealer in the existing Dick Strauss facility. The State of Virginia grants the license." The dealer association pledged to fight the license.

Now, Ford and Strauss are "working to figure out something else," Merrill said, adding that it would be premature to disclose details. For example, Ford could buy the dealership and then sell it to another dealer, a practice permitted under Virginia law.

"I feel Ford has been totally decent and fair about the whole situation, and I am not upset," Strauss said last week. "I think that when all is said and done, I will have a positive result." Strauss declined additional comment.

SOLID OPPOSITION

The dealer association began mobilizing against a Richmond Auto Collection after Ford's plans became known in the spring of 1999.

"I didn't have a single dealer in Virginia who thought our course of action was incorrect," said Donald Hall, president and CEO of the Virginia Automobile Dealers Association. Ford sought changes to Virginia law that would permit factories to own or operate dealerships, Hall said.

"We made it abundantly clear that under no circumstances would we accept any changes to what is on the books," he said. "We laid the groundwork for grass-roots opposition."

Five Auto Collections operate in the United States. They are in Tulsa and Oklahoma City, Okla.; Rochester, N.Y.; San Diego; and Salt Lake City.

NADA pushed GM, Ford to trim retail, group's head says

DONNA HARRIS
Staff Reporter

Jim Willingham, chairman of the National Automobile Dealers Association, started last year with a conciliatory approach to the factories.

But Ford Motor Co. and General Motors answered NADA with greater attempts to control retail operations.

Nevertheless, Willingham last week assured members attending the NADA convention in Orlando, Fla., that the association had made progress in industry relations efforts under his watch.

He said the organization's new, aggressive stand against factory stores led GM and Ford to curtail their factory-controlled retail operations.

"GM is going forward with the program (General Motors Retail Holdings)," Willingham said. "But thanks to the strong voice of the dealers and ongoing dialogue with NADA, the program appears to be greatly scaled back at this point. And whatever it does in the future, GM has promised to consider dealer input."

GM said last fall it planned to buy up to 10 percent of its dealers, but it later killed the idea.

Ford assured NADA that a dealer would be its only channel for selling cars in the future.

"Ford now says it is returning to its original mission to have auto collections as a learning laboratory for new retail ideas," Willingham said. Auto collections are Ford's dealership consolidations in five U.S. markets.

NADA CONVENTION



"NADA drummed home the need for meaningful dealer input before new programs are unveiled," Willingham said.

NADA held more than 100 meetings with manufacturers, particularly GM and Ford.

"NADA drummed home the need for meaningful dealer input before new programs are unveiled," Willingham said. He added the association would take a strong stand against any factory that competes unfairly with its own dealers.

Willingham also lambasted any Web site that circumvents dealers, whether the site belongs to a factory or an online auto broker.

To answer this threat, NADA is launching an online shopping site designed to improve dealers' relationships with retail customers.

"The Internet initiative is a giant step toward helping dealers take control of our e-commerce destiny," Willingham said.

"While the Web is a great way to reach a new generation of technology-savvy consumers, it is not a replacement for dealers." AN

1-24-00
Automotive News

Auto dealers saying no to carmakers

Bill would limit manufacturers' ownership in NH dealerships

By DENIS PAISTE
Union Leader Staff

Car and truck dealers in New Hampshire do not want auto manufacturers to own retail dealerships in the state, except in rare instances.

Legislation in Concord this week, supported by the New Hampshire Auto Dealers Association, would limit manufacturers to partial ownership of dealerships where there is a plan in place for a local entity to eventually gain control of the franchise, where there is a transition to new ownership within a year; or where there is not a local individual or entity capable of operating the dealership in the public interest. However, the manufacturer then must continue to make the dealership available for sale on reasonable terms.

Senate Bill 375 would amend RSA 357-C:3, III(k), the existing dealer franchise law. It was introduced in the Senate by Sen. Frederick W. King Sr., R-Colebrook, and House co-sponsor Rep. Kathleen N. Taylor, D-Dover. A public hearing before the Senate Transportation Committee is scheduled for 3:30 p.m. tomorrow.

Historically, dealer development programs allow businesses to be started with a minimal investment, with backing from the manufacturers. As a dealer's business grew, his equity would enable him to gradually buy the dealership from the manufacturer.

Texas and Georgia have similar laws barring manufacturers from owning retail dealerships, and about a dozen states are currently considering legislation, said Daniel B. McLeod, president of NHADA, in an interview at The Union Leader last week.

Manufacturers have been scrambling for the past year to deal with challenges from the Internet to a network of aging dealerships. Automotive News reported in November that General Motors was backing away from a plan to buy up to 770 dealerships nationwide.

Manufacturers have a relationship with their franchises that gives them an unfair advantage if they own competing dealerships, McLeod said.

"The fear is a person who sees your financial statements will be competing with you," McLeod said.

Kenneth R. Plante, NHADA chairman and a partner in Tri-City Dodge and Subaru in Somersworth, said, "They know my financials. They know who my customers are. It's not a level playing field."

DEALERS, PAGE B5

DEALERS
(Continued From Page B1)

McLeod said the auto dealers group would not object to typical dealer development arrangements, but strongly opposes wide extension of a manufacturer's presence in the retail market.

"General Motors did announce they wanted to own 5 percent of dealerships in 130 markets," said McLeod. However, he said, 20 percent of franchised dealerships sell 80 percent of new cars sold, so GM's proposal represented a significant threat to independent dealers.

"The people going to be hurt the most are consumers," said McLeod. "Guess who is going to establish the price? It's going to be the factory."

"They are not getting into this to pass on savings to the community," said Plante.

The Northeast is currently flush with dealers whose competition with each other means better deals for buyers, McLeod said. "If you eliminate that type of competition, someone is going to pay the piper."

Recent years have good to dealers, McLeod said. "1999 and 1998 have been two good sales years. 1999 broke the 1987 record by almost a million vehicles. . . .Profitability has been good."

McLeod said on average, net profit before taxes of about 2 percent is considered good by dealers. Dealers make their profit from a mix of new and used car and truck sales, leasing, body and repair shops.

Leasing has also helped new car dealers, Plante said. He said leasing appeals to the "type of person who will always have a car payment."

About 30 percent of new cars are leased, McLeod said.

The New Hampshire Auto Dealers Association represents 165 franchise car dealers, out of a total of 515 small business members.

NADA CONVENTION

GM expands dealer partnerships to add market share

JOE MILLER
Staff Reporter

General Motors is taking its San Fernando Valley project to other metropolitan markets.

GM will form partnerships with existing dealers in some markets where its share is struggling. It will use the partnerships to buy ailing dealerships and consolidate them.

That's the model the automaker used in Los Angeles' San Fernando Valley. There it bought nine dealerships, consolidated them into five and brought in successful dealer Wes Rydell from the Midwest as its partner.

GM would not say how many markets it is targeting or which ones it is considering.

In the San Fernando project, GM has kicked in $18 million, while Rydell and other partners contributed $2 million.

Dealers in the Los Angeles area initially fought against the San Fernando Valley project, saying it was too large and too close to factory ownership. But state officials so far have recognized the project as a traditional dealer-development program, legal under California franchise laws.

Outgoing NADA Chairman Jim Willingham now says the San Fernando Valley project and others like it are fine as long as the dealer can buy out GM in a reasonable period of time — say, five to 10 years. Willingham also wants GM to get dealer input before starting such projects.

"It's much better than them going in and buying the stores themselves and running them with managers," Willingham said, referring to GM's now-defunct GM Retail Holdings business unit. GM created the unit to own and operate up to 770 GM dealerships.

Under the new San Fernando-like projects, "We would only buy if we have a dealer to go in with us. The intent would always be for the dealer to buy us out as soon and fast as possible," said Roy Roberts, group vice president of North American vehicle sales, service and marketing.

Roberts said GM would concentrate on areas "where we need to restructure because the market share is so dismal."

NADA leaders said they believe GM is sincere when it says it will allow its dealer partners to buy it out.

"If they don't, they've broken their promise, and we're back to square one," said Lou Kairys, a GM dealer with stores in Washington, D.C., and Virginia, and chairman of NADA's industry relations committee. AN

GM consolidations

In its dealership consolidations, GM promises to:

- Have a dealer partner
- Let the dealer partner buy out the company in a reasonable time
- Target weak markets that need help

GM's O'Malley seeks dealers' ad input

Regions control local spending, though

JOE MILLER
Staff Reporter

General Motors is looking for a way to improve local advertising without resurrecting the dealer marketing groups it disbanded a year ago.

Mike O'Malley, general manager of GM's North Central Region, is heading the automaker's efforts to communicate better with dealers about local marketing.

O'Malley wants GM's market area managers to start meeting in March with local groups of dealers to discuss marketing strategy. Each local group would represent a single brand: Buick, Cadillac, Chevrolet, Oldsmobile, Pontiac or GMC.

But O'Malley and other GM officials emphasize that the dealer marketing groups as they once were will not return.

Whether that satisfies the majority of GM dealers is doubtful. Many want to regain direct control of the $600 million in annual advertising spending that the dealer marketing groups controlled until 10 months ago.

Some complain that the money that once came to their markets now is going to larger markets where GM wants to improve sales. And when GM does buy ads in their markets, dealers say, they are not told about them until it is too late for them to coordinate their efforts.



O'Malley: GM can act fast.

LAWSUITS AND COMPLAINTS

The elimination of the dealer marketing groups last April, part of GM's decentralizing of its sales and marketing organization, added to a long list of dealer complaints in 1999.

Dealers in Chicago and the state of Indiana are suing GM to retake control of the advertising funds the company once provided the dealer groups.

GM spokeswoman Rebecca Harris would not comment on the lawsuits, saying only that GM is working to resolve them.

Other dealer marketing groups continue to meet in the hope that GM will change its mind. In the Los Angeles area, dealer John De l'Orme meets with fellow Southern California Buick dealers every three months, but they no longer use the meetings to plan media buys.

"We don't have any money to spend," said De l'Orme of Thorson Motor Center (Buick-GMC).

In the Minneapolis-St. Paul area last month, seven Oldsmobile dealerships went a step further. They decided to pool their own money to buy local TV spots. Wally McCarthy, owner of four GM dealerships in Minnesota, is president of the group.

"This is not necessarily knocking what Oldsmobile or General Motors is doing, but they're lacking something" in their regional ads, McCarthy said. "We're lacking the voice of the local dealer."

GM has no problem with dealers setting up their own associations, O'Malley said last Wednesday, Feb. 9.

REGAINING A VOICE

The old dealer marketing groups allowed dealers to get together, share ideas and align what they were doing with what was coming from the factory, O'Malley said last week. That no longer happens when GM market area managers meet with dealers one-on-one, he said.

"What we saw was there was an intangible in those dealer groups that you don't necessarily see on a hard-core business analysis," he said.

O'Malley said GM wants to recreate that dealer marketing group atmosphere but without giving dealers direct control of local ad spending. That control will remain with GM's five regions.

"The key thing in my mind is communications," he said, echoing the conciliatory speech delivered last month by GM Chairman Jack Smith to dealers at the National Automobile Dealers Association convention in Orlando, Fla.

But McCarthy and other dealers believe the advertising funds will be better spent if dealers are in charge. McCarthy said GM can take weeks to respond to a new opportunity or problem in a local market. A dealer marketing group can respond within two days, he said.

O'Malley disputes that. "There's no credence to that claim whatsoever," he said. "We can turn around a program in 24 hours." AN

GM vs. dealers

General Motors' disbanding of more than 900 dealer marketing groups last year prompted lawsuits against the automaker. The dealers suing GM say the money GM once gave to the dealer marketing groups is legally theirs.

Illinois: More than 70 dealers in the Chicago area last year requested a court injunction to prevent GM from taking funding away from the dealer marketing groups. In November, a Cook County circuit court judge denied the request. The dealers are appealing that decision, said Mike Conway, a lawyer representing the dealers.

Indiana: Eight dealers are seeking class-action status for their lawsuit against GM. The lawsuit is scheduled to go to trial in October, said lawyer Ron Smith, who represents the dealers.

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E-entrepreneurs: Government acts too slowly

By ERICA NOONAN
Associated Press Writer

BOSTON — Massachusetts needs better teachers, better schools and better workers. Now.

Those were the opinions of some of the region's leading Internet entrepreneurs who shared the stage with political leaders Saturday at a forum titled "Massachusetts and New Hampshire: How to Win in the New Economy."

Sponsored by the Democratic Leadership Council, an arm of the Washington-based Progressive Policy Institute, the gathering drew about 200 e-commerce leaders who urged state lawmakers to quickly revamp their educational systems and change attitudes about online business.

Rob Atkinson, PPI's director of Technology and the New Economy, told lawmakers to resist passing laws that protect "old economy" professions like travel agent, stockbroker, car dealer, wine wholesaler and stockbroker from e-commerce competition.

Massachusetts Senate President Thomas Birmingham, D-Chelsea, said he agreed with Atkinson, despite recent political pressure from brick-and-mortar retailers who want laws restricting e-commerce vendors.

While he sympathizes with the retailers, Birmingham said he doesn't think online vendors should be severely restricted.

"We cannot be driven by immediate parochial concerns," he said. "Change is going to happen."

Other participants focused on a campaign to rebuild the public education system from the bottom up.

David Weatherall, CEO of the Andover-based venture capital firm CMGI Inc., called for swift, radical changes to Massachusetts schools, which he said were suited to an industrial economy, not a technology-based one.



AP photo

NEW HAMPSHIRE GOV. JEANNE SHAHEEN gives the keynote speech at the Democratic Leadership Council's conference on the nation's new hi-tech economy in Boston Saturday. Shaheen and other business and political leaders gathered at a local hotel to discuss the implications of the hi-tech economy for the region and the nation.

"Information is an inalienable right," he said. "The information divide can set a population apart in the most severe way."

"We want government to play a role that isn't heavy-handed. But we should move faster. We have to start kicking some butts."

— SEN. JOHN KERRY, D-Mass.

New Hampshire Gov. Jeanne Shaheen, a Democrat, said the forum was a first step for political leaders and business leaders looking to keep the region competitive in the global marketplace over the next several decades.

"We have to convince people that infrastructure isn't just roads and airports, but telephone lines and technology too," she said.

She said some of the new ideas could be difficult for some older, lower-tech residents, and politicians, to accept at first.

"We have the opportunity here to minimize disruption. We have the opportunity to get jobs for New Hampshire that are highly paid and highly skilled."

One of the most prominent attendees was Sen. John Kerry, D-Mass., who brought federal lawmaking muscle to the forum.

He said he was firmly behind the notions of education reform and a hands-off policy on e-business, although he said he and other lawmakers were close to imposing new rules on sales tax for purchases over the Internet.

"We want government to play a role that isn't heavy-handed," he said. "But we should move faster. We have to start kicking some butts."

Kerry said he was intrigued by a recent proposal by Maine Gov. Angus King to give students free laptop computers as a way to keep his citizens up-to-date with fast-moving technology.

He also suggested free continuing education programs for adults and free Internet access as other ways to keep New England in the forefront of innovation.

"They (the business leaders) don't claim to know much about politics," Kerry said. "But they tell us they don't have enough good workers, they need them desperately, and they have to go to other countries to get them. I want our citizens doing these jobs."

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Dot-com seeks new e-license

Change would aid Internet retailers

DONNA HARRIS
Staff Reporter

Carsdirect.com, the online auto broker backed by billionaire Michael Dell, wants states to let Internet companies sell vehicles without a business location, franchise or vehicle inventory.

If states accepted the Carsdirect.com proposals, the legislation would give Internet companies a huge competitive edge over traditional dealers because they could sell vehicles without investing in physical dealerships, service operations and personnel. For years, states have required dealers to make this investment to sell cars.

Fresh pressure for Internet sales

- Carsdirect.com wants to establish an online dealership license
- The license would eliminate the need for a physical dealership, service and personnel
- No state legislature has approved the proposal
- There is no guarantee that factories would provide inventory under the license

Legislative sources confirm Carsdirect.com has been lobbying in Arizona, California, Nebraska and Texas.

However, even with a so-called online license, there is no guarantee that factories would provide new-vehicle inventory to Carsdirect.com.

BIG-BUCK BACKERS

Carsdirect.com, which touts competitive, no-haggle prices, now operates by acquiring new vehicles from dealers and marking them up for resale to consumers. The online broker has raised $310 million in venture capital through high-power investors such as Michael Dell's MSD Capital, Goldman Sachs, Morgan Stanley Dean Witter and Oracle Corp.

Carsdirect.com has been unable to do business in states such as Texas and Arkansas that have restrictions on auto brokering. The company's proposals would make it easier to do business in states without strict bans on brokering.

Carsdirect.com declined to comment on its legislative strategy. But it clearly wants to expand its ability to sell cars over the Internet.

According to the proposed leg-

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DOT-COM

Calif., Nebraska Internet bills differ

continued from PAGE 1

islation, the company believes dealer licensing laws discriminate against Internet companies.

Carsdirect.com got a bill introduced in the California senate that would let Internet companies advertise new vehicles without holding a franchise for the makes they promote. California otherwise bars dealers from advertising new vehicles without the appropriate franchise.

However, the California bill protects franchised new-car dealers as the sole source of new vehicles sold by online dealers over the Internet. In Nebraska, where Carsdirect.com circulated another proposal, that's not the case.

MISSED DEADLINE

Carsdirect.com recently showed a proposal to Nebraska lawmakers for online dealer licenses. The company was trying to attach the proposal to a dealer-supported bill that prohibits factory-owned dealerships. Carsdirect.com missed the deadline to introduce a proposal for online licenses as a separate bill during the current legislative session.

The effort failed because the Carsdirect.com proposal had nothing to do with factory stores, said Loy Todd Jr., executive vice president of the Nebraska New Car and Truck Dealers Association.

The proposal defines an "online motor vehicle dealer" as an entity without an established place of business that uses the Internet to sell new or used vehicles. The definition specifically excludes bricks-and-mortar dealers who advertise their dealerships over the Internet. The proposal exempts e-dealers from traditional dealer licensing laws that require a place of business, a franchise, business hours, signs, repair facilities and telephones.

Todd opposes the e-dealer license because he believes it discriminates against bricks-and-mortar dealers. Many traditional dealers use the Internet to sell cars, and they still have to meet all of the state licensing requirements. AN

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NADA joins Web sales war

Service will link customers, dealers

DONNA HARRIS
Staff Reporter

Online car buying services will soon have a formidable new rival: the National Automobile Dealers Association.

NADA will launch a Web site in April that will field leads for dealerships, said Harold Wells, NADA chairman-elect and president of Wells Automotive in Whiteville, N.C.

The NADA site is expected to offer shoppers the largest online new- and used-vehicle inventory of any automotive site, in addition to price quotes, shopping tips and links to dealer Web sites. Wells said it would be cheaper than many major online buying services.

More online competition

NADA plans to offer the following services on its auto-sales Web site:

- Huge inventory of new and used vehicles
- Vehicle prices
- Shopping tips
- Links to dealer Web sites

NADA is developing the site to cut dealers' Internet marketing costs and give dealers a direct relationship with online shoppers. When shoppers use a buying service, they often consider themselves customers of the buying service.

The site address will include the well-recognized "NADA" name. NADA's used-vehicle guide site, NADA.com, draws 500,000 visitors per month without spending the millions of dollars in promotion typical of other auto Web sites.

The NADA site will let customers ask dealerships for price quotes on vehicles they have in stock. Some dealerships also will post prices on the site. Shoppers will choose dealerships they want to do business with from a list of nearby participating stores. They also will be able to check which vehicles that dealerships have in stock, order parts and make service and test-drive appointments.

Cobalt Group, a Seattle company that creates and administers dealership Web sites, will create and maintain the NADA site.

The fees look like this: If a dealership hires Cobalt to establish its Web site, Cobalt will charge a $350 start-up fee plus $349 to $599 per month, depending on the services provided. Cobalt customers automatically will be linked to the NADA site.

NADA members who are not Cobalt customers can receive referrals and list their new- and used-vehicle inventory on the NADA site for $150 per month.

Competing online services range from about $400 to $1,700 per month. AN

Seattle Internet company sells used cars sight unseen

ARLENA SAWYERS
Staff Reporter

An Internet company in Seattle is enabling Washington consumers to order, finance and take delivery of late-model used vehicles without setting foot in a bricks-and-mortar dealership.

In fact, customers don't see their vehicles until they are delivered to their home or workplace.

OneGoodCar.com is licensed to sell used vehicles and specializes in low-mileage used vehicles, generally fewer than 30,000 miles, said Dennis Haydon, the company's 53-year-old president. Each vehicle comes with a three-day, 300-mile money-back guarantee.

OneGoodCar.com is available in Washington only. The company plans to expand into Portland, Ore., in March and into northern California in April. It plans to go national within a year, Haydon said.

NOT A BROKER

He said OneGoodCar.com is unique because it is not a vehicle broker or referral service, does not auction vehicles and is not affiliated with traditional dealerships.

Haydon said the 2-month-old company has delivered about 100 vehicles. Only one was rejected by the buyer.

He said consumers are willing to buy his vehicles sight unseen because of his no-pressure sales environment and because the money-back guarantee serves as a test drive. He does not expect OneGoodCar.com to take the place of traditional dealerships but sees it as an alternative for used-car shoppers who find the dealership experience distasteful.

"Our focus groups told us they don't want to go to the dealership," said Haydon, a former investment banker with Morgan Stanley and a former owner of Olympic Lincoln-Mercury in Seattle.

"We want to be (similar to) Wendy's or McDonald's. You know what's on the menu; you know the restrooms are clean. We want to standardize the used-car experience and establish a national brand."

Among OneGoodCar.com's investors are Regions Financial Corp., Ramius Capital Group and Bulldog Capital Management.

Haydon said his company buys vehicles from auctions, rental car companies and dealers. He said he also has access to vehicles repossessed by Carbuck$, OneGood Car.com's captive finance company.

RECONDITIONING

Haydon said each vehicle goes through an extensive 155-point reconditioning process. The price of each vehicle includes a 100,000-mile warranty, roadside assistance and home or workplace delivery.

Last week, OneGoodCar.com listed 91 vehicles and included 1996 models and newer vehicles.

Among its offerings was a 1996 Accord with 31,678 miles. The vehicle's price was listed at $13,995. Also listed were a 1997 Saturn SL2, a 1997 Volkswagen Jetta GT and a 1998 Chevrolet S10 pickup. The listings included photos of the vehicles, their nonnegotiable prices, *Kelley Blue Book* prices and vehicle equipment.

The vehicles are stored in warehouses until they are delivered to consumers.

OneGoodCar.com accepts online applications for finance and insurance and will appraise and accept trade-ins, Haydon said. Should a vehicle need service, consumers can take the vehicle to any ASE certified service facility. AN

Automotive News 3/6/00

Poll: Half of Net shoppers want to buy from factory

DONNA HARRIS
Staff Reporter

About half of consumers who use the Internet to shop for new vehicles would rather buy cars directly from the factory — even if cutting out the middleman didn't save them any money.

That is the conclusion of a study by consulting firm J.D. Power and Associates of Agoura Hills, Calif., which surveyed 400 recent new-car buyers who used the Internet to shop for vehicles, whether it was just to research the purchase or to arrange the transaction.

"That's amazing when you consider these people were told they would have to give up many conveniences to buy from the factory," said Chris Denove, director of consulting services for J.D. Power.

"They were told they couldn't drive home the vehicle in the same day, and they would have to wait for delivery. And they couldn't test drive the same vehicle they want to buy. They would have to test drive a similar vehicle at a regional test-drive facility."



Denove: Fewer conveniences

The study also says slightly more than half would buy directly from the factory if it would save them $1,000, and 70 percent would buy direct if it would save them $3,000.

The car buyers most likely to avoid dealerships tend to be younger consumers who buy high-volume import makes such as Toyota and Honda. Consumers over 50 and those who buy luxury car lines prefer the personal attention they receive at a dealership.

Generally, the main reason car buyers prefer to do business with a dealership is that they want a local operation that can address potential problems with the transaction or the vehicle. AN

Autotrader.com, eBay form used-car Web site

ARLENA SAWYERS
Staff Reporter

AutoTrader.com, an online used-vehicle classified service, and eBay, an Internet marketplace, have combined forces to create an auction-style Internet site where consumers and dealers can buy and sell used vehicles.

The new site, www.ebay-autotrader.com, debuted Tuesday, March 7. Both companies will continue to maintain their separate sites that contain links to the combined site.

Chip Perry, AutoTrader.com CEO, said the new site exposes eBay's 10 million buyers and sellers to AutoTrader.com's 1.5 million vehicle listings from 40,000 dealers and 250,000 consumers. Perry said 5 million different users click on AutoTrader.com's Web site a month.

Perry said the goal of the venture is to provide a practical way for consumers to buy and sell used cars and trucks. He said eBay is the logical partner to make that happen.

"They (eBay) have the expertise, the technology, the brand name and credibility to operate a high-volume complex online auction," he said. "It's a skill set we didn't have."

Brian Swette, eBay COO, said he believes consumers enjoy buying vehicles online in an auction format.

The site is open to consumers and dealers. Perry said the site will become a powerful, low-cost tool for dealers who want to sell used vehicles to consumers. Using a credit card, the seller pays $25 to list a vehicle and another $25 when a vehicle is sold. The buyer pays no fee for using the site.

Perry said consumers and dealers who contact AutoTrader.com about listing a vehicle for sale have the option of listing the vehicle on either the AutoTrader.com site or the new combined site. The AutoTrader.com site is a classified listing.

He said AutoTrader.com is working on a program that will allow vehicles listed on the new site to be simultaneously listed on AutoTrader.com's site with an icon that labels it as an "auction" vehicle. When a user clicks on the icon, he or she will be linked to the vehicle listing on ebay-autotrader.com.

Both companies will oversee the development of the site and pay for a co-branded marketing campaign, Perry said. EBay is managing the technical operation of the site and is in charge of customer service.

EBay made a cash investment in AutoTrader.com. While neither company would disclose the financial terms of the agreement, Perry said Manheim Auctions Inc., which founded AutoTrader.com, remains the site's majority owner.

Other AutoTrader.com investors are Landmark Communications Inc., a publishing company in Norfolk, Va.; ADP Dealer Services Group of Hoffman Estates Ill., a division of Automatic Data Processing Inc.; and Kleiner Perkins Caufield & Byers, an Internet venture-capital firm in Menlo Park, Calif. AN

www.ebay-autotrader.com

- Online used-vehicle auction site created by AutoTrader.com and eBay
- Consumer-to-consumer and dealer-to-consumer transactions
- Brings eBay's 10 million buyers and sellers together with AutoTrader.com's 1.5 million vehicle listings from 40,000 dealers and 250,000 consumers

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.com
e-commerce insight

Donna Harris

Brokers join to oppose licensing law in Texas

It was just a matter of time before online buying services jumped into the legislative arena to defend their turf.

Carsdirect.com, a Culver City, Calif., online auto broker, has joined a new political action committee that plans to take on the tough dealer licensing law in Texas. Texas has taken the lead in enforcing state franchise and licensing laws against Internet buying services acting as middlemen in auto sales.

About 30 Internet-related businesses belong to **NETPAC,** a Texas political action committee that will fight state laws that discourage e-commerce. The political action committee has raised more than a half million dollars since its startup three months ago, said **Rick Green,** a Republican state representative from Dripping Springs, Texas, who is recruiting members.

Carsdirect.com has avoided doing business in Texas because of the state's ban on auto brokering. Because the company buys vehicles from dealers and resells them to online shoppers, it is considered a broker.

"We support NETPAC's efforts to bring the benefits of e-commerce to Texas, particularly to its automotive consumers and the dealers who serve them," said **Bob Brisco,** CEO of Carsdirect.com.

These Internet companies could rapidly grow into a powerful lobby because of their popularity with consumers, a feature they like to play up.

In other dot-com news:

■ Online shoppers now can contact the **Oldsmobile** Web site on pocket-sized personal organizers that have wireless Web access, such as the **Palm VII.** Oldsmobile will put its Web site on **Palm.net,** a leading portal for wireless Web users. The wireless Web service will let consumers view product information, locate the nearest Oldsmobile dealer and send e-mail to Oldsmobile.

■ **AutoTrader.com,** an online used-vehicle Web site, has joined **TargetLive.com,** an online automotive training company, to introduce a Web-based training service covering a variety of topics for AutoTrader.com's dealer partners. Dealership employees can participate in events and interact with instructors in real time.

Donna Harris can be reached at dharris@crain.com or at (202) 662-7218.

Autoweb.com, Texas settle dispute over brokering

DONNA HARRIS
Staff Reporter

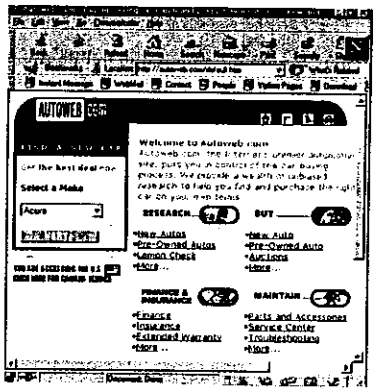
Autoweb.com, an online buying service, has changed its dealer fees in Texas to settle allegations that it violated a state ban on auto brokering.

The Texas Motor Vehicle Division last year accused Autoweb.com of Santa Clara, Calif., of brokering because it charges dealers a fee for each Internet prospect. Dealers subscribe to Autoweb.com to receive leads from the company's Web site, which enables consumers to request price quotes from dealers.

Instead of charging a fee per referral, Autoweb.com dealers in Texas will pay $10 per month per franchise within an exclusive territory defined by ZIP code. In other states, Autoweb.com will continue to charge $30 per online lead. Texas prohibits buying services from charging dealers transaction fees. The Texas Motor Vehicle Division said a referral fee is a transaction fee because some referrals result in auto sales.

The division threatened to fine dealers who did business with Autoweb.com. As a result, Autoweb.com's Texas dealer clientele dropped to 100 from 130. The buying service has 5,300 dealers nationally.

Autoweb.com officials say the company is seeking auto brokers' licenses in some states, even though it has not run into legal trouble outside of Texas. AN



The Autoweb.com Web site allows consumers to request price quotes from dealers.

Texas OKs rules for Net services

DONNA HARRIS
Staff Reporter

Texas is the first state to adopt formal rules for Internet auto brokers and buying services.

The rules, adopted Feb. 3, are an attempt to clear up confusion over the state's definition of auto brokering. Texas bans brokering, and state authorities have filed complaints against some Internet buying services, alleging that they are brokers.

Other states are expected to follow Texas in adopting some form of Internet rules. The California Department of Motor Vehicles has developed staff guidelines on how to apply dealer licensing law to Internet companies. And the National Association of Motor Vehicle Boards and Commissions is developing a model Internet law that could be adopted by its members. Twenty-nine states, including Texas and California, are members of the association.

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Texas regulations

Anti-broker rules

- No transaction fees or referral fees are permitted
- All dealers pay the same flat fee
- No exclusive territories for dealers
- No discrimination based on dealership size, location or number of franchises
- Dealers must control vehicle prices

TEXAS

State approves rules for Internet services

continued from PAGE 1

The rules are a wake-up call to dot-com companies, which can expect stiffer enforcement of dealer licensing laws. Many have set up Web sites before doing their legal homework.

FLOODED WITH CASES

Though the Texas requirements apply to all auto brokers, whether or not they are online, the growth of Internet auto buying services drove the state to develop the rules. Violators must stop doing business in the state or face stiff fines.

"The Internet has been the impetus to formalize our guidelines into a rule," said Carol Kent, director of enforcement for the Texas Motor Vehicle Division. "Before (the Internet), there weren't too many brokers, and brokering was a minor portion of our workload."

During the past five years, Kent's office has been flooded with cases involving Internet auto brokering. She hopes the rules will guide dot-com companies that want to do business in Texas.

Golden State Net rules

California guidelines for brokers

- Brokers must be licensed
- Staff members who arrange sales must be licensed as salespeople
- Internet companies that provide leads to dealers are not brokers
- Internet companies that arrange car sales for a fee are brokers

The rules, adopted by the Texas Motor Vehicle Board on Feb. 3, have received mixed reviews from Internet companies.

The primary thrust is a prohibition of transaction fees. If a company charges a fee or commission for arranging an auto sale, it is a broker. The state also considers a fee tied to Internet leads to be a transaction fee because some referrals result in car sales.

CALIFORNIA LAW

California's Internet guidelines differ from the Texas rules. California allows brokering if the brokers are licensed. If an Internet company just sends leads to dealers, it does not have to be licensed. California has no problem with charging a fee per referral.

But if the Internet company handles the sales transaction and accepts a commission, it must be licensed as a dealer and must comply with California brokering requirements. Any staff involved in the sale must be licensed as salespeople.

"Driveoff.com designed its business model to be compliant with rules like these that prove most online buying services to be nothing more than brokers," said Michael Kranitz, president of Driveoff.com, a buying service in Denver.

Two highly publicized buying services — Carsdirect.com and Carorder.com — are prohibited from doing business in Texas. Both are considered brokers because they buy cars from dealers for resale to consumers.

Carsdirect.com refused to comment on the rules. A spokeswoman for Carorder.com, which intends to buy and operate dealerships, said the company's e-dealer model eventually will comply with the Texas rules. AN

NADA CONVENTION

Ford stresses it won't sell directly over Net

CHARLES CHILD
News Editor

Ford Division dealers reserved their heartiest applause for a bit of old news at the make meeting.

Jim O'Connor, president of the division, repeated the company's pledge not to sell directly to consumers via the Internet.

Jerry Reynolds, chairman of the Ford Dealer Council, said: "That's the No. 1 issue. That drew rousing applause."

Aside from Internet anxiety, however, and some worries about product delivery, the make meeting was upbeat. Sales are sky-high, profits are robust and dealers anticipate a full year of hot sellers, such as the Ford Excursion, and new products, such as the Explorer Sport Trac.

"We're looking at a very strong industry this year," O'Connor said. "We're expecting 16.4 million in sales" in 2000. The figure excludes medium- and heavy-duty vehicles.

Reynolds added: "This is the most upbeat (NADA) make meeting I've been to. We're pretty happy guys."

The division's primary Internet goal is to devise the most efficient partnership with the dealers, not bypass them, O'Connor said.

Many dealers are leery of such pledges because the communication power of the Internet could enable factories to sell directly to consumers.

Ford has stated it wants a partnership with dealers, "but nobody wants to believe that's our intent," said Jim Schroer, vice president of global marketing at Ford Motor Co., after the make meeting.

Ford is working hard on various Internet activities because it is a fast-growing medium used by millions, he said. "But the dealers will still do the sales and the service. People think there will be another distribution system. That's not the case."

O'Connor said after the meeting that the division has a program under way to train dealers for faster response time to Internet sales leads.

Reynolds said the Internet brouhaha boils down to, "What's the best way to get the leads to the dealer?"

Dealer Greg Knuth, part owner of Osseo Ford in Osseo, Wis., was satisfied with the division's Internet promises at the meeting.

Besides, he said, state franchise laws, which typically prohibit direct factory sales, will keep the factory at bay. AN

Highlights

Ford Division make meeting highlights

- Won't sell directly to consumers on the Internet
- Railroads delay shipments
- New products in 2000
- Dealer profits high

Ford calms dealers about Net

MARY CONNELLY
Staff Reporter

DETROIT — Ford Motor Co. takes its first tiny step this month toward allowing consumers to custom-order vehicles over the Internet.

Customers buying limited-volume models, such as the Ford Mustang, will be able to configure a vehicle online at CarPoint.com, and then search dealers' inventory and order banks for a match.

The program is the first phase of Ford's alliance with Microsoft Corp. The two companies want to permit customers to custom-order cars and trucks on the Web.

The Microsoft program is only one small piece of Ford's Internet strategy. Ford wants to lead the auto industry in e-commerce.

Ford's e-goals

With the Internet, Ford says it is trying to

- Target new buyers
- Improve the buying experience
- Build owner loyalty
- Work with dealers

Since August, the automaker has launched a number of consumer-related Internet experiments. Now, Ford executives are trying to reassure brick-and-mortar retailers they will not be left behind.

"What is really important is to combine the retail and the e-tail efforts," said Brian Kelley, vice president in charge of Ford's e-business. "It is not that the Internet will win, or retail will win. It's going to be the best combination of the two that wins.

"We don't ever intend to have a process that goes around the dealers. We are not doing it today, and we won't do it."

Ford dealers support Ford's embrace of the Internet, but remain uneasy, said Jerry Reynolds, chairman of the Ford Division National Dealer Council and owner of Prestige Ford in Garland, Texas.

Recently, Ford has moved closer to a virtual showroom floor.

see FORD, 48

Ford buys 20 salvage yards ➤ 16

Automotive News 1/3/00

FORD

Automaker calming dealers' Web anxiety

continued from PAGE 1

For example, Ford has invested in Carclub.com, a site that aims to sell autos of all makes, plus insurance and other automotive services, to a pool of members. The automaker is testing a new consumer service with Priceline.com, a Web bidding site. Lincoln Mercury is testing an online auto concierge service, guiding customers through a vehicle purchase. And Ford has tested online sales of off-lease vehicles in four markets.

Dealers want a commitment from Ford's top echelon that the company will not try to sell vehicles directly over the Internet or bypass retailers in Web initiatives, Reynolds said.

"Those words need to come from very high up in the company before the dealers are going to be at ease with it," he said. "We get mixed messages. In discussions, we are referred to as the presenter and deliverer of the vehicle. That may very well mean seller, but it has caused confusion. We would like to hear it from the top."

WHAT DO CUSTOMERS WANT?

Consumers "don't want to buy direct over the Internet," said Kelley, who joined Ford from the appliance division of General Electric in June. "The way customers want to buy is they want to test drive. They want to have a place for service. Eighty percent of consumers buying new have a used-car trade-in. We don't see a day when there is not a dealer."



Kelley: In charge of e-business

Reynolds says vehicle sales are too complicated to complete over the Internet.

"Leads may be generated on the Internet, but the deals are still going to happen in the showroom," he said. Financing and trade-ins complicate vehicle sales.

Said Jim O'Connor, Ford Division president: "No one talks about the trade-in. Eight hundred thousand used (Ford) cars is not a fool-around business. That is an asset that depreciates quickly, so you'd better turn it around quickly. Our stated intent is to go through our dealers and use that strong asset."

Successful dealers will develop e-commerce departments that are as strong as new-car, used-car and service departments, O'Connor said. Now, Ford Division dealerships close about 14 percent of e-commerce leads, compared with 25 percent to 30 percent of traditional leads, he said.

Said Kelley: "We do see a day when the dealer role changes. It is beginning to change already."

For example, the average consumer spends 7.5 hours in a dealership buying a vehicle today, Kelley said. Handling many aspects of the transaction over the Internet will dramatically reduce that time, he said. AN

Ford forges Web link with Yahoo!

PATRICIA RIEDMAN and JEAN HALLIDAY
Advertising Age

DETROIT — Trying to cozy up to its customers online, Ford Motor Co. is introducing a marketing program with Yahoo!

General Motors is planning a similar deal with America Online, the largest Web portal, or entrance site to the Internet.

Under the Ford-Yahoo! program, auto owners will be able to access owner guides and Ford Credit information, receive recall notices and service reminders and maintain auto maintenance logs. They also will be able to plan trips and receive information on road conditions.

In coming months, owners also will be able to schedule appointments with dealers through Ford's OwnerConnection or even chat and correspond with Ford engineers through Yahoo! clubs and Yahoo! message boards.

The personalized marketing program, unveiled Sunday, Jan. 9, at the North American International Auto Show here, allows owners of Ford, Lincoln, Mercury and Mazda vehicles to register at Yahoo! Autos (autos.yahoo.com) or at Ford's OwnerConnection (ownerconnection.com) site.

The service will be extended to owners of Ford's Jaguar and Volvo vehicles later this year.

Ford's family of brands has an estimated 40 million owners.

"Our mantra is to be where consumers are online, and people are spending time at MyYahoo!" said Jamie Allison, e-marketing manager at Ford. "At the core of this is the opportunity for our owners to be able to maintain their vehicles online," he added, referring to the service reminders.

Ford has ventured into interactive marketing before. Last year it signed co-marketing deals with Excite@Home, women's online community iVillage, Microsoft Corp.'s MSN CarPoint and others.

As of Friday, Jan. 7, GM was negotiating final details of a similar marketing deal with America Online Inc. that will link their respective Web sites.

Under that agreement, America Online also is expected to provide online services for GM's next-generation OnStar in-vehicle communications system. The new OnStar system, due out this year, will give OnStar subscribers voice-activated access to the Internet.

The two companies will build on an alliance created last June when America Online invested $1.5 billion in GM's Hughes Electronics Corp. subsidiary. That alliance seeks to link America Online with Hughes' DirecTV satellite TV. AN

Staff Reporter Joe Miller contributed to this report

Doom looms for traditional

dealers, analyst declares

DONNA HARRIS
Staff Reporter

Internet technology will doom the franchise system and turn the traditional dealer into a dinosaur, according to a report by Gary Lapidus, an analyst for Goldman Sachs Investment Research of New York.

The report, "Gentlemen, Start Your Search Engines," concludes that the auto industry can cut $60 billion annually from the manufacturing, distribution and retailing process by using the Internet. But the transformation to a leaner, more consumer-focused industry will produce winners and losers. The winners will be the manufacturers, some suppliers and some online auto brokers.

Suppliers that are less competitive on price are expected to bite the dust when aggressive online trading with manufacturers becomes commonplace. But dealers will be the biggest losers in the Internet revolution, Lapidus predicts. The franchised dealers who are left will be reduced to delivery boys for the manufacturers. They will not sell cars.

Harold Wells, chairman of the National Automobile Dealers Association and owner of Wells Automotive in Whiteville, N.C., counters that auto retailing is far too complex for the Internet upstarts to overtake dealers. Dealerships appraise trade-ins — a stumbling block for online sales — and they have the expertise to help customers make purchase decisions and service vehicles after the sale.

"In the long run, the automobile business is still going to be a people-to-people business," Wells said.

DEALER DEMISE

The demise of the dealer will start as direct online auto brokers such as Carsdirect.com go public and buy dealerships, the report says. Brokers will purchase dealerships to get around state franchise laws that forbid the retailing of new vehicles without a franchise.

"Buying new-car franchises isn't as forbidding as it sounds," Lapidus says in the report. "The top 15 states comprise almost 70 percent of total U.S. auto sales. California, Texas and Florida alone account for 27 percent of the total U.S. new-car volume. We estimate that acquiring one franchise for each of the top 40 brands in California, Texas and Florida would cost only about $75 million."

Lapidus also believes online auto retailers do not have to provide service after the sale. Over time, dot-com companies can develop partnerships with chain service providers such as Jiffy Lube, he says. Eventually, the manufacturers could certify those service partners to do warranty work.

The report acknowledges that certification is not likely anytime soon because the manufacturers do not want to infuriate their dealers.

PARTNERSHIPS

And direct sales to consumers would give the online brokers an $800-per-vehicle cost advantage over traditional brick-and-mortar dealers, the report asserts. The online auto sales outfits would achieve the savings by reducing inventory to about a 35-day supply, eliminating sales commissions and decreasing overhead.

The report says that direct online sales companies would need fewer facilities and their dealerships would be less costly, no-frills outlets.

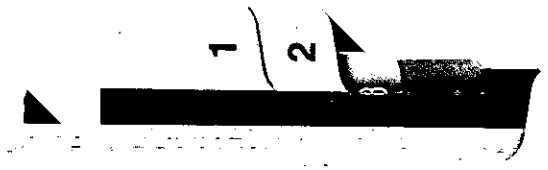
As the online auto brokers use the Internet to reduce the cost of marketing vehicles, the manufacturers will want a piece of the action. Manufacturers will develop a direct-to-consumer ordering system in which the car transaction is handled online. And dealers, unable to compete with the Internet companies, will cry "uncle" and go into partnership with the manufacturers, Lapidus says.

The dealer will receive a fee to receive, prepare and deliver the new car to consumers, he says. AN

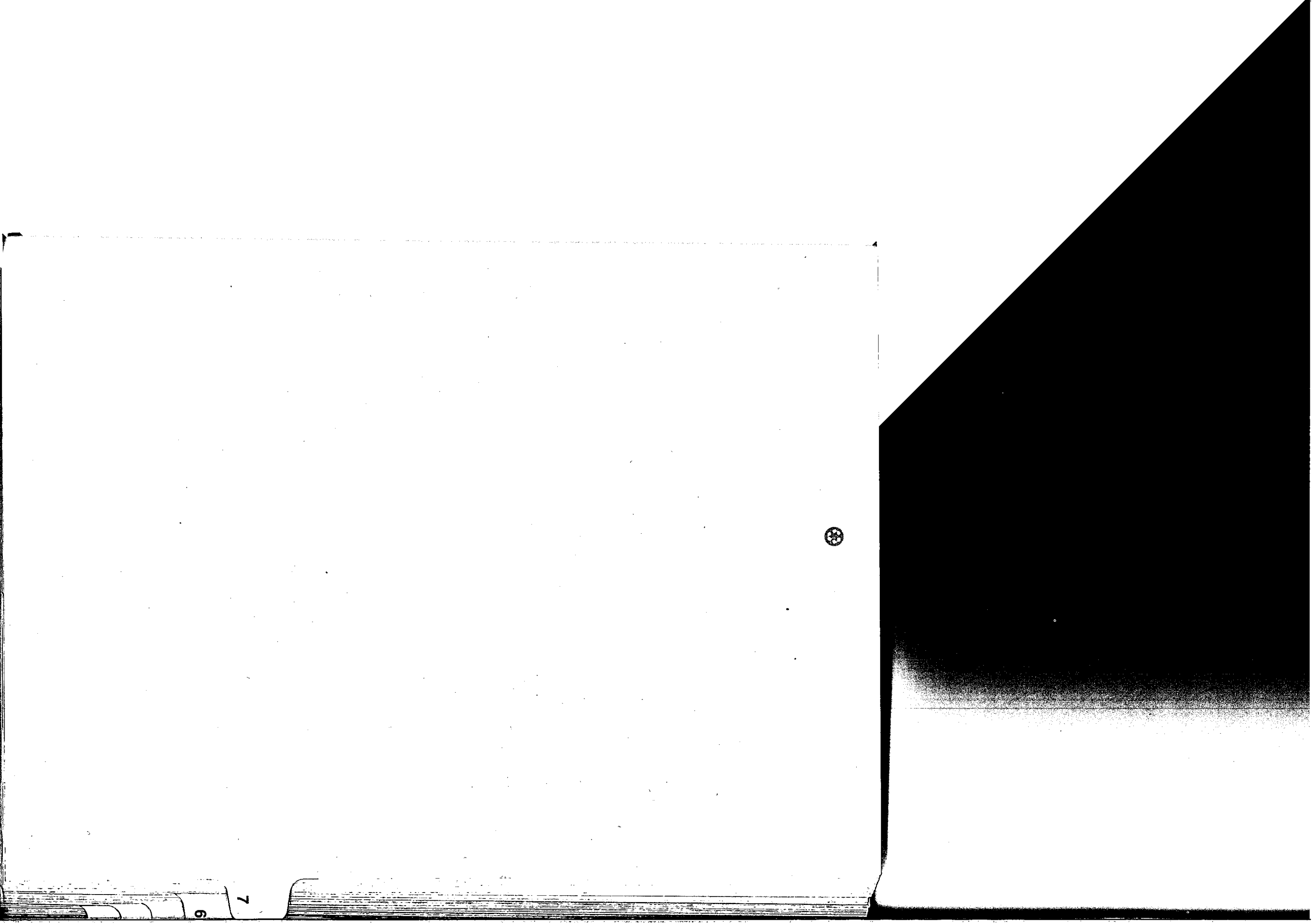
How the Internet could cut costs per vehicle*

	Current cost	Future cost	Savings
Factory costs			
Field sales support	$604	$405	$199
Freight	250	200	50
Subtotal	854	605	249
Dealer costs			
Inventory	431	201	230
Sales commissions	381	0	381
Dealer overhead	570	382	188
Advertising	350	350	0
Price discounts	500	500	0
Subtotal	2,232	1,433	799
Total costs	**$3,086**	**$2,038**	**$1,048**

*This assumes the factory cuts field support by 33 percent and reduces the number of dealerships. It also assumes dealers reduce days supply to 35 days from 75 days, eliminate sales force and cut overhead by 33 percent.


1
2


7



Testimony on SB375
Senate Transportation
January 18, 2000

Mr. Chairman and Members of the Committee:

My name is Edward Dupont. I am here representing the Alliance of Automobile Manufacturers. The Alliance is the government relations organization that represents the following companies: General Motors, Ford, Daimler Chrysler, Isuzu, Toyota, Nissan, Mazda, Fiat, Volkswagen and Volvo.

We are here today in opposition to the proposed changes to RSA 357C: The Regulation of Business Practices Between Motor Vehicle Manufacturers, Distributors, and Dealers. I have brought a copy of the whole statute and would ask that you review the complete statute so that you have the full sense of what has already been legislated in the relationship between dealers and manufactures.

I would like to start off by saying that no other relationship between two private entities is as strictly regulated as the relationship between dealers and automobile manufacturers. While the Franchise Act was originally written to protect dealers on issues related to their franchise agreement and their assigned territory, over the years it has been amended a number of times and now regulates even such mundane day-to-day issues such as; parts pricing on warranty work, how much dealers get paid for warranty work, pricing of delivery services, etc. These are issues that I would suggest the state has no reason to be involved in, and would not be but for the political strength of the dealership organization in our state.

Today's bill takes this intrusion to the next step, which is to define the marketplace in NH by legislation. First, let me say that everyone in this room has paused to think about how products will be sold to consumers in the coming years. The manufacturers have not only been thinking about this issue, they have been talking to consumers to find out what they are thinking. Both GM and Ford have made several announcements related to the changes they anticipate will be taking place in the retailing of automobiles.

In NH, we have gone from the old model where we had at least one dealership in virtually every town, to today's model where we have several large dealerships that sell a majority of all the vehicles sold in the state. Consumers drive out of their towns to purchase vehicles. Publicly available statistics have one or two of these organizations having sales close to $200 million each year. This dollar volume is larger than many of the state's manufacturing concerns. NH's dealerships today are very sophisticated businesses enjoying unparalleled prosperity in this strong economy.

SB375 does nothing for consumers -- in fact, it is bad for consumers. It defines the NH marketplace by what the dealers need to protect their interests, rather than protecting the interest of consumers and a free marketplace. No one has brought in legislation enjoining Mobil Oil or Exxon from selling gas directly to consumers in NH. While gas station operators enjoyed franchise protection, they never sought restrictions preventing the major oil companies from operating their own facilities in the state. If they had sought this protection, we would still have gas stations on every corner, higher prices for gas, difficulty finding an open station for gas on Sundays, and no convenience stores or self-serve gas facilities.

Franchise laws are supposed to provide dealerships and manufacturers clear direction on their rights in a very sophisticated operating agreement. They were not designed to protect the dealers from changes taking place in the marketplace, whether these changes are driven by consumer buying habits, the advent of the Internet, or the emergence of a better way to sell or distribute cars.

For example, what happens if a new car company is formed and decides to sell its cars directly to consumers via the Internet? To provide better pricing to consumers they would open their own sales and service facilities, with one dealership located in Manchester, and one in Berlin or Conway. Under this legislation there is no way this could happen.

Finally, the manufacturer's name is on each and every one of these dealerships. As we have legislated the relationship, we have taken more and more control over the name away from the manufacturers and made it harder and harder for this business relationship to be a partnership.

The dealers will tout the fact that the manufacturers have failed every time they have tried to directly run dealerships. If that is the case, why do we

need this legislation? Let the manufacturers learn their lesson in the marketplace -- not the Legislature.

This is bad legislation because it tells the manufacturers that no matter what consumers want, no matter what the marketplace dictates, you can't sell directly to consumers in NH. If we are going to do this, then lets close down all manufacturer-run stores in NH. This would shut down the outlet malls in Conway and Tilton, plus half the stores at NH's major malls. None of the businesses competing against the outlet stores have asked for your protection. They don't fear the competition and neither should the dealers.

This legislation is an unwarranted intrusion into an existing business relationship. The only thing the manufacturers are guilty of is trying to anticipate the way consumers want to purchase vehicles and what those vehicles are going to be. This legislation provides unusual protection to one class of business that is not enjoyed by any other unregulated business in the state.

Transportation Committee

SB 375 Hearing Report

TO: Members of the Senate

FROM: Susan Duncan
Legislative Assistant

RE: Hearing report on SB 375 – ***An Act relative to motor vehicle Dealerships.***

HEARING DATE: January 18, 2000.

Sponsor: Senator Fred King, District 1
Representative Taylor, Strafford 11

What the bill does: This bill restricts the circumstances whereby a motor vehicle manufacturer or distributor may operate a dealership in the state without engaging in unfair competition with area dealers or franchisees.

Who supports the bill:
Senator Fred King
Ken Plante, NH Auto Dealers Assoc. Chair
Peggy Proko, NHADA (of Nashua)
Paul Holloway, NHADA
Dan Prior, NHADA
Rep. Kathy Taylor
Gregory Holmes, Bow
Senator Lou D'Allesandro
Senator Leo Fraser
Senator Arthur Klemm
Donna Gaudet Hosmer, Tilton
Andrew Hosmer, Tilton

Who opposes the bill:
Jill MacDonald, Alliance of Auto Mfgs.
Ed Dupont

Summary of testimony received:

- This legislation was submitted by Senator King on behalf of the automobile dealers of New Hampshire.
- If not enacted, local people who have engaged in competitive business practices would be at a loss.
- With competition, individuals have lower prices.
- Private auto dealers cannot compete with dealers who are also owners and manufacturers.
- Local dealers have been loyal to their manufacturers.
- Without this legislation, local dealers would be unfairly undercut.
- Local dealers actively support local organizations, charities and clubs.
- Local dealers are actively involved with their communities.
- There is a long tradition with many dealerships where generations have remained loyal to each other.
- Communities could be hurt by not having this legislation.
- Large corporations have the ability to raise substantial sums of money far more easily than smaller, local businesses.
- Manufacturer franchises would negatively impact a local dealer's:
    - Inventory levels
    - Warranty reimbursements
    - "Good will"
    - Consumer's interests
- Financial information is disclosed to manufacturers when automobiles are sold.
- Manufacturers would have access to all sales data, customer lists and other important private information.
- Local dealers do not have access to this information.
- Currently there are no manufacture-owned dealerships in NH.
- General Motors announced earlier that they want to own 10% of the dealerships. This would impact 130 market areas in the country.
- Local dealers feel that they have been successfully running dealerships for years – why not ask them what they need to know?
- Ford Motor Company is currently buying dealerships around the country.
- A franchise agreement is different from a contract.
    - Under a franchise agreement, the manufacturer dictates:
        - Location
        - Size
        - What vehicles are sold
        - Business operations
        - Standards

    - Pricing
    - Distribution of product
    - Where financing goes
    - And demands a monthly statement
- The current partnership arrangement has worked well for over 70 years.
- Manufacturers already employ restrictive practices:
    - A mailing went out to owners of Jimmies which offered a perk to owners taking their vehicles to a Chevy dealer.
    - As a GM dealer, the dealer could not offer that to his customers.
- The automobile industry is not the place to work if you don't like competition. It's the basis of the entire industry.
- The mean average of gross profits for an auto dealer is less than 6%. In real estate, this is around 7%.
- The local dealers cannot compete on a level playing field with manufacturers.
- Without this law, it is believed that many local dealers would be forced out of business over time.
- This would lead to increased prices for the consumer.

Summary of testimony received in opposition to the legislation:

- This bill would further regulate the distribution of automobiles.
- This legislation would reduce the value of the dealerships in NH.
- This legislation would reduce potential competition.
- General Motors experienced a fair amount of dealer unrest following their announcement and subsequently withdrew it.
- Automobile dealerships are being run essentially as they have been operated for the past 100 years.
- There are some new thoughts which have come into auto dealing – these new dealerships would enable manufacturers to "break the current mold."
- The Alliance of Auto Manufacturers support allowing some flexibility into the auto market.
- The relationship between manufacturers and dealers has worked well over the past – there is no reason to believe that this would not continue in the future.
- Franchise agreements are already clearly spelled out in statute.
- The franchise acts are not intended to protect the dealers.
- This legislation would work unfairly for the consumer.
- Why should this protection to offered to one segment of the economy?

- The efficiency of the marketplace should not be determined within the legislature.

Funding: Not applicable.

Future Action: The Committee took the bill under advisement.

sfd
[file: SB 375 report]
January 20, 2000

Voting Sheets

HOUSE COMMITTEE ON COMMERCE

EXECUTIVE SESSION on SB 375

BILL TITLE: **relative to motor vehicle dealerships.**

DATE: March 9, 2000

LOB ROOM: 302

Amendments:

Sponsor: Rep. Marshall — OLS Document #: 2000 4396h

Sponsor: Rep. — OLS Document #:

Sponsor: Rep. — OLS Document #:

Motions: OTP, (OTP/A), ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. Marshall

Seconded by Rep. Francoeur

Vote: 14-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 14-0/Yes

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Stephen G. Avery, Clerk

Stephen G. Avery

HOUSE COMMITTEE ON COMMERCE

EXECUTIVE SESSION on SB 375

BILL TITLE: **relative to motor vehicle dealerships.**

DATE:

LOB ROOM:

Amendments:

Sponsor: Rep. Marshall OLS Document #: 4396h Adopted/Failed

Sponsor: Rep. _____ OLS Document #: _____ Adopted/Failed

Sponsor: Rep. _____ OLS Document #: _____ Adopted/Failed

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. Marshall

Seconded by Rep. Francoeur

Vote: 14-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. _____

Seconded by Rep. _____

Vote: _____ (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 14-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Stephen G. Avery, Clerk

OFFICE OF THE HOUSE CLERK

2000 SESSION

COMMERCE

Bill #: SB 375 Title: Relating to motor vehicle dealerships

PH Date: ___/___/___ Exec Session Date: 3/9/00

Motion: ___ Amendment #: 4396h

MEMBER	Amend YEAS	YEAS	Amend NAYS	NAYS
Hunt, John B, Chairman				
Francoeur, Sheila T, V Chairman	✓	✓		
Herman, Keith R				
Tsiros, William B				
Belanger, Ronald J				
McGough, Tim S	✓	✓		
Avery, Stephen G, Clerk	✓	✓		
Kenney, Joseph D	✓	✓		
Langley, Jane S				
Pappas, Marc P				
Dalianis, Griffin T				
DiFruscia, Anthony R				
Marshall, Gene B	✓	✓		
Clark, Martha Fuller	✓	✓		
Crosby, Toni M	✓	✓		
Russell, Ronald G	✓	✓		
Reardon, Tara G	✓	✓		
Vachon, Dennis P	✓	✓		
Taylor, Kathleen N	✓	✓		
Curran, James C	✓	✓		
Garrish, Linda L	✓	✓		
Keye, Harvey	✓	✓		
TOTAL VOTE:	14	14	0	0

Printed: 12/30/1999

Committee Report

COMMITTEE REPORT

COMMITTEE: **Commerce**

BILL NUMBER: **SB 375**

TITLE: relative to motor vehicle dealerships.

DATE: May 9, 2000 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ RE-REFER

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

As introduced, this bill totally restricted the circumstances under which any auto manufacturers could operate dealerships in competition with area dealers or franchisees. The committee worked with representatives of all concerned parties to craft a solution which meets the needs of all while preserving a high degree of protection for New Hampshire businesses and consumers alike. The bill also includes amendments requested by the Motor Vehicle Division clarifying procedures of the NH Motor Vehicle Industry Board for dealing with challenges to (dealer service) chargebacks and with appeals from the board's decisions.

Vote 14-0.

Rep. Gene B. Marshall
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Commerce

SB 375, relative to motor vehicle dealerships. OUGHT TO PASS WITH AMENDMENT

Rep. Gene B. Marshall for Commerce: As introduced, this bill totally restricted the circumstances under which any auto manufacturers could operate dealerships in competition with area dealers or franchisees. The committee worked with representatives of all concerned parties to craft a solution which meets the needs of all while preserving a high degree of protection for New Hampshire businesses and consumers alike. The bill also includes amendments requested by the Motor Vehicle Division clarifying procedures of the NH Motor Vehicle Industry Board for dealing with challenges to (dealer service) chargebacks and with appeals from the board's decisions. Vote 14-0.

SB 375, relative to motor vehicle dealerships, OUGHT TO PASS WITH Amendment.
Gene B. Marshall for the Commerce Committee: As introduced, this bill ~~severely~~ totally restricted the circumstances under which ANY auto manufacturers could operate dealerships in competition with area dealers or franchisees. The committee worked with representatives of all concerned parties to craft a solution which meets the needs of all while preserving a high degree of protection for New Hampshire businesses and consumers alike. The bill also includes amendments requested by the Motor Vehicle Division clarifying procedures of the N.H. Motor Vehicle Industry Board for dealing with challenges to (dealer service) chargebacks and with appeals from the board's decisions. Vote 14-0. OK

SB 375, relative to motor vehicle dealerships, OUGHT TO PASS WITH Amendment.

Gene B. Marshall for the Commerce Committee: As introduced, this bill severely restricted the circumstances under which auto manufacturers could operate dealerships in competition with area dealers or franchisees. The committee worked with representatives of all concerned parties to craft a solution which meets the needs of all while preserving a high degree of protection for New Hampshire businesses and consumers alike. The bill also includes amendments requested by the Motor Vehicle Division clarifying procedures of the N.H. Motor Vehicle Industry Board for dealing with challenges to (dealer service) chargebacks and with appeals from the board's decisions. Vote 14-0.