Bill as Introduced

SB 375- AS INTRODUCED

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

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 RSA 357-C:3, III(k) is repealed and reenacted to read as follows: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 one year, 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

Senate Transportation
February 16, 2000
2000-3491s
08/10

IF this amendment is adopted by the Committee, please deliver to the House Clerk (Room 317) or Senate Clerk (Senate Chamber), the 2 originals and 2 copies.

Amendment to SB 375

Amend RSA 357-C:3, III(k)(1) as inserted by section 1 of the bill by replacing it with the following:

(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;

Committee Minutes

Date: January 18, 2000
Time: 3:30 PM
Room: 104 LOB

The Senate Committee on Transportation held a hearing on the following:

SB 375 relative to motor vehicle dealerships.

Members of Committee present:

Senator Gordon
Senator Roberge
Senator Below
Senator Pignatelli
Senator Russman
Senator Trombly

The Chair, Senator Edward M. Gordon, opened the hearing.

Senator Edward M. Gordon, D. 2: May I call the hearing to order on SB 375 relative to motor vehicle dealerships. And I'll call upon the Primary Sponsor, Senator Fred King, to lead the discussion.

Senator Frederick W. King, D. 1: Thank you Mr. Chairman and members of the committee.

See attachment A

Explanation in Attachment A: I'm not sure how you're involved with the Auto Dealers, but when it was time for me buy my pickup, which is my vehicle of choice I visit the dealers in my district and see what kind of deal I can get. I usually take the place where I can save the most money on my transaction. I'm sure most people also take advantage of that competition between manufactures, between dealers as they buy an automobile. That's pretty much the way it was in the 60's and 70's, I don't think that has changed very much.

Situation in Colebrook from Attachment A: A few short years ago we had two privately owned drug stores on the main street in my small town of

Colebrook. Now we have one drugstore owned by a national chain. They came in and essentially bought one store and proceeded to drive the other store out of business. I will tell you in the recent flu epidemic, that store did very well. I did a little research and I found out that in Concord if my constituents would be there to buy their prescription drugs, they could have bought them a lot cheaper. There is no competition now, and they have to buy their cold medicine from one supplier. Competition is a good thing and I really think we need it.

Senator Edward M. Gordon, D. 2: Questions for Senator King? I see none. Thank you.

Senator Frederick W. King, D. 1: Thank you very much.

Senator Edward M. Gordon, D. 2: Senator D'Allesandro?

Senator Lou D'Allesandro, D. 20: Thank you very much Mr. Chairman. For the record I'm Lou D'Allesandro, representing district 20. I'm here to support Senator King's bill. And I'll be very brief.

I think we've got a number of dealers who've been in business for a long period of time and they've done a good work marketing their products. Without this kind of protection these dealerships are certainly in danger. And they are the cornerstones of the business world of New Hampshire. They've been very supportive of their clientele, they've been in business for a long period of time and now they're being threatened by the large manufacturers. And that's a very difficult situation and one that I feel we should deal with. We have to respect the integrity of our franchises that have been loyal to the manufacturer they've been loyal to the client base, and this endangers their ability to make a living.

So I thank you very much for time, and I appreciate your support.

Senator Edward M. Gordon, D. 2: Thank you for your testimony.

Senator Lou D'Allesandro, D. 20: Thank you.

Senator Edward M. Gordon, D. 2: Representative Taylor?

Representative Kathy Taylor, Strafford D.11: Thank you Senator Gordon. For the record I'm Representative Kathy Taylor, from Strafford District 11.

I'm cosponsoring this for a constituent and my Auto Dealer who also happens to be President of New Hampshire Auto Dealers Association. I can always

get a competitive price from him and I also receive excellent service. I don't want the manufacturers to set up in competition with our local dealers and unfairly undercut them. I'll leave the rest of the detailed testimony to those that follow. Thank you.

Senator Edward M. Gordon, D. 2: Thank you. John Stephen signed up but I don't see him anywhere. I'm not sure that he actually wanted to speak but he signed up in favor, as did Senator Fraser.

Senator Klemm do you wish to testify?

Senator Arthur P. Klemm, Jr., D. 22: In the interest of time I'd just like to go on record of being in favor of the bill.

Senator Edward M. Gordon, D. 2: Gregory Holmes?

Gregory Holmes, Bow: I'm here but I'm not willing to testify, I'm just in general support of the bill.

Senator Edward M. Gordon, D. 2: There are a number of Representatives from NHADA, do you want to be called in any particular order?

Ken Plante NHADA: Ken Plante and Peggy Proko, in the interest of time we will testify together.

Thank you Senator, good afternoon everybody.

My name is Ken Plante, I'm Chairman of the New Hampshire Automobile Dealers Association, and I proud owner of Tri-City Dodge and Tri-City Subaru.

Peggy Proko NHADA: My name is Peggy Proko, Vice Chair of New Hampshire Auto Dealers, and also owner of Peters Auto Center in Nashua New Hampshire.

Ken Plante: This bill has been a topic of conversation in our board meetings for some time now. The testimony that you are going to hear from the dealers that follow is representative of the feelings of the entire dealer body in New Hampshire.

At this time I'd like to take this opportunity to tell you a little bit about our business and the impact of this bill. This is a case of the main dealership in a state where family owned and operated business is a strong tie to the community. We support the local charitable and civic organizations,

basically we get involved, we sponsor the Little League teams, the hockey teams and some of the others, ... We work with the vocational programs at the high school levels, specifically the Voc Tech program, we provide vehicles for the kids so they can learn about the latest and greatest in technology. We do job shadowing, let the kids come in and spend a day in our dealership with our technician or our service writers or our office staff, just to see what its like in the real world in the automobile business. We have a vested interest in the community because our business is in the community. I find it hard to believe that if the manufacturer would be allowed to become a dealer that they would have that same vested interest.

The community aspect is one part of the business, the other part is the customer. Currently people that I do business with, their parents did business with my father, and their parents did business with my grandfather. We've developed a relationship over the years where these people know if they have a problem they call me. They don't call the manufacturer. They call me at work, they call me at home. Its not unusual that I get calls on a Sunday, because they know that I'm going to take care of them and I'm going to help them out. Being a local community dealer it is in my best interest to take care of these customers. Whereas, in my opinion the manufacturer, its in their best interest to take care of their chairman. I think there's a big difference there.

The local dealer provides a level of community support and customer service that the manufacturer will not be able to match. Consequently, if we do not pass this bill, the dealer and the employees of the dealer will be hurt. And simply it will no longer be our business. The community will be hurt and ultimately the consumer will be hurt.

Senator Edward M. Gordon, D. 2: Thank you.

Peggy Proko: Thank you.

See attachment B

Senator Edward M. Gordon, D. 2: Thank you very much for your testimony. Any questions?

Senator Clifton Below, D. 5: Thank you Mr. Chairman. Ken or Peggy part of your franchise agreement with the manufactures that you represent, do you have to disclose information about your customers or your business financial records?

Peggy Proko: We have to disclose financial records for the main fact that every month...

Ken Plante: May I interrupt. With the report on the vehicle sale, which is all the information on the customer, whether they did financing with the factory. For example they want to know the source that the customer did the financing with, which is really not necessarily their business, so they tend to ask for quite a bit of information.

Senator Clifton Below, D. 5: If the manufacturer were to compete with you then you presumably don't have reciprocal access to information that their asking to view would you consider that an unlevel, unfair playing field for competition?

Ken Plante: Absolutely.

Senator Edward M. Gordon, D. 2: Other questions?

Senator Richard L. Russman, D. 19: I have a question how does this whole thing play into potential sales on the Internet? And I don't know if that works. But is there any room for where the auto manufacturer might sell directly to the customer on the Internet or somehow? I mean is that addressed in this bill? As you were talking the thought occurred to me and I was curious.

Peggy Proko: It's a big concern of the dealer body, in the whole country right now, this whole E-commerce. Right now we're somewhat comfortable with what the manufactures have stated, that they're not going to bump past the dealer and make sure that all the information is flowed down through the dealer and then to our customer. But at this point we don't know.

Ken Plante: We don't feel that they should sell directly to the customer over the Internet.

Senator Richard L. Russman, D. 19: So how does this compare to these direct quotes in terms of life insurance and things of that nature, it seems like they're bypassing the insurance agent. Is that comparable?

Ken Plante: I'm not sure that the arrangement the insurance agent would have with the companies that they represent, I mean we have a contract, we represent their product, we sell their products. We have a tremendous expense in selling their products, and a tremendous investment. It's a bit of a different arrangement than you would have with the insurance person.

Senator Edward M. Gordon, D. 2: Any questions?

Senator Richard L. Russman, D. 19: The question I have is, just in terms of the timing of the legislation itself, are there circumstances in New Hampshire today where there are in fact manufacturer owned dealerships? And if not why is it that this legislation is being brought forward at this time?

Peggy Proko: Not yet. There are no factory owned stores in New Hampshire, I hope there won't be.

Ken Plante: I guess what started all this is General Motors specifically announced that they wanted to own I believe it was 10% of the dealers. I think they recognized 130 markets where they wanted to come in and buy our dealerships and run the dealerships alongside their current dealers. They felt it was a way for them to get a better understanding of the market. That's what prompted this legislation. We've been doing this for years. Why don't they ask us about the market? We're pretty confident that we've got a handle on it. And that's really what started... Plus Ford Motor Company has started owning groups of dealerships in various parts of the country, so that's another thing. So they have started buying dealerships.

Senator Edward M. Gordon, D. 2: Any other questions?
Thank you for your testimony.

Ken Plante: Thank you.

Senator Edward M. Gordon, D. 2: Jill Macdonald?

Jill Macdonald AAM: Mr. Chairman, members of the committee, my name is Jill Macdonald. I'm here today on behalf of the Alliance of Automobile Manufactures. Members of the alliance include: BMW, Daniel Chrysler, Ford, General Motors, Mazda, Miasanna, Toyota, Volvo and Volkswagen. I do have some knowledge of the business of each of those companies.

I'm here today to state that my position to SB 375, which would further regulate the distribution of cars and trucks in the state beyond what it already does and would in our opinion do a number of things. Not the least of which is to impair existing contract rights we have with our dealers. We think it would end up reducing the value of the dealerships in the state by eliminating a ready and willing buyer under certain circumstances. We also think that fundamentally as we go down the road would limit consumer choice, because you are in fact reducing potential competition.

But I'd like to say what nobody else said that no manufacturer has indicated an interest in buying this deal, and that where General Motors after it had a fair amount of dealer unrest over its announcement of its efforts over a long period of time. We're talking about 10 years of buying a portion of the dealer network, has now withdrawn that because it had such dealer opposition. Ford is currently partnering in a number of cities with existing dealers, and is in a wary position to see if there isn't a way to better deliver their product through the retail process.

As someone pointed out some aspect of the retail process hasn't changed in nearly 100 years. So there are thoughts of making better ways to actually retail the vehicle to the consumer. But all manufactures are supporting current retail networks and consider them to be a vital link to the consumer through the entire ownership experience from the purchase, through the warranty period and hopefully after the warranty period is over. I think there's an understatement to say that there are changes going on in the industry. We're seeing a substantial consolidation in the manufacturing level who have died, in large member because there's no capacity. Just this past week Daniel Chrysler indicated they wanted to become a number one worldwide automotive manufacturer through acquisition. Entering talks with a number of companies.

We're also seeing a consolidation on the retail side, we don't know where that's going. But we do have now for the first time ever big box retailers with the counterpart of Wal-Mart, who has entered the retail arena. 5 years ago for example Auto Nation didn't exist. Last year Auto Nation sold 286,000 new vehicles for the nearly 400 dealerships its purchased in less than 5 years. Just by comparison the 97,000 new cars and trucks sold in 98 in New Hampshire. So they're seeing some changes. We don't know where this is all going.

E-Commerce as you indicated is something that none of us know precisely how the auto companies and their dealers are going to factor in. Most manufactures are working on web-sites that will provide their dealers with, consumers with information and possibility for leads going to dealerships, but are doing it in conjunction with their dealerships. No manufacturer at this point is selling directly on the Internet. With the changes that we're seeing we're concerned about eliminating any form of competition, when the law in this state already limits the number of total dealerships that can be in New Hampshire.

We support allowing some flexibility in the form of investment in dealerships. Specifically we'd like to preserve the opportunity to partner with dealers as this board is doing in Oklahoma, to preserve the value of the dealership by

obtaining the potential buyer, i.e. the manufacturer. To preserve the competition and consumer choice, and also to provide an exit opportunity for the dealers that can't find a willing buyer. All of those things are at risk under SB375.

We also recognize however, that there should be no discrimination in favor of dealers and that the manufacturer has an investment. Manufacturers in fact have been investing in dealerships for a very long period of time, most of the last century, this is the first time they've been able to say that. And there has been no indication that they have favored the dealers in which they have provided an investment, opportunities.

We think there should be something less than an outright prohibition from the manufacturer ever having, owning, the retail operation in the state. I'd be happy to answer any questions that you might have on this. This concludes my testimony.

Senator Edward M. Gordon, D. 2: Senator Pignatelli?

Senator Debora B. Pignatelli, D. 13: Thank you. My understanding was that a manufacturer could purchase a dealership if there were no other person for whom to purchase it, but needed to dispose of it in two years. Is that correct?

Jill Macdonald: That's correct. That's the current law. This bill would take it to one year and require a hearing for any further period of time, which I have to say the likely hood of the manufacturer being willing to do it under those circumstances is low. You'd be in fire sale. If you buy it at market value and then can't find a buyer you'd be under the gun to sell it. That's not very attractive to anyone looking for an investment.

Tape change

...having a new dealer appointed, unless you can go through a hearing and establish that the market will support it. Unless the state population grows for a retail sales increase, would probably be hard pressed to establish that the market will support another dealership. So that's why in non-growth markets that have these kinds of laws the current number is not likely to grow.

Senator Debora B. Pignatelli, D. 13: And just one last question. So were manufacturers thinking about opening up dealerships in competition with dealerships that are currently established, or were they considering, we don't have a law like this, purchasing dealerships that are already in existence?

Jill Macdonald: In other states where they have been permitted to purchase...Understand currently there are limitations on what they can do, but its to buy an existing dealership not at add another dealer in the market.

Senator Debora B. Pignatelli, D. 13: Thank you.

Senator Edward M. Gordon, D. 2: Any questions? Senator Below?

Senator Clifton Below, D. 5: Thank you.

Are you familiar with the franchise arrangements between manufacturers and dealers?

Jill Macdonald: Yes I am. I was a lawyer with Ford Motor Company, for 18 years going on retirement.

Senator Clifton Below, D. 5: Do manufacturers generally have pretty have open access to a dealers financial information and customer records?

Jill Macdonald: Dealers under those franchise agreements provide a manufacturer with financial information on a monthly basis. But that financial information is protected under the franchise agreement itself from disclosure to third parties. And with respect to customer information, the customer information that is generally provided its not specified in detail in the franchise agreement, but usually is the name of the customer and address so that they can enter it on their system to follow the customer. Manufacturers vary on the amount of information.

Senator Clifton Below, D. 5: That's protected from disclosure from third parties that would go to a dealer or a manufacturer itself had subsidorated this in direct competition with whom in New Hampshire or any state could be considered direct competition... Would that potentially be a problem?

Jill Macdonald: It may be potentially a problem, but that is the manufactures have had investments in fact 100% investments with people over a period of time, over since the mid 20s, and I don't know of any time when there an abuse in the exchange of information. That also could be addressed by narrowly crafting it to protect that information from disclosure to wholly owned subsidorator.

Senator Edward M. Gordon, D. 2: Other questions?

Senator Clifton Below, D. 5: If this bill provided a lot of minority ownership interest by manufacturers would that make it more difficult to ...

Jill Macdonald: That would be one of the exceptions that we would certainly like, that is in the current law that does recognize those programs.

Senator Clifton Below, D. 5: OK. Thank you.

Senator Edward M. Gordon, D. 2: Any other questions? I see none, thank you for your testimony.

Jill Macdonald: Thank you.

Senator Edward M. Gordon, D. 2: Paul Holloway?

Paul Holloway NHADA: Good afternoon, my name is Paul Holloway and I own 6 automobile dealerships located in Exeter, Hampton, Manchester, Portsmouth and Stratum. I employ over 200 people and we represent General Motors, BMW, and Mercedes Benz franchises.

I'm the past President, the immediate past Chairman actually of the National Automobile Dealers Association, which represents over 19,000 franchised Automobile Dealers in the United States. Serving in this position has given me a good understanding of the value of our state franchise laws and the need to strengthen them.

Franchised Vehicle Dealers operate as independent businesses, under an agreement with the Manufacturer. Which in turn supplies them with vehicles, parts and information. The franchise agreement is structured differently than the standard contracts. When an Automobile Dealer is presented with an agreement and there is no, no negotiation involved. Take it or leave it. If you do not execute the agreement you do not have the franchise. And these agreements are renewed at 1 to 5-year intervals depending on the manufacturer. And some manufacturers do have continuing agreements.

The manufacturer dictates the location of the building, the size of the building that you have to operate out of, what vehicles can be sold at the given location, how much working capital must be invested to be a dealer, they approve your rent. They mandate the hours of operation, they set the training standards, they control pricing and they control the distribution of product. They demand a monthly financial statement including a balance sheet and a profit more statement, which reveal even the smallest detail of the Dealerships operation. There are no secrets. Manufacturers have

complete access to all financial records. On this feared basis people become Automobile Dealers, and they form what is loosely called a partnership with the manufacturer.

That relationship has worked well for over 70 years, but recently some changes are taking place. We have all seen unprecedented success in the retail sales this past year. Manufacturers are no longer satisfied with their share of profits, they now want to compete with their franchised dealers in the marketplace. To quote a higher General Motors official, and I quote "We want some because we bail profits." General Motors announced last summer that they wanted own 10% of their retail outlets, for about 800 dealerships nationwide. They form GMRH, which stands for General Motors Retail Holdings. And they had begun buying out retail dealerships, some as close as 30 minuets from New Hampshire.

In contrary to what you have heard about General Motors backing away, as of a week ago Friday the man who was named President of General Motors Retail Holdings was still on the job. I spoke to him personally and he still in his mind was going forward with that program.

Ford Motor Company has established retail operations in Salt Lake City and Oklahoma City in attempt to corner that retail market. They attempted to locate in Dallas Texas, but strong state laws and questionable negotiation tactics prevented them from doing so. They were forced to sell when the private Magna dealer ordered a ... Ford is now trying to establish a retail center in Richmond Virginia. Incidentally none of these operations have been outstanding successes. Although Ford claimed they never wanted to own more than 35% of the stock than the retail centers, they always had control through a veto ballot... But even now they're approaching 70% of the dealership in Oklahoma City and Salt Lake City and its quickly pushing towards 100% of the ownership of the stock.

If manufacturers have complete control of the manufacturing, pricing, distribution and the sale of vehicle consumers will be the losers. The consumer is best served by independent dealers competing for their business. Look at what happened when the manufacturers were granted the protection of import quotas in the 1970s. When gasoline shortages put the domestic manufactures unprepared to compete with energy efficient imports, they asked Congress to protect their market shares through a quota system. And Congress granted that request. One the quotas were in place manufactures began increasing the price of their products on a quarterly basis. For example, the price of the 1980 Buick Skylark increased more than $1,200 from introduction to bill out of that model in 1 year. And of course with decreased competition from abroad prices on the 1981's rose as well.

Another issue confronting the new car dealer is, who owns the information? If it's a General Motor's vehicle I am required to provide General Motors with information about each of my customers, such as name, address and model of vehicle purchased. And that's understandable, especially if a safety recall should ever be required. However, if the vehicle is not financed with GMAC, General Motors Captive Financing Arm, GM demands to know the financing source, the interest rate and the term of the loan and the lease. And I have the sheet here. This information is, this is information that General Motors does not need to know about my customers. But if I the dealer do not provide that information the delivery is not validated and the Dealer's allotment of vehicles is adversely affected. No information no products. Because it doesn't count as a delivery, and you only get cars in our cars in our business by selling cars.

Another move towards total control, if General Motors Dealer elects the floor plan or finance new vehicles in an institution other than GMAC that dealer is denied special sales programs, rebates and incentives. And they are charged for information that is provided at no cost with GMAC financing is in place. Once again this places consumers at a disadvantage in the market place. Talking about the information, it just so happens that today we receive from General Motors a copy of a mailing that is going out to owners of Jimmys, which is a SUV that we sold form our dealership in the coast. They took our information, and they're now sending it to these customers and they are asking them to go into a Chevrolet dealership and get a special incentive. I can not offer that incentive in my General Motors dealership that sells Jimmys. In other words the information is not propriety, the information is shared for all branches within General Motors. And here it is for you to see.

One time the Manufacturing/Dealer relations existed on a pretty level playing field, but that is rapidly changing. If factories are allowed to close existing franchises, or buy existing franchises, and put in their own retail centers in place both independent business owners and consumers will suffer in the process. The retail business and the consumer's benefit from the inter and intra brand competition. If you live in Exeter you can shop 6 Pontiacs, 6 Fords, 7 Chevrolet and 6 Chrysler dealers in a 20 mile radius. The northeast region by everybody's standards has too many dealerships for the geographic area, and the consumer demographics. The factory ownership is not the answer.

The local automobile dealers are heavily invested in New Hampshire. We provide products and services at competitive prices, we know our customers and are responsive to their needs. And dealers and their employees give back to the communities in countless numbers of ways. Retail dealers have

survived and prospered despite wars, inflation, recession, gas shortages, price controls and will continue to be an intracal part of New Hampshire's economic infrastructure. Unless we are forced out, by corporate giants who take advantage of legal loopholes in our state franchise laws.

Strong state laws will ensure a level playing field, and that's why we're asking and we would appreciate your support in SB 375. Thank you.

Senator Edward M. Gordon, D. 2: Senator Below?

Senator Clifton Below, D. 5: Thank you.

What concerns do you have about allowing manufactures to have a minority interest? And is there any potential advantage to you as a dealer or other dealers to having additional option of when you go to sell your dealership, of selling it to an individual... Perhaps if you weren't to divide the whole business but could take a majority interest.

Paul Holloway: Well let me just say that first of all we've had experience with the kind of advertising that the factory store does. In Massachusetts where they already own quite a few dealerships and they advertise direct factory pricing, giving the indication that they have something special. That's not true. All dealers pay the same price, but they are using their fluff as being a manufacturer as serving, leading people to believe that they have something better than everybody else has to offer.

On your second question about, the second part of the question, about people owning; Dealer, manufacturers have been involved with dealerships for a long time and I don't know of anyplace where they have a program where the manufacturer owns 100% and then had a buyout. But they do have minority programs where it allows people to get started with owning a certain percentage, but there is a prescribed buyout procedure. The same thing is true for General Motors has what's called Motors Holding, and Motors Holding is where the dealer and the division of the cooperation are partners and there is a prescribed buyout period.

I would have great difficulty with an arrangement such as Ford had, where they had 35% of the profit and they said that's all they wanted. And for instance in Oklahoma City where they had the dealer in place and they talked about having this board collection. But that 35% always had the retail power over 5 major decisions in that dealership. There were certain things that lawyers, accountants and Ford really can afford that retailer. Now the dealers have elected that it's not working, and the dealers have elected to get

out, and Ford is I believe owning, I believe in that case, 70% of the stock and probably will end up very close to 100%. That's not good for the consumer.

Senator Clifton Below, D. 5: Thank you.

Senator Edward M. Gordon, D. 2: Senator Pignatelli?

Senator Debora B. Pignatelli, D. 13: Thank you Mr. Chairman.

I just have one brief question. I don't know how it relates to this, but let me just ask it. You said that you own 6 auto dealerships over and toward the seacoast?

Paul Holloway: Yes.

Senator Debora B. Pignatelli, D. 13: And chances are if you're successful in those you may want to purchase some others? You didn't buy those 6 in the very beginning, you probably started with 1...

Paul Holloway: Certainly not, you're right.

Senator Debora B. Pignatelli, D. 13: So you might want to purchase others as you become more and more successful? Do we have any laws in this state that prohibit you from purchasing all of the General Motors Dealerships in a certain area? And how does the consumer benefit by having you own 6 dealerships in a particular area?

Paul Holloway: The dealerships that own, I own 2 Mercedes Dealerships, I own 1 BMW, I own a Chevrolet, Buick, Pontiac, Oldsmobile, and in the other ones I own a Cadillac, Pontiac, GMC. So they're pretty dispersed brands. There is no rule against it, you have not heard dealers talking about competing against Auto Nation, which was the dealership that was mentioned here in earlier testimony. Dealers have not, members of our Association, there is no problem with us. Myself I welcome Auto Nation to the state if they want to come. I will compete against any individually controlled dealership, but I don't want somebody who controls my product, looks at financial statement, has the right to come in and open my books at any time, does all the audits and approves my warranty to be my competitor.

Senator Debora B. Pignatelli, D. 13: Thank you.

Paul Holloway: You're very welcome.

Senator Edward M. Gordon, D. 2: Any questions? Thank you very much. Dan Prior?

Dan Prior NHADA: Good afternoon Senators. My name is Dan Prior, I'm the Chairman of Autofair. We're a large group of a large privately held dealership in Manchester New Hampshire. We represent 7 franchises in Manchester, we employ 385 people, and have been in business since February of 91.

I'd like to address my concerns about this problem in 2 areas. The first is that if, I've been in the business about 25 years, and the only advise, the only question I'd ask a young person entering into this business if they were asking me about the business is if you don't like competition this is not a good career. And I think that the last impression that we want to give is that we are asking you to stop competition. We frankly thrive on competition. I think consumers get the best from us through that competition. What we're really saying is in manufacturers owning retail establishments we no longer have fair and honest competition. Or at least there is certain, there are many many ways where that could be heard. To bring my point home about competition I just point out that the mean average of margin in our business is less than 6%. That's just basically the difference between the cost of the car and what we sell it for, and that includes extended service contracts that we sell, insurance products that we sell and financing that do. Those margins are sub-6%. Real Estate Agents that don't hold inventory are in about 7% range, just to put that in perspective. Most years the departmental net profit in the...

Tape change

...auto dealers is very marginal. We need to aggregate that business with our used vehicle business, our service business, our body-shop business and parts business. And sort of the portfolio of business that gets off that is really what makes this business worthwhile to us. So I think that if there is a fear that there is a lack of competition in the new vehicle segment, we just have to look to the margins that exist currently and have for years and years. And I think that we could put that fear to rest.

My second point is about the level playing field, and even towards certain compromises that might talk to minority ownership by factories and like such plans. I don't think that these could ever be enforced, nor could even the price parity of the vehicle's themselves be enforced. I'm a pretty bright guy but I'm not certainly as bight as the manufacturers in terms of strategies. But I've had several nightmares and have dreamed up several ways where I and the manufacturer or retailer could have the same price of a vehicle, but through cost transfers and very indirect ways we wouldn't have the same pricing at all. Being vertically integrated they'd have a different set of

success criteria than I do. And they could in very indirect ways through subsidy of expenses, re-capitalization schemes after one of their factory dealerships has lost a tremendous amount of money and this is where I'm getting to the point where I'm not sure if the competition would be fair. I think if this law doesn't happen and the manufacturer becomes retail, I think we lose many local businessmen large and small but we lose them very slowly. I think the levels of local availability of vehicle inventory, parts and service support would erode for New Hampshire citizens especially in the smaller communities. And I think eventually because there would be less competition prices would rise and consumers would have less vehicle, less convenient vehicle purchasing services experiences.

I think many of the schemes and Mr. Holloway mentioned the Ford Minority Ownership the provisions of those contracts and the cooperate structure requires super majorities in many many instances, so that you can't change your finance source from Ford Motor Credit. And a number of other things that really, you can't sell your business even though you're the majority owner of your business. So I think that there are just ways because our need in relationship in dependency on the manufacturer is so strong that we can never create through administrative rules or legislation a way where we would be protected from this.

One more point about the Internet, I think most dealers in the United States are Web enabled. We embrace the technology because we feel it will make the business more efficient, and drive cost out of the business for everyone. But what I think the manufacturers are losing sight of is that they have a really wonderful local infrastructure already in place to use in any Internet strategy that any one might envision. And in matter of fact this click in brick format is the current rage as a model of choice in the Internet development. So I think we've proven our ability to adapt as Paul Holloway said through recessions, gas crunches and the like And I think the best for the dealers, the manufactures and the consumers is to have dealers remain dealers and manufacturers remain manufacturers.

Thank you for your time.

Senator Edward M. Gordon, D. 2: Any questions for Mr. Prior? I see there are none. Thank you. Ed Dupont?

Ed Dupont: Thank you Mr. Chair and members of the committee. I'll try to be as brief as I can. My name is Ed Dupont, I'm here representing the Alliance of Automobile Manufacturers.

We are as Jill indicated here today in opposition to the proposed changes to RSA 357-C and I have brought copies of that that I would be glad to had out to all of you. Because I think if you go through it and you look at the statute you'll find that there is probably no other industry in New Hampshire, private industry in New Hampshire, that is as highly defined statute wise as this industry is. The relationship between dealers and automobile manufactures started out with a franchise agreement that, legislation that dealt with their agreement with the manufacturers in their assigned territories. And over the years its evolved to get itself intertwined with many of the other business dealings between these two entities.

I'd like to say that I think this bill takes a further step into the relationship to (inaudible) I think its fair to say that probably everybody in this room has given some thought to how they're going to purchase goods in the future. And if you're wise and you're manufacturing a product today or selling a product today you have to be concerned about what the marketplace is going to look like for any product. In New Hampshire we've already gone from the old motto where there was a Ford dealer and a Chevy dealer and a Pontiac dealer in every town to one that now is represented by several large dealerships who sell the majority of the vehicles that are sold in New Hampshire.

Sitting behind me and around me are some business people who I have a great deal of respect for, they're friends. I also have followed them as they've developed their businesses in the state. Quite frankly we have a number of dealerships in the state who sell between 50 and 200 million dollars worth of automobiles every year. That's a fairly big business, it's been a relationship that they've enjoyed with the manufacturer that has allowed them to represent the manufacturer in New Hampshire. And it obviously is a concern probably that you sit here and listen to what appears to be a relationship that has not worked well in the past, and that is not the case.

My concern is on the surface if you look at SB375 it does nothing for the consumers. In fact its bad for consumers because it attempts to define marketplace, and whenever we've tried to do that in the past the government has usually been wrong. As many of you know my father was in the Gas-station business, and I can remember when self-serve gas stations came to New Hampshire the dealers were all up in arms. But they didn't march to Concord and say we want legislation that prevents Exxon and Mobile or Shell from operating a gas station in the state of New Hampshire. And I think if they had done that and the legislature had passed, that legislation we'd probably still have a gas station on every corner, good or bad. We probably wouldn't have convenience stores selling gas 24 hours a day. And we probably wouldn't be able to buy gas on Sunday because back in those days

folks didn't open their gas stations on Sunday. So again as I indicated before this legislature has to move very carefully when it wants to insert itself into the market place and start determining what the market place is going to look like.

Let me also say that the franchise act is not intended to protect dealers from marketplace. And whether it right or wrong the bottom line is what you're being asked to do today, is to provide on that protection. Because I can't sit here and I don't think anybody in this room can sit here and say that 5 years down the road the model for selling automobiles might very well be all on the Internet, through whatever entity decides to do that. Maybe a manufacturer comes along and decides they want to market directly to the consumer. A new manufacturer, somebody starts a automobile manufacturing company and the model is to deliver directly to the consumer. So trying to anticipate what is going to happen in the future as this legislation does is bad.

Furthermore I think its patently unfair that all of the folks in the state of New Hampshire, whether it be a drug store or a store that competes with any of the outlet malls where there are manufacturers that have direct run stores, offer this privilege to one segment of our economy. I have not, I think if you look at it on the surface and suggest that manufacturers shouldn't have the opportunity to market direct to consumers as this legislation would have you do, to look at all of the other business in the state who face that competition who have not come in here and asked you for that protection. That it creates a very unfair situation for other businesses in the state.

Now having said all of that I think my parting words are going to be; the efficiency of the market place should not be determined in this building. That's what competition is all about and I've always believed that the best friend of the consumer is the competitive and vibrant economy that provides the consumer with choices. My good friend Paul Holloway mentioned how bad a job the manufacturers have done when they've tried to run dealerships and I would suggest that rather protecting the manufacturers from failure by legislating them out of the business you ought to let them go out and fail on their own. That's the way we do things in this country. So with that I'll end my testimony and I need to clean it up a little bit Mr. Chairman, and I will submit it to the committee. Thank you.

Senator Edward M. Gordon, D. 2: Thank you. Does anyone else wish to testify on SB375? Seeing none the hearing is closed.

Hearing closed at 4:45 PM

Respectfully submitted,

Jillian Nina Mason, secretary

SB-375

TY Mr. Chairman. For the record I am Senator Fred King representing Senate District One – all of Coos County and five towns in Grafton County – essentially everything north of the notches.

I am pleased to sponsor SB-375 on behalf of the auto dealers of NH. I am disappointed that such a bill is necessary.

The sale of new automobiles has changed dramatically since I was in the business. But the fundamentals are the same. The manufacturers have needed the private businesses to sell and service their products. This has worked well since the Model T days. It works well for the consumer because it brings true competition to the market. (EXPLAIN).

Throughout our state there are local men and women who have invested money and energy to offer good products at competitive prices. These good folks are members of the community. They serve on hospital boards, school boards and a lot of other local organizations. When there is drive to raise money for some local charity they are among the first to donate. You know who they are and you meet them face to face as you go about your daily activities. They are one of us.

An automobile or in my area a pickup truck is not a luxury it is necessity and next to a home is the largest investment most of our constituents make.

We need to ask ourselves why fix something that is not broken. Are these manufacturers so greedy that in addition to making thousands on their big SUVs they need to make another a hundred or two that the dealer scrapes out of a deal after working their way through the trade and living with ~~moths~~ MONTHS and years of warranty obligations some of which ~~is~~ ARE never recovered from the company.

We need to ask ourselves why when we are spending millions of state dollars to bring competition to the electric industry we should allow our constituents to be encumbered by a loss of competition in the purchase of that second most costly investment that they make. I can tell you in my

District many families will always be making either a car payment or a lease payment. They need competition in transportation a lot more than they need competition in electric rates.

(MENTION SITUATION WITH DRUG STORE CHANGE IN COLEBROOK AND ITS IMPACT)

Today we have many probably most dual or multiple dealerships. This is good for the shopper for a new car. Will General Motors have Hondas in their Chevrolet dealerships. I DOUBT IT.

Today about 30% of new vehicles are leased. The manufacturer will control the availability the car or truck, the finance, the insurance and the lease deal. How can the private dealer in the next town compete. Will we end up with the same situation that I described in the drug store market in Colebrook. Maybe. Do you think when a new model comes out that is hot in the market that there will be fair distribution of these models between the company store and the local businessman. I doubt it.

There are others that will bring a more personal perspective to this issue but I would be glad to try and answer any questions that you might have.

Thank you for your consideration of this legislation.

GOOD AFTERNOON!

MY NAME IS PEGGY PROKO FROM PETERS AUTO CENTER AND I AM A THIRD GENERATION AUTO DEALER IN NASHUA, NH. MY GRANDFATHER STARTED OUR DEALERSHIP IN 1955 WITH LITERALLY $500 IN THE CASH REGISTER AND 2 USED CARS.

TODAY, WE EMPLOY 135 PEOPLE WITH OVER 80 MILLION DOLLARS IN SALES ANNUALLY. I BELIEVE OUR SUCCESS IS NOT ONLY ATTRIBUTED TO FROM HARD WORK BUT ALSO THROUGH THE FRANCHISE OPPORTUNITIES AVAILABLE TO ANY ENTREPRENEUR.

MY HOPE BY SPEAKING WITH YOU TODAY, IS THAT OUR BUSINESS WILL BE ALLOWED TO BE PASSED TO A FOURTH GENERATION; MY CHILDREN. IT IS WITH THIS IN MIND THAT I AM TALKING TO YOU TODAY ABOUT THE PERILS OF ALLOWING THE COMPANIES THAT DESIGN, MANUFACTURE AND DISTRIBUTE,AN OPPORTUNITY TO RETAIL ALONG SIDE ME.

IT IS NO SECRET THAT ANY LARGE CORPORATION HAS AN ABILITY TO RAISE FUNDS MORE EASILY, AT LESS COST AND WITHOUT THE SAME PERSONAL RISK AS A SMALL TO MEDIUM BUSINESS OWNER AS MYSELF COULD. TO COMPETE AGAINST SUCH A LIBERAL AMOUNT OF MONIES, WOULD IN ITSELF BE ENOUGH REASON TODAY TO CONVINCE YOU, OUR SENATORS ON HOW THIS COULD DESTROY MOST OF THE DEALER BODY IN THE STATE OF NEW HAMPSHIRE.

ONE EXAMPLE OF THIS WOULD BE INVENTORY LEVELS. OUR INVENTORY'S ARE ONE OF THE MOST COSTLY ASPECTS OF DOING BUSINESS. FLOOR PLAN CHARGES HAVE ALWAYS DETERMINED THE DIFFERENCE BETWEEN PROFIT AND LOSS TO OUR PRIVATELY OWNED COMPANIES.

ANOTHER AREA WHERE A MANUFACTURER COMPETING IN THE SAME MARKET AS ME COULD EASILY TAKE ADVANTAGE OF MY CUSTOMER BASE, WOULD BE WARRANTY REIMBURSEMENT. ASIDE FROM THE STANDARD WARRANTY COVERAGE DICTATED BY LAW, THERE HAS ALWAYS BEEN A GRAY AREA FOR "GOODWILL" TO THE CONSUMER. THIS GOODWILL COULD BE JEOPARDIZED WHEN A FACTORY-OWNED

STORE MIGHT PREFER TO HAVE ALL GOODWILL GO THEIR LOCATION RATHER THAN MY OWN FURTHER ERODING MY CUSTOMER BASE, INCONVENIENCING THE CUSTOMER AND LIMITING THE CONSUMER CHOICES,

THE MOST INTANGIBLE REASON, ~~BUT~~ and Perhaps THE MOST IMPORTANT ONE TODAY WOULD BE THE CONSUMERS INTEREST. AT A TIME WHEN THE GOVERNMENT HAS ALREADY BROKEN UP ONE KNOWN MONOPOLY KNOW AS THE PHONE COMPANY AND FACED WITH A SIMILAR CHALLENGE WITH THE MICROSOFT CASE, I FIND IT HARD TO BELIEVE THAT YOU WOULD NOT ALLOW A LAW TO BE PASSED, WHICH COULD CLEARLY STOP WHAT COULD BE DEFINED AS THE BEGINNINGS OF CREATING A MONOPOLY IN THE AUTOMOTIVE INDUSTRY.

AS MERGERS CONTINUE TO PROSPER IN OUR INDUSTRY, ALLOWING MANUFACTURERS TO RETAIL ALONGSIDE THE PRIVATELY OWNED RETAIL AUTOMOTIVE DEALERSHIP, IS A RECIPE FOR A MONOPOLIZED ENVIRONMENT.

IN CLOSING, HOW WILL WE CONTINUE TO PROSPER AND GROW AS WE ARE CHALLENGED TO COMPETE WITH THE VERY SAME COMPANIES THAT MAKE THE RULES AND POLICIES OF MY BUSINESS. I THINK YOU'LL ALL AGREE THAT IS WILL SURELY BE THE DEMISE OF THE SMALL OR LARGE PRIVATELY OWNED AUTOMOBILE DEALERSHIP IN THE STATE OF NEW HAMPSHIRE. THE ONLY REAL LOSER IS THE CONSUMER.

PLEASE, I EMPLORE YOU TO VOTE IN FAVOR OF SENATE BILL 375

THANK YOU VERY MUCH FOR YOUR TIME.

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
Dan McLeod, 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 in support:

- 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

Speakers

Date 1/18/2000 Time 3:30PM

SENATE TRANSPORTATION COMMITTEE

PUBLIC HEARING
ON SB 375

APPEARING IN FAVOR: (Please Print)

CHECK IF YOU WISH TO SPEAK	NAME	ADDRESS	REPRESENTING
✓ ☑	KEN PLANTE		NHADA
✓ ☑	PEGGY PROKO		NHADA
✓ ☑	Paul Holloway		NHADA
✓ ☑	DAN PRIOR		NHADA
✓ ☐	John Stephen		SAFETY
✓ ☑	Rep Kathy Taylor	Strafford #11	
✓ ☐	Gregory A Holmes	Bow, NH	
✓ ☑	SENATOR FRED KING		
✓ ☐			
✓ ☐	Senator Lou Fraser		Dist. 4
✓ ☑	Sen. Ken Davis		Dist 24
☐	Donna Gaudet Hosmer	Tilton, NH	
☐	Andrew Hosmer	Tilton, NH	

APPEARING IN OPPOSITION: (Please Print)

CHECK IF YOU WISH TO SPEAK	NAME	ADDRESS	REPRESENTING
✓ ☒	JILL MACDONALD		ALLIANCE OF AUTO MANUFAC.
✓ ☒	Ed Dupont		
☐			
☐			
☐			
☐			
☐			
☐			
☐			

Testimony

Jillian

the Dupont Group

Government Relations / Policy Management / Regulatory Affairs
114 NORTH MAIN STREET ■ SUITE 401 ■ CONCORD, NH 03301 ■ (603) 228-3322 ■ FAX: (603) 228-0713

February 14, 2000

Senator Rick A Trombly
23 Tremont St
Boscawen, NH 03303-1325

Dear Senator Trombly,

I know the Senate Transportation Committee is planning to take action on SB375 *an Act relative to motor vehicle dealerships.* I thought it important to make a few last minute points and to put in your hands recent news stories that refute the need for this legislation.

As you know, the basis for this legislation was plans by General Motors and Ford to start purchasing and directly operating retail automobile dealerships. Since the introduction of this legislation, and similar legislation in a number of other states, General Motors and Ford have met with various dealers groups seeking a resolution to this matter. As the enclosed articles will show, General Motors and Ford have decided not to proceed with their plans. More importantly, New Hampshire was never targeted in their plans, rather, they focused on large metropolitan areas.

While I understand the dealers' desire to send a message to the automobile manufacturers with this legislation, it appears that message has already been received by Ford and General Motors. I have already conveyed to you my belief that this legislation creates artificial barriers for business entry into NH's retail marketplace. I believe an open and competitive marketplace is the consumers best friend. While dealers can argue that the NH automotive marketplace is very competitive, after the passage of this legislation it will no longer be open to anyone who wants to sell new cars in New Hampshire. Instead, the Legislature will have defined who can sell new cars in NH and where consumers have to go to purchase them. I would argue this is not good for NH consumers.

In closing, no consumers showed up at the public hearing on this legislation clamoring for you to protect their local dealership -- only dealers seeking protection for their business. As you will see from the enclosed articles, the National Automobile Dealers Association and the automobile manufacturers have resolved their differences and have pledged to work together on retail sales issues. The best course of action is to find SB375 inexpedient to legislate or send it to interim study.

Sincerely,

Edward C. Dupont, Jr.

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

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 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

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.

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

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

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

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.

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.

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

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

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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:

(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

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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 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

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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 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.

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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:

(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;

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(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 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;

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(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 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.

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History

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

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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.

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

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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).

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.

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§ 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 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.

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(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 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

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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.

(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

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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.

--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

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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

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

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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.

(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

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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.

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

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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

(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).

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§ 357-C:8. Survivorship.

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

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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.

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.

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Amendments--1996. Paragraph I: Amended generally.

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

Paragraph III: Amended generally.

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

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make within the relevant market area.

History

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

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

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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, 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

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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.

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.

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(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 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.

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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, 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.

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

History

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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Committee Report

Date: January 18, 2000 Time: 3:30 PM

The Senate Committee on Transportation held its hearing in Room 104-LOB, Concord, New Hampshire.

BILL NO.: SB 375 TITLE: relative to motor vehicle dealerships.

Members of the Committee present:

Senator Gordon
Senator Roberge
Senator Below
Senator Pignatelli
Senator Russman
Senator Trombly

Those appearing in favor:

Name and Address	Representing
See Attached.	

Those appearing in opposition:

Name and Address	Representing
See Attached.	

REPORT OF THE COMMITTEE:

- ☐ Ought to Pass
- ☒ Ought to Pass w/ Amendment
- ☐ Inexpedient to Legislate
- ☐ Rereferred
- ☐ Interim Study
- ☐ Continued Hearing
- ☐ Postponed Hearing

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date:

THE COMMITTEE ON Transportation

to which was referred Senate Bill 375

AN ACT relative to motor vehicle dealerships.

VOTE: 3-0

2000-3491s

Having considered the same, report the same with the following amendment and recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Debora B. Pignatelli
For the Committee

|SB375 Docket

Next|Prev|Results List|Main|Bill Status

Bill Title: relative to motor vehicle dealerships.

Date	Body	Description
1/5/2000	S	Introduced and Ref. to Transportation; SJ Convening Day, Pg. 11
1/6/2000	S	Hearing, Jan. 18, 3:30 p.m., Room 104, LOB; SC1, Pg.4
3/6/2000	S	Committee Report Ought to Pass with Amendment{3491}; SC15, Pg.5
3/9/2000	S	Ought to Pass with Amendment{3491}, AA, VV; OT3rdg, MA,VV; SJ 5, Pg.151
3/9/2000	H	Introduced and ref to Commerce; HJ22, p660
3/13/2000	H	Copy to Chairman on 3/13/2000
3/15/2000	H	Hearing Apr 5 1:30 RM302,LOB
4/18/2000	H	Subcom Work Session Apr 25 1:30 RM302,LOB
4/19/2000	H	(Subcom: Reps Hunt, G Marshall & Keye)
4/25/2000	H	Subcom Work Session May 3 1:30 RM302,LOB
5/9/2000	H	Maj Report OTP/AM for May 17 (vote 14-0;CC)
5/9/2000	H	Prop Comm Am{4396}; HC40, p1255-1256
5/17/2000	H	Passed with Am; Reps Chandler & Burling Susp Rules for 3rd reading, MA 2/3VV; HJ45, p1367-1368+1394
5/23/2000	S	Sen. Gordon Concur with House Amendment{4396}; MA, VV; SJ 15, Pg.499
5/31/2000	S	Enrolled Bill, Adopted; SJ 16, Pg.626
5/31/2000	H	Enrolled; HJ48, P1548
6/12/2000	S	Signed by the Governor on 6/12/2000 Eff: 1/1/2001 Chap: 0261

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Docket Abbreviations