

State of New Hampshire

HOUSE RECORD

First Year of the 161st General Court Calendar and Journal of the 2009 Session

Vol. 31

Concord, NH

Wednesday, May 6, 2009

No. 34A

Contains: Additional Committee Report and Amendment.

ADDENDUM TO HOUSE CALENDAR NO. 34 WEDNESDAY, MAY 6 ADDITIONAL REGULAR CALENDAR REPORT

COMMERCE AND CONSUMER AFFAIRS

SB 153, relative to business practices between motor vehicle manufacturers, distributors, and dealers. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Paul McEachern for Commerce and Consumer Affairs: This bill seeks to balance the playing field between motor vehicle (car, truck, motorcycle and RV) dealers and manufacturers. The manufacturer-dealer agreements are not negotiable by the dealers. SB 153 aims to ensure that a motor vehicle dealer is fairly and reasonably compensated for all work performed and that consumers are protected when vehicles have various manufacturers. With the recent economic conditions many dealerships are voluntarily terminating their dealership business, being terminated by their manufacturer, or finding their manufacturer ending lines like Pontiac, Saturn, Saab and Hummer. During the past 16 months, 16 franchised dealers closed their doors in New Hampshire. Many of those dealers were neither fairly nor timely compensated by the manufacturer for their operations, including the remaining inventory of vehicles and parts. On May 11th, 15 New Hampshire GM dealers will likely receive termination notices; this along with the loss of Chrysler dealers means the loss of approximately 1,000 jobs. This bill will provide those businesses a "soft landing." It will allow a New Hampshire dealership to accurately assess the cost of transitioning to a used sales or service operation and know what it will be compensated for. The compensated items are those that are required by the manufacturer, including new cars, parts, signs, special tools and equipment. The "soft landing" provisions will most importantly save jobs for New Hampshire citizens who are employed at dealerships. When a dealership can accurately know the cost of scaling back operations, it can transition to a used car operation that can still service customers, provide community benefit and keep people employed. **Vote 15-0.**

2009-1512h

Amendment to SB 153

Proposed by the Committee on Commerce and Consumer Affairs

Amend RSA 357-C:5, II(b)(3) as inserted by section 5 of the bill by replacing it with the following:

(3) The wholesale price on which a dealer's markup reimbursement is based for any parts used in a recall, service campaign, or other similar program, shall not be less than the highest wholesale price listed in the manufacturer's or distributor's wholesale price catalogue within 6 months prior to the start of the recall, service campaign, or other similar program. If the manufacturer or distributor does not have a wholesale price catalogue, or if the part is not listed in a wholesale price catalogue, the wholesale price on

which a dealer's markup reimbursement is based in a recall, service campaign, or other similar program shall be the average price charged to dealers of similar line makes in the state for the part during 6 months prior to the start of the recall, service campaign, or other similar program. In no event shall a dealer receive less than the dealer's actual cost for that part, plus the markup as calculated pursuant to this subparagraph.

Amend RSA 357-C:6-a, II(b) and (c) as inserted by section 8 of the bill by replacing them with the following:

(b) Require a dealer to warrant or guarantee the accuracy and completeness of any personal, financial, or credit information provided by the customer on the credit application and/or in the course of applying for credit other than to require that the dealer make reasonable inquiry regarding the accuracy and completeness of such information and represent that such information is true and correct to the best of the dealer's knowledge.

(c) Require a dealer to repurchase, pay off, or guaranty any contract for the sale or lease of a motor vehicle or to require a dealer to indemnify, defend, or hold harmless the captive finance source for settlements, judgments, damages, litigation expenses, or other costs or expenses incurred by such captive finance source unless the obligation to repurchase, pay off, guaranty, indemnify, or hold harmless resulted directly from (i) the subject dealer's material breach of the terms of a written agreement with the captive finance source or the terms for the purchase of an individual contract for sale or lease that the captive finance source communicates to the dealer before each such purchase, except to the extent the breached terms are otherwise prohibited under subparagraphs (a)-(h), or (ii) the subject dealer's violation of applicable law. However, for purposes of this section, the dealer may contractually obligate itself to warrant the accuracy of the information provided in the finance contract, but such warranty may only be enforced if the captive finance source gives the dealer a reasonable opportunity to cure or correct any errors in the finance contract where cure or correction is possible. For purposes of this section, any allegation by a third party that would constitute a breach of the terms of a written agreement between the dealer and a captive finance source shall be considered a material breach.

Amend RSA 357-C:6-a, IV-VII as inserted by section 8 of the bill by replacing them with the following:

IV. Any captive finance source who engages directly or indirectly in purposeful contacts within this state in connection with the offering or advertising the availability of financing for the sale or lease of motor vehicles within this state, or who has business dealings within this state, shall be subject to the provisions of this section and shall be subject to the jurisdiction of the courts of this state.

V. The applicability of this section shall not be affected by a choice of law clause in any agreement, waiver, novation, or any other written instrument.

VI. It shall be unlawful for a captive finance source to use any subsidiary corporation, affiliated corporation, or any other controlled corporation, partnership, association, or person to accomplish what would otherwise be illegal conduct under this section on the part of the captive finance source.

Amend RSA 357-C:7, VI(a) as inserted by section 13 of the bill by replacing it with the following:

(a) The dealer cost plus any charges by the manufacturer, distributor, or branch or division thereof 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 in the dealer's inventory that have original invoices bearing original dates within 24 months prior to the effective date of termination with less than 750 miles on the odometer, and insurance costs, and floor plan costs from the effective date of the termination to the date that the vehicles are removed from dealership or the date the floor plan finance company is paid, whichever occurs last. Vehicles with a gross vehicle weight rating over 14,000 shall be exempt from the 750 mile limitation. Motorcycles shall be subject to a 350 mile limitation. All vehicles shall have been acquired from the manufacturer or another same line-make vehicle dealer in the ordinary course of business.

Amend RSA 357-C:7, VIII as inserted by section 13 of the bill by replacing it with the following:

VIII. Within 90 days of a termination or nonrenewal, with good cause and in good faith, the manufacturer or distributor of any franchise, or any branch or division thereof, and notwithstanding any terms therein to the contrary, the manufacturer, distributor, or branch or division thereof shall pay to the new motor vehicle dealer the amount remaining to be paid on any leases of computer hardware or software that is used to manage and report data to the manufacturer or distributor for

financial reporting requirements and the amount remaining to be paid on any manufacturer or distributor required equipment leases or service contracts, including but not limited to computer hardware and software leases.