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DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 2
FOR
SENATE BILL NO. 278
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 6 AND 21 OF THE DELAWARE CODE RELATING TO COMMERCE AND TRADE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 49, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

CHAPTER 49. Motor Vehicle Franchising Practices

Amend § 4901 of Chapter 49, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline, as follows:

§ 4901. Declaration of purpose.

The General Assembly finds and declares that the distribution and sale of vehicles within this State vitally affects the general economy of the State and the public interest and the public welfare, and that in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate vehicle manufacturers with franchise agreements, distributors or wholesalers and factory or distributor representatives, and to regulate franchises issued by the aforementioned who are doing business in this State in order to prevent frauds, impositions and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this State.

Section 2. Amend Chapter 49, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4902. Definitions.

As used in this chapter:

(8) a. "Motor vehicle" means every self-propelled vehicle, regardless of the size or type of motor or source of power, that is intended primarily for use and operation on the public highways ~~which is self-propelled~~, not including motor

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homes, motor home products and recreational vehicles, farm tractors and other machines and tools used in the production, harvesting and care of farm products.

b. “New motor vehicle” means a motor vehicle with a franchising manufacturer's certificate of origin that has not been titled or registered by any state or country in the name of an end user via sale or lease and that has never been the subject of a completed, successful, or conditional sale that was subsequently approved other than between new motor vehicle dealers, or between a manufacturer and a new motor vehicle dealer of the same franchise. ~~a vehicle which has been sold to a new motor vehicle dealer and which has not been used for other than demonstration purposes and on which the original title has not been issued from the new motor vehicle dealer.~~

(12) “Electric motor vehicle” includes all of the following:

a. A plug-in hybrid vehicle, which operates with an internal combustion engine and an electric motor that can be plugged into an external electric power source to charge the internal battery.

b. An all-electric vehicle, which operates solely from an internal electric battery.

(13) "Sell," "selling," "sold," "exchange," "retail sales," and "leases" include:

a. Accepting a deposit or receiving a payment for the retail purchase, lease, or other use of a motor vehicle, but does not include facilitating a motor vehicle dealer’s acceptance of a deposit or receipt of a payment from a consumer or receiving payment under a retail installment sale contract.

b. Accepting a reservation from a retail consumer for the retail purchase, lease, or other use of a specific motor vehicle identified by a vehicle identification number or other product identifier.

c. Setting the retail price for the purchase, lease, or other use of a motor vehicle, but does not include setting a manufacturer's suggested retail price.

d. Offering or negotiating with a retail consumer terms for the purchase, lease, or other use of a motor vehicle.

e. Offering or negotiating with a retail consumer a value for a motor vehicle being traded in as part of the purchase, lease, or other use of a motor vehicle, but does not include a website or other means of electronic communication that identifies to a consumer a conditional trade-in value and that contains language informing the consumer that the trade-in value is not binding on any motor vehicle dealer.

f. Any transaction where the title of a motor vehicle or a used motor vehicle is transferred to a retail consumer.

g. Any retail lease transaction where a retail consumer leases a vehicle for a period of at least 12 months, but does not include administering lease agreements, taking assignments of leases, performing required actions

pursuant to such lease, or receiving payments under a lease agreement that was originated by a motor vehicle dealer.

Section 3. Amend § 4903 of Chapter 49, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline, and by redesignating as appropriate, as follows:

§ 4903. Sales incentives; warranty and predelivery obligations to new motor vehicle dealers.

(a)(1) Each new motor vehicle manufacturer shall do all of the following:

a. Specify in writing to each of its new motor vehicle dealers licensed in this State the dealer's obligations for predelivery preparation, manufacturer-sponsored maintenance programs, manufacturer extended warranty, certified pre-owned warranty, manufacturer-issued service contracts, parts exchange programs, recall and warranty service on its products.

b. Compensate the new motor vehicle dealer for such service required of the dealer by the manufacturer.

c. Provide the dealer the schedule of compensation to be paid such dealer for parts, work, and service in connection therewith, and the time allowance for the performance of such work and service.

d. Allow at least 180 days for its new motor vehicle dealers to submit claims for reimbursement for such services required of the dealers by the manufacturer.

(b) In no event shall such schedule of compensation for such services identified in subsection (a)(1) of this section fail to include reasonable compensation for diagnostic work, as well as parts, 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. With respect to manufacturer-sponsored maintenance programs, manufacturer extended warranty, certified pre-owned warranty, manufacturer-issued service contracts, parts exchange programs, recall and warranty parts and labor ~~warranty~~ reimbursement, reasonable compensation shall not be less than the rate charged by such dealer for like services to nonwarranty customers for nonwarranty parts, service, and repairs. If a manufacturer furnishes a part or component to a motor vehicle dealer at no cost or at a reduced cost to use in performing repairs under a recall, campaign service action, recall or warranty repair, the manufacturer shall compensate the dealer for the part or component in the same manner as warranty parts compensation under subsection (a)(1) of this section, less the dealer cost for the part or component as listed in the manufacturer's price schedule.

(2) For the purposes of this provision, all of the following parts or types of repairs are excluded from the calculation:

a. Repairs for manufacturer special events and manufacturer discounted service campaigns.

b. Parts sold at wholesale or parts discounted by a dealer for repairs made in group fleet, insurance, or other third-party payer service work or parts used in repairs of government agencies' repairs for which volume discounts have been negotiated.

c. Tires replaced due to normal wear.

d. Routine maintenance not covered under any retail customer warranty such as alignments, flushes, oil changes, brakes, fluids, filters and belts not provided in the course of repairs.

e. Engine assemblies and transmission assemblies.

f. Vehicle reconditioning.

g. Batteries, other than electric vehicle or hybrid vehicle propulsion batteries. ~~and lightbulbs.~~

h. Lightbulbs, other than lightbulbs that use light emitting diode technology.

~~h.~~ i. Nuts, bolts, fasteners, and similar items that do not have an individual part number.

(d) (1) All claims made by new motor vehicle dealers pursuant to this section for such labor and parts shall be paid within 30 days following their approval; provided, however, that the manufacturer retains the right to audit such claims and to charge back the dealer for claims due to fraud, work done unnecessarily, or work not properly performed for a period of ~~1 year~~ 180 days following payment. All such claims shall be either approved or disapproved within 30 days after their receipt on forms and in the manner specified by the manufacturer, and any claim not specifically disapproved in writing within 30 days after the receipt shall be construed to be approved and payment must follow within 30 days. A manufacturer or distributor shall not deny a claim or reduce the amount to be reimbursed to the dealer as long as the dealer has provided reasonably sufficient documentation that the dealer did both of the following:

a. Made a good faith attempt to perform the work in compliance with the reasonable written policies and procedures of the manufacturer.

b. Actually performed the work.

(2) The manufacturer or distributor may not disapprove or charge back a reimbursement claim provided that the dealer can substantiate the claim either in accordance with the manufacturer's reasonable policies and procedures or by other reasonable means. A claim may not be denied or charged back due to an administrative error by the dealer as long as the claim meets the above requirements. The ~~1 year~~ 180-day limitation on the manufacturer's right to audit a claim shall not be effect in the case of fraudulent claims.

(3) Notwithstanding anything in this subsection to the contrary, a manufacturer may not fail to fully compensate a dealer for warranty or recall work or make any charge back to the dealer's account based on the dealer's failure to comply with the manufacturer's claim documentation procedures unless both of the following requirements have been met:

a. The dealer has, within the previous 12 months, failed to comply with the same specific documentation procedure.

b. The manufacturer has, within the previous 12 months, provided a written warning to the dealer by certified United States mail, return receipt requested, identifying the specific claim documentation procedure violated by the dealer.

(e) Any audit for sales incentives, service incentives, rebates or other forms of incentive compensation shall only be for a period of ~~1 year~~ 180 days following the date of the termination of the sales incentives program, service incentives program, rebate program or other form of incentive compensation program. These limitations shall not be in effect in the case of fraudulent claims.

Section 4. Amend § 4907 of Chapter 49, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline, as follows:

§ 4907. Termination, cancellation or nonrenewal of franchise — Compensation by manufacturer.

Upon the termination, nonrenewal, discontinuance, or cancellation of any franchise by the manufacturer or by the new motor vehicle dealer, the new motor vehicle dealership shall be compensated by the manufacturer within 90 days of receipt of a repurchase request from the dealer as set forth below:

(2) The manufacturer shall purchase from the dealer all new, unused, undamaged parts in their original, unbroken packaging, listed in the current price catalog and acquired from the manufacturer or distributor or from a source approved or recommended by the manufacturer, at the new motor vehicle dealer price listed in the current price catalog, less applicable allowances. The manufacturer shall also compensate the dealer for any transporting, handling, packing, storing, and loading of any returned parts, tools, and equipment. If the above parts are not listed in the current price catalog due to the manufacturer's or distributor's renumbering of parts or issuance of a superseding part number within the last 3 years, said parts shall be repurchased by the manufacturer, provided they are new, unused, undamaged parts in their original, unbroken packaging and are in salable condition;

Section 5. Amend § 4913 of Chapter 49, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline, as follows:

(b) It shall be a violation of this chapter for any manufacturer:

(7) To ~~unfairly~~ compete with a new motor vehicle dealer in the same line-make operating under an agreement or franchise from the aforementioned manufacturer in the relevant market area. A manufacturer shall not, however, be deemed to be competing when operating a dealership either temporarily for a reasonable period, or in a bona fide retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which

an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of such dealership on reasonable terms and conditions.

(16) To fail or refuse, at the written request of the dealer, to accept the return or otherwise fully reimburse a dealer for the cost of parts, tools, equipment, chargers and other infrastructure required under the franchise agreement, or as a part of a program, policy or other initiative related to the sale or service of electric motor vehicles, provided that the dealer can demonstrate that the volume of electric motor vehicle sales or service is inadequate to allow the dealer to realize a reasonable return on the investments over the useful life of the part, tool, equipment, charger or other infrastructure in question, and the dealer submits its request to the manufacturer or distributor in writing and within 24 months of the dealer's receipt of the part, tools, equipment, charger or other infrastructure.

(e) If the new motor vehicle dealers of the line-make located in this State are permitted to sell retail customers the same motor vehicle accessory, option, add-on, feature, improvement, or upgrade for a motor vehicle of the line-make manufactured, imported, or distributed by the manufacturer or distributor, the manufacturer or distributor may, on the same terms offered to the dealer, after the date of sale of the motor vehicle by a dealer to a retail customer, also sell to the retail customer or activate for a fee a permanent or temporary motor vehicle accessory, option, add-on, feature, improvement, or upgrade for a motor vehicle of a line-make manufactured, imported, or distributed by the manufacturer or distributor; provided that the accessory, option, add-on, feature, improvement, or upgrade is activated or installed directly on the retail customer's motor vehicle through remote electronic transmission. If such motor vehicle was sold or leased as new by a franchised new motor vehicle dealer in this State within the 5-year period preceding such remote electronic transmission, then the manufacturer or distributor must pay such franchised new motor vehicle dealer a minimum of 8% of the gross revenue received by the manufacturer, distributor, agent, or common entity for such sale or activation and renewals during such 5-year period. The manufacturer or distributor must provide each of its franchised dealers with a quarterly statement of the revenue received by the manufacturer or distributor, its agent, or its common entity during that quarter for such remote sales or activations and renewals relating to those vehicles sold or leased by the dealer during the 5-year period subsequent to the sale or lease of the vehicle to the retail customer. When providing a new motor vehicle to a dealer for offer or sale to the public, the manufacturer or distributor shall provide to the dealer a written disclosure that may be provided to a potential buyer of the new motor vehicle of each accessory or function of the vehicle that may be initiated, updated, changed, or maintained by the manufacturer or distributor through over the air or remote means, and the charge to the customer for initiation, update, change, or maintenance. A manufacturer or distributor may comply with this requirement to provide a written disclosure by notifying the dealer that the information is available on a website or by other digital means.

Section 6. Add a new § 4920 to Chapter 49, Title 6 of the Delaware Code by making the insertions as shown by underline, as follows:

§ 4920 Association Standing.

(a) In order to prevent injury or harm to all or a substantial number of its members or to the franchise distribution system of new motor vehicles within this State, any association that has as members at least 30 new motor vehicle dealers or 6 motorcycle dealers, substantially all of whom are new motor vehicle dealers located within the State, and that represents the collective interests of its members, has standing to file a petition or a civil action against a manufacturer regulated under this chapter to enforce the provisions of this chapter in any court of competent jurisdiction for itself, or on behalf of any or all of its members, seeking declaratory and injunctive relief. Any such association also has standing to intervene as a party in an action against a manufacturer regulated under this chapter previously filed by an individual member or members of such association to enforce the provisions of this chapter. This section does not authorize an association to file a petition, civil action, or administrative proceeding, or to intervene in any civil action or administrative proceeding, with or against the State, or any of its agencies.

(b) An action brought pursuant to this section may seek a determination of whether one or more manufacturers, factory branches, distributors, or distributor branches doing business in this State have violated any of the provisions of this chapter, or for the determination of any rights created or defined by this chapter, so long as the association alleges an injury to the collective interest of its members cognizable under this section.

Section 7. Amend § 6301 of Chapter 63, Title 21 of the Delaware Code by making deletions as shown by making deletions as shown by strike through and insertions as shown by underline, and by redesignating as appropriate, as follows:

CHAPTER 63. Sale of Motor Vehicles

§ 6301. Definitions.

As used in this chapter:

(2) “Dealer” or “motor vehicle dealer” ~~includes:~~ includes all of the following:

a. A person, corporation, partnership, proprietorship or any other legal entity who is in the business of buying, selling or exchanging during any 12-month period 5 or more ~~vehicles; and/or~~ vehicles.

b. Any person, corporation, partnership, proprietorship or any other legal entity who offers to sell, sells, displays or permits the display for sale, of 5 or more vehicles within a 12-month period.

(3) “Dealer” or “motor vehicle dealer” ~~shall~~ does not ~~include:~~ include any of the following:

a. A receiver, trustee, personal representative, or other person appointed by or acting under the authority of any court of competent ~~jurisdiction;~~ jurisdiction.

b. A public official who sells or disposes of vehicles in the performance of the official's ~~duties;~~ duties.

c. Any financial institution chartered or authorized to do business in Delaware, including its subsidiaries or affiliates, which receives title to a motor vehicle in the normal course of its business by reason of a lease, foreclosure, repossession, judicial sale or voluntary conveyance or reconveyance of the motor vehicle as a result of any lease of the motor vehicle or any extension of credit secured by the motor vehicle or the enforcement of any lien on the motor ~~vehicle;~~ vehicle.

d. A licensed auctioneer acting on behalf of a seller, secured party or owner and when title does not pass to the auctioneer and the auction is not for the purpose of avoiding this ~~chapter;~~ chapter.

e. An insurance company authorized to do business in Delaware that sells or disposes vehicles under a contract with its insured in the regular course of ~~business;~~ business.

f. Either a manufacturer or distributor who sells or distributes vehicles to licensed dealers or a person employed by a manufacturer or distributor to promote the sale of the vehicles of the manufacturer or distributor, if that manufacturer, ~~distributor~~ distributor, or person does not sell vehicles to retail buyers. A manufacturer or distributor engaged in selling vehicles to retail buyers may be licensed as a dealer, subject to the limitations set forth in § 6302(g).

g. A nonprofit educational foundation organized to promote instructional effectiveness and educational achievement.

( ) "New motor vehicle" means a motor vehicle with a manufacturer's certificate of origin that has not been titled or registered by any state or country in the name of an end user via sale or lease and that has never been the subject of a completed, successful, or conditional sale that was subsequently approved other than between new motor vehicle dealers, or between a manufacturer and a new motor vehicle dealer of the same franchise.

( ) "New motor vehicle dealer" means a dealer or motor vehicle dealer who sells new motor vehicles.

( ) "Used motor vehicle" means a motor vehicle that has been sold, bargained, exchanged, given away, or title transferred from the person who first acquired it from the manufacturer or importer, dealer or agent of the manufacturer or importer and so used as to have become what is commonly known as "secondhand" within the ordinary meaning thereof. "Used motor vehicle" also includes a motor vehicle that has been driven for 7500 miles or more, or that has been used for personal use by an employee or owner of a new motor vehicle dealer, or by a family member of an employee or owner of a new motor vehicle dealer, regardless of whether the motor vehicle would otherwise qualify as a new motor vehicle.

( ) "Used motor vehicle dealer" means a dealer or motor vehicle dealer who exclusively sells used motor vehicles.

Section 8. Amend § 6302 of Chapter 63, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline, as follows:

(g) Restriction upon ownership of dealership by manufacturer, importer or distributor

A manufacturer, importer, or distributor, or agent of a manufacturer, importer, or distributor, or parent, subsidiary, common entity, officer, or currently employed representative of the manufacturer, importer, or distributor, may not directly or indirectly own, operate, or control, by contract, agreement, or otherwise, a motor vehicle dealership in this state if the manufacturer, importer, or distributor has manufactured, imported, or distributed motor vehicles of any line-make which have been or are offered for sale under a franchise agreement in this state with an independent person. Any person who is not prohibited by this section from owning, operating, or controlling a motor vehicle dealership may be issued a dealer license, provided that all applicable licensing requirements are satisfied. Any person prohibited by this section from owning, operating, or controlling a motor vehicle dealership may not be issued a dealer license.

Whenever used in this section, unless the context otherwise requires, the following words and terms have the following meanings:

(1) "Common entity" means a person:

a. Who is directly or indirectly controlled by or has more than 30% of its equity interest directly or indirectly owned, beneficially or of record, through any form of ownership structure, by a manufacturer, an importer, a distributor, or a licensee, or an affiliate thereof; or

b. Who has more than 30% of its equity interest directly or indirectly controlled or owned, beneficially or of record, through any form of ownership structure, by one or more persons who also directly or indirectly control or own, beneficially or of record, more than 30% of the equity interests of a manufacturer, an importer, or any affiliate thereof.

(2) "Importer" means any person who imports motor vehicles from a foreign country into the United States or into this state for the purpose of sale or lease.

(3) "Independent person" means a person who is not an agent, a parent, a subsidiary, a common entity, an officer, a director, or an employed representative of a manufacturer, importer, or distributor.