

CHAPTER 372
FORMERLY
SENATE BILL NO. 229
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO MOTOR VEHICLE FRANCHISING PRACTICES.

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

Section 1. Amend Title 6 Subtitle II, Chapter 49 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike-throughs.

§4902. Definitions.

(11) "Relevant market area" means the area within a radius of 10 miles from the intended site of a proposed additional dealership, ~~except that in New Castle County the radius shall be 7 miles from the intended site of a proposed additional dealership.~~

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

(a) Each new motor vehicle manufacturer shall specify in writing to each of its new motor vehicle dealers licensed in this State the dealer's obligations for predelivery preparation and warranty service on its products, shall compensate the new motor vehicle dealer for such service required of the dealer by the manufacturer, and shall provide 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.

(b) In no event shall such schedule of compensation 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 parts and labor warranty reimbursement, reasonable compensation shall not ~~In no event shall the hourly labor rate paid to a dealer for services~~ be less than the rate charged by such dealer for like services to nonwarranty customers for nonwarranty parts, service and repairs, provided such rate is reasonable.

(1) For the purposes of this provision, the dealer's rate charged to nonwarranty customers for parts and labor shall be established by the dealer submitting to the manufacturer one hundred (100) sequential customer paid service repair orders or ninety (90) days of customer paid service repair orders, whichever is less, covering like repairs made no more than one hundred eighty (180) days before the submission of such customer paid service repair orders and declaring the schedule of compensation. The new schedule of compensation shall take effect within thirty (30) days after the initial submission to the manufacturer and shall be presumed to be fair and reasonable. However, within thirty (30) days following receipt of the declared schedule of compensation from the dealer, the manufacturer may make reasonable requests for additional information supporting the declared schedule of compensation. The thirty (30) day time frame in which the manufacturer shall make the schedule of compensation effective shall commence following receipt from the dealer of any reasonably requested supporting information. No manufacturer shall require a motor vehicle dealer to establish a schedule of compensation by any other methodology or require supportive information that is unduly burdensome or time consuming to provide including, but not limited to, part by part or transaction by transaction calculations. The dealer shall not request a change in the schedule of compensation more than once every nine (9) months.

(2) For the purposes of this provision, the following parts or types of repairs shall be excluded from the calculation: (i) repairs for manufacturer special events and manufacturer discounted service campaigns; (ii) 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; (iii) tires replaced due to normal wear or (iv) routine maintenance not covered under any retail customer warranty such as fluids, filters and belts not provided in the course of repairs.

(3) A manufacturer shall not take or threaten to take adverse action against a dealer who seeks to obtain compensation pursuant to this provision, including but not limited to, creating or implementing an obstacle or process that is inconsistent with the manufacturer's obligations to the dealer under this provision.

(4) Within 30 days of receiving the manufacturer's notice of denial of the dealer's parts and/or labor submission pursuant to §4903(b), any such new motor vehicle dealer may file with the Public Service Commission a protest to the manufacturer's denial. In the event a protest is filed, the manufacturer possesses the burden of proof to establish that the dealer's submission did not meet the respective submission requirements contained within this provision. In the event a dealer prevails in a protest filed under this provision, the dealer's increased parts and/or labor reimbursement shall be provided retroactive to the date the submission would have been effective pursuant to the terms of this section but for the manufacturer's denial.

§4905. Product liability indemnification.

Notwithstanding the terms of any franchise agreement, it shall be a violation of this chapter for any new motor vehicle manufacturer to fail to indemnify and hold harmless its franchised dealers against any ~~judgment~~ judgment or settlement agreed to in writing by the manufacturer for damages, including, but not limited to, court costs and reasonable attorneys' fees of the new motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, warranty (express or implied) or rescission of the sale as is defined in § 2-608 of the Uniform Commercial Code, less any offset recovered by the dealer and only to the extent that the judgment or settlement relates to the alleged defective or negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, beyond the control of the dealer.

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

Upon the termination, nonrenewal, discontinuance or cancellation of any franchise by the manufacturer, the new motor vehicle dealership shall be allowed fair and reasonable compensation by the manufacturer as set forth below ~~for~~:

(1) The manufacturer shall purchase from the dealer any ~~New~~, unused, undamaged and ~~current model motor~~ unmodified motor vehicles with less than 750 miles registered on the odometer ~~inventory which that the dealer has been~~ acquired from the manufacturer or distributor, or from another dealer of the same line-make in the ordinary course of business within 18 months of the notice of termination at dealer cost including any charges for distribution and delivery paid by the dealer, less all allowances paid to the dealer by the manufacturer;

(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. 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 ~~23~~ 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;

(3) The manufacturer shall purchase from the dealer all equipment and furnishings, showroom kiosks and other marketing structures, signs and special tools particular to the line-make and required by the manufacturer at: (1) the dealer's net acquisition cost if the item was acquired in the 12 months immediately preceding the effective date of the termination, cancellation or nonrenewal; (2) 75% of the dealer's net acquisition cost if the ~~time~~ item was acquired more than 12 but less than 24 months immediately preceding the effective date of the termination, cancellation or nonrenewal; (3) 50% of the dealer's ~~next~~ net acquisition cost if the item was acquired between 24 and 36 months immediately preceding the effective date of the termination, cancellation or nonrenewal; (4) 25% of the dealer's net acquisition cost ~~the~~ if the item was acquired more than 36 but less than 60 months immediately preceding effective date of the termination, cancellation or nonrenewal; or (5) fair market value if the item was acquired between 60 and 84 months immediately preceding the termination, cancellation or nonrenewal;

(4) The manufacturer shall reimburse the dealer for any costs the dealer incurred for facility upgrades or alterations required by the manufacturer within the 24 months immediately preceding the effective date of the termination, including facility upgrades or alterations required in order to participate in any manufacturer sponsored programs that provided to the dealer financial reimbursement or benefits; provided, however, that any amounts payable to a dealer shall be reduced by any amounts paid to the dealer by the manufacturer due to the dealer's participation in any such facilities upgrade or alteration program; And

(5) If a termination, cancellation, discontinuance or nonrenewal of a dealer's franchise is the result of the cessation of a line-make by a manufacturer, then in addition to the payment of termination assistance set forth in this statute, the dealer shall be paid an amount at least equivalent to the fair market value of the franchise for the line-make, which amount shall be the greater of that value as determined as of (i) the date the manufacturer announces the action that results in the cessation of the line-make; (ii) the date the action that resulted in the cessation is issued; or (iii) the date 12 months prior to the date on which the notice of termination, cancellation, discontinuance or nonrenewal is issued. Fair market value shall only include the value of the dealer's franchise for that line-make in the dealer's relevant market area. Payment is due not later than 45 days after fair market value has been determined as set forth below. Upon the dealer's written notice to the manufacturer that the dealer seeks compensation pursuant to this section, the affected dealer and the affected manufacturer shall each select a business valuation appraiser, certified public accountant, or other person that performs business valuations as a part of their occupation. The valuations shall be performed and exchanged within 60 days of the dealer's notice to the manufacturer. If the difference in valuation as determined by the respective valuers is within 10 percent, then the valuations shall be averaged and the average of the two valuations shall constitute fair market value for the purposes of this provision. If the difference in valuation as determined by the respective valuers is greater than 10 percent, then the chosen valuers shall select a third valuator by mutual agreement within 20 days following the exchange of the valuations. The third valuator shall provide its determination of fair market value within 45 days of selection. The third valuator's determination shall be the fair market value for the purposes of this provision unless the valuator's determination is within 25 percent of either the dealer or manufacturer's valuation. In that instance the valuator's determination shall be averaged with the determination that ~~it~~ is within 25 percent of and that average shall be the fair market value for the purposes of this section.

§4908. Termination, cancellation or nonrenewal of franchise -- Dealership facilities assistance.

In the event of a termination, cancellation or nonrenewal by the manufacturer under this chapter, except termination, cancellation or nonrenewal by the manufacturer for insolvency, license revocation, conviction of a crime or fraud by a dealer owner or failure of the dealer to conduct customary sales and service operations during business hours for seven consecutive business days, except in circumstances beyond the direct control of the dealer, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or 3 years' rent, whichever is less, or if the new motor vehicle dealer owns the dealership facilities, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for 3 years. Nothing in this section shall relieve a lessee from the obligation to mitigate damages under the lease, nor prevent a manufacturer from discharging its obligations by negotiating a lease termination, sublease or new lease.

§4913. Unlawful acts by manufacturers.

(9) To expand, construct or significantly modify facilities without written assurances that the franchisor will provide a reasonable supply of new motor vehicles within a reasonable time so as to justify such an expansion, in light of the market and economic conditions. To require, coerce or attempt to coerce a dealer to substantially alter a facility or premises if the facility or premises has been altered within the last seven years at a cost of more than

two hundred and fifty thousand dollars and the alteration was required and approved by the manufacturer, except for improvements made to comply with health or safety laws, to accommodate the technology requirements necessary to sell or to service a motor vehicle or for alterations made pursuant to voluntary agreements between a dealer and a manufacturer where separate and valuable consideration has been offered and accepted.

(12) To refuse to pay, or claim reimbursement from, a dealer for sales, incentives or payments related to a motor vehicle sold by the dealer because the purchaser of the motor vehicle exported or resold the motor vehicle in violation of the policy of the manufacturer unless the manufacturer can show that, at the time of sale, the dealer knew or reasonably should have known of the purchaser's intention to export or resell the motor vehicle. There is a rebuttable presumption that the dealer did not know or should not have reasonably known that the vehicle would be exported if the vehicle is titled and registered in any state of the United States.

(13) To require a dealer to provide its customer lists or service files to the manufacturer, unless necessary for the sale and delivery of a new motor vehicle to a consumer, to validate and pay consumer or dealer incentives, for reasonable marketing purposes, for evaluation of dealer performance, for analytics or for the submission to the manufacturer for any services supplied by the dealer for any claim for warranty parts or repairs. Nothing in this section shall limit the manufacturer's ability to require or use customer information to satisfy any safety or recall notice obligation or other legal obligation. To release or cause to be released a dealer's nonpublic customer information to another dealer unless the franchise has been terminated, the customer has relocated to an address that is greater than forty (40) miles outside of the motor vehicle dealer's primary market area as assigned by the manufacturer, a customer has not transacted with the dealer from which a vehicle was purchased for a period of thirty-sixty (36) months or the dealer expressly consents in writing to the sharing of customer information with other dealers.

§4916. Civil actions for violations.

(b) Where the violation of a provision of this chapter can be shown to be ~~wilful~~ willful or wanton, or if continued multiple violations of a provision or provisions of this chapter occur, the court may award punitive damages, attorney's fees and costs in addition to any other damages under this chapter.

(d) Where there are continued violations of a provision or provisions of this chapter and it can be shown that the violations are ~~wilful~~ willful or wanton, the court, in addition to any other remedy or award of damages under this chapter, may assess monetary penalties.

Approved July 27, 2012