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Osienski, Ramone, Schwartzkopf, D. Short,
Michael Smith, K. Williams

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 271

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:

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

3 CHAPTER 49. Motor Vehicle Franchising Practices

4 § 4902. Definitions.

5 As used in this chapter:

6 (8) a. "Motor vehicle" means every self-propelled vehicle, regardless of the size or type of motor or source of
7 power, that is intended primarily for use and operation on the public highways ~~which is self-propelled~~, not including motor
8 homes, motor home products and recreational vehicles, farm tractors and other machines and tools used in the production,
9 harvesting and care of farm products.

10 b. "New motor vehicle" means a motor vehicle with a manufacturer's certificate of origin that has not been titled or
11 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
12 completed, successful, or conditional sale that was subsequently approved other than between new motor vehicle dealers, or
13 between a manufacturer and a new motor vehicle dealer of the same franchise. ~~a vehicle which has been sold to a new~~
14 ~~motor vehicle dealer and which has not been used for other than demonstration purposes and on which the original title has~~
15 ~~not been issued from the new motor vehicle dealer.~~

16 (9) "New motor vehicle dealer" or "dealer" means any person or entity engaged in the business of selling, offering
17 to sell, soliciting or advertising the sale of new motor vehicles, including manufacturers who were licensed by the Division
18 of Motor Vehicles prior to August 1, 2023, to sell or lease new motor vehicles directly to customers. ~~and who holds, or held~~
19 ~~at the time a cause of action under this chapter accrued, a valid sales and service agreement, franchise or contract granted~~
20 ~~by the manufacturer or distributor for the retail sale of said manufacturer's or distributor's new motor vehicles.~~ "New motor
21 vehicle dealer" or "dealer" includes any person who engages exclusively in the repair of motor vehicles, except motor

22 homes, if such repairs are performed pursuant to the terms of a franchise or other agreement with a franchiser or such
23 repairs are performed as part of a manufacturer's or franchiser's warranty. "New motor vehicle dealer" or "dealer" does not
24 mean any person engaged solely in the business of selling used motor vehicles.

25 (12) "Electric motor vehicle" includes all of the following:

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

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

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

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

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

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

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

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

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

43 (g) Any retail lease transaction where a retail consumer leases a vehicle for a period of at least 12 months, but does
44 not include administering lease agreements, taking assignments of leases, performing required actions pursuant to such
45 lease, or receiving payments under a lease agreement that was originated by a motor vehicle dealer.

46 § 4903. Sales incentives; warranty and predelivery obligations to new motor vehicle dealers.

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

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

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

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

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

57 (2) Notwithstanding the terms of any franchise agreement, it is unlawful for a new motor vehicle manufacturer to
58 recover all or any portion of its costs for compensating its dealers in this State for recalls or warranty parts and service
59 either by reduction in the amount due to the dealer, or by separate charge, surcharge, or other imposition.

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

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

82 transaction by transaction calculations. The dealer shall not request a change in the schedule of compensation more than
83 once every 9 months.

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

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

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

90 c. Tires replaced due to normal wear.

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

93 e. Engine assemblies and transmission assemblies.

94 f. Vehicle reconditioning.

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

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

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

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

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

108 (c) It is a violation of this section for any new motor vehicle manufacturer to fail to perform any warranty
109 obligations or to fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected
110 date by which necessary parts and equipment will be available to dealers for the correction of such defects, or to fail to
111 compensate any of the new motor vehicle dealers in this State for repairs effected by such recall.

112 (d) (1) All claims made by new motor vehicle dealers pursuant to this section for such labor and parts shall be paid
113 within 30 days following their approval; provided, however, that the manufacturer retains the right to audit such claims and
114 to charge back the dealer for claims due to fraud, work done unnecessarily, or work not properly performed for a period of
115 ~~1-year~~ 180 days following payment. All such claims shall be either approved or disapproved within 30 days after their
116 receipt on forms and in the manner specified by the manufacturer, and any claim not specifically disapproved in writing
117 within 30 days after the receipt shall be construed to be approved and payment must follow within 30 days. A manufacturer
118 or distributor shall not deny a claim or reduce the amount to be reimbursed to the dealer as long as the dealer has provided
119 reasonably sufficient documentation that the dealer did both of the following:

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

122 b. Actually performed the work.

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

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

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

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

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

139 (f) A manufacturer may not do any of the following related to a claim by a new motor vehicle dealer, unless it can
140 be shown that the claim was false or fraudulent or that the dealer failed to reasonably substantiate the claim either in
141 accordance with the manufacturer's reasonable written procedures or by other reasonable means:

142 (1) Deny a new motor vehicle dealer's claim for sales incentives, service incentives, rebates, or other forms of
143 incentive compensation.

144 (2) Reduce the amount to be paid to the dealer on the claim.

145 (3) Charge a dealer back subsequent to the payment of the claim.

146 (g) (1) A manufacturer that has entered into a franchise agreement with a new motor vehicle dealer must
147 compensate the new motor vehicle dealer for a used motor vehicle in any of the following circumstances:

148 a. That is of the same make and model manufactured, imported, or distributed by the manufacturer.

149 b. That is subject to a recall notice issued by the manufacturer or an authorized governmental agency, regardless of
150 whether the vehicle is identified by its vehicle identification number.

151 c. That is held by the new motor vehicle dealer in the dealer's inventory at the time a recall notice is issued or that
152 is taken by the new motor vehicle dealer into the dealer's inventory after the recall notice as a result of a retail consumer
153 trade-in or a lease return to the dealer inventory in accordance with an applicable lease contract.

154 d. That cannot be repaired due to the unavailability, within 30 days after issuance of the recall notice, of a remedy
155 or parts necessary for the new motor vehicle dealer to make the recall repair.

156 e. For which the manufacturer has not issued a written statement to the new motor vehicle dealer indicating that
157 the used motor vehicle may be sold or delivered to a retail customer before completion of the recall repair. The purpose of
158 such written statement is to provide notice to the new motor vehicle dealer that the vehicle may be sold or delivered based
159 solely on the specific recall notice and is not intended to address any other aspect of the vehicle unrelated to the recall
160 notice.

161 (2) The manufacturer shall pay the required compensation within 30 days after the motor vehicle dealer's
162 application for payment. Applications for payment must be submitted monthly, as necessary, through the manufacturer's
163 existing warranty application system or another system or process established by the manufacturer which is not unduly
164 burdensome or which does not require information unnecessary for the payment.

165 (3) Compensation under this section must be the greater of the following:

166 a. Payment at a rate of at least 1.5 percent per month of the motor vehicle value, as determined by the average
167 Black Book value of the corresponding model year vehicle of average condition, of each eligible used motor vehicle in the
168 new motor vehicle dealer's inventory for each month that the dealer does not receive a remedy and parts to complete the
169 required recall repair. Such payment must be prorated for any period less than 1 month based on the number of days during
170 the month each eligible used motor vehicle is in the motor vehicle dealer's inventory.

171 b. Payment under a national program applicable to all motor vehicle dealers holding a franchise agreement with
172 the manufacturer for the motor vehicle dealer's costs associated with holding the eligible used motor vehicles.

173 § 4907. Termination, cancellation or nonrenewal of franchise — Compensation by manufacturer.

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

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

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

190 (3) The manufacturer shall purchase from the dealer all equipment and furnishings, showroom kiosks and other
191 marketing structures, signs and special tools particular to the line-make and required by the manufacturer at:

192 a. The dealer's net acquisition cost if the item was acquired in the 12 months immediately preceding the effective
193 date of the termination, cancellation or nonrenewal;

194 b. Seventy-five percent of the dealer's net acquisition cost if the item was acquired more than 12 but less than 24
195 months immediately preceding the effective date of the termination, cancellation or nonrenewal;

196 c. Fifty percent of the dealer's net acquisition cost if the item was acquired between 24 and 36 months
197 immediately preceding the effective date of the termination, cancellation or nonrenewal;

198 d. Twenty-five percent of the dealer's net acquisition cost if the item was acquired more than 36 but less than 60
199 months immediately preceding effective date of the termination, cancellation or nonrenewal; or

200 e. Fair market value if the item was acquired between 60 and 84 months immediately preceding the termination,
201 cancellation or nonrenewal;

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

208 (5) If a termination, cancellation, discontinuance or nonrenewal of a dealer's franchise is the result of the cessation
209 of a line-make by a manufacturer, then in addition to the payment of termination assistance set forth in this statute, the
210 dealer shall be paid an amount at least equivalent to the fair market value of the franchise for the line-make, which amount
211 shall be the greater of that value as determined as of:

212 a. The date the manufacturer announces the action that results in the cessation of the line-make;

213 b. The date the action that resulted in the cessation is issued; or

214 c. The date 12 months prior to the date on which the notice of termination, cancellation, discontinuance or
215 nonrenewal is issued.

216 Fair market value shall only include the value of the dealer's franchise for that line-make in the dealer's relevant
217 market area. Payment is due not later than 45 days after fair market value has been determined as set forth below. Upon the
218 dealer's written notice to the manufacturer that the dealer seeks compensation pursuant to this section, the affected dealer
219 and the affected manufacturer shall each select a business valuation appraiser, certified public accountant, or other person
220 that performs business valuations as a part of their occupation. The valuations shall be performed and exchanged within 60
221 days of the dealer's notice to the manufacturer. If the difference in valuation as determined by the respective valuator is
222 within 10%, then the valuations shall be averaged and the average of the 2 valuations shall constitute fair market value for
223 the purposes of this provision. If the difference in valuation as determined by the respective valuator is greater than 10%,
224 then the chosen valuator shall select a third valuator by mutual agreement within 20 days following the exchange of the
225 valuations. The third valuator shall provide its determination of fair market value within 45 days of selection. The third
226 valuator's determination shall be the fair market value for the purposes of this provision unless the valuator's determination
227 is within 25% of either the dealer or manufacturer's valuation. In that instance the valuator's determination shall be
228 averaged with the determination that is within 25% of and that average shall be the fair market value for the purposes of
229 this section.

230 § 4913. Unlawful acts by manufacturers.

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

232 (1) To delay, refuse or fail to deliver new motor vehicles or new motor vehicle parts or accessories in a reasonable
233 time, and in reasonable quantity relative to the new motor vehicle dealer's facilities and sales potential in the new motor
234 vehicle dealer's relevant market area, after acceptance of an order from a new motor vehicle dealer having a franchise for
235 the retail sale of any new motor vehicle sold or distributed by the manufacturer, any new motor vehicle, parts or accessories
236 to new vehicles as are covered by such franchise, if such vehicle, parts or accessories are publicly advertised as being
237 available for immediate delivery or actually being delivered. This paragraph is not violated, however, if such failure is
238 caused by acts or causes beyond the control of the manufacturer.

239 (2) To refuse to disclose to any new motor vehicle dealer, handling the same line-make, any matters relating to the
240 manner and mode of distribution of that line-make within the State, including, without limitation, matters related to
241 establishment or relocation of dealers under § 4915 of this title (but with appropriate exclusion of financial information not
242 essential to a complete understanding of the manufacturer's manner and mode of distribution).

243 (3) To obtain money, goods, service or any other benefit from any other person with whom the new motor vehicle
244 dealer does business, on account of, or in relation to, the transaction between the new motor vehicle dealer and such other
245 person, other than for compensation for services rendered, unless such benefit is promptly accounted for, and transmitted to,
246 the new motor vehicle dealer.

247 (4) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered for consumers prior
248 to the new motor vehicle dealer's receipt of the written official price increase notification. A sales contract signed by a
249 consumer shall constitute evidence of each such order provided that the vehicle is in fact delivered to that customer. In the
250 event of manufacturer price reductions or cash rebates paid to the new motor vehicle dealer, the amount of any such
251 reduction or rebate received by a new motor vehicle dealer shall be passed on to the consumer by the new motor vehicle
252 dealer. Price reductions shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. Price
253 differences applicable to new model or series shall not be considered a price increase or price decrease. Price changes
254 caused by either:

255 a. The addition to a motor vehicle of required or optional equipment; or

256 b. Revaluation of the United States dollar, in the case of foreign-make vehicles or components; or

257 c. An increase in transportation charges due to increased rates imposed by carriers;

258 shall not be subject to this paragraph.

259 (5) To release to any outside party, except under subpoena or as otherwise required by law (including, without
260 limitation, provisions of this chapter) or in an administrative, judicial or arbitration proceeding involving the manufacturer
261 or new motor vehicle dealer, any business, financial or personal information which may be from time to time provided by
262 the new motor vehicle dealer to the manufacturer, without the express written consent of the new motor vehicle dealer.

263 (6) To deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for
264 any lawful purpose.

265 (7) To ~~unfairly~~ compete with a new motor vehicle dealer in the same line-make operating under an agreement or
266 franchise from the aforementioned manufacturer in the relevant market area. A manufacturer shall not, however, be deemed
267 to be competing when operating a dealership either temporarily for a reasonable period, or in a bona fide retail operation
268 which is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which
269 an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to
270 acquire full ownership of such dealership on reasonable terms and conditions.

271 (8) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursement.

272 (9) To prevent or attempt to prevent the new motor vehicle dealer by written instrument or otherwise from either
273 receiving the fair market value of the dealership in a sale transaction or from transferring the new motor vehicle dealership
274 to a spouse or legal heir as specified in this chapter.

275 (10) To offer to sell or lease, or to sell or lease, any new motor vehicle to any new motor vehicle dealer at a lower
276 actual invoice price than the actual invoice price offered to another for the same model vehicle, notwithstanding the
277 availability of incentive programs or sales promotion plans or other similar programs available to new motor vehicle dealers
278 at the time of consumer purchase.

279 (11) To use a promotional program or device or an incentive, payment or other benefit, whether paid at the time of
280 sale of the new motor vehicle to the dealer or later, that results in the sale or offer to sell a new motor vehicle at a lower
281 price, including the price for vehicle transportation, than the price at which the same model similarly equipped is offered or
282 is available to another dealer in the State during a similar time period. This subdivision shall not prohibit a promotional or
283 incentive program that is functionally available to competing dealers of the same line-make in the State.

284 (12) To engage in any predatory practice or discrimination against any new motor vehicle dealer or unreasonably
285 discriminate between or among dealers in the sale of a motor vehicle owned by the manufacturer or distributor.

286 (13) To resort to or to use any fraudulent or intentionally misleading advertisement in connection with its business
287 as a distributor or manufacturer licensed in this State; or for any agent of a distributor or manufacturer or distributor to

288 make any fraudulent or intentionally misleading statements to new motor vehicle dealers as inducements to enter into any
289 agreement or franchise.

290 (14) To directly or indirectly own an interest in a dealer or dealership; or operate or control a dealer or dealership;
291 or act in the capacity of a dealer except as provided by this section.

292 a. A manufacturer or distributor may own an interest in a franchised dealer, or otherwise control a dealership for a
293 period not to exceed 24 months from the date the manufacturer or distributor acquires the dealership if the dealership is for
294 sale by the manufacturer or distributor at a reasonable price and on reasonable terms and conditions.

295 b. A manufacturer or distributor may temporarily own an interest in a dealership if the manufacturer's or
296 distributor's participation in the dealership is a bona fide relationship with a franchised dealer who:

297 1. Is required to make a significant investment in the dealership, subject to loss;

298 2. Has an ownership interest in the dealership; and

299 3. Operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and
300 under reasonable terms and conditions.

301 (15) To engage in business as a dealer or to manage, control, operate or own any interest in a dealership either
302 directly or indirectly, if the primary business of such dealer or dealership is to perform repair services on motor vehicles,
303 except motor homes, pursuant to a manufacturer's or franchiser's warranty.

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

310 (c) (1) It is unlawful for any manufacturer, or any officer, agent or representative to coerce or to attempt to coerce
311 any new motor vehicle dealer in this State to sell, assign or transfer any retail installment sales contract, obtained by such
312 dealer in connection with the sale by the dealer in this State of new motor vehicles manufactured or sold by such
313 manufacturer, to a specified finance company or class of such companies, or to any other specified persons, by any of the
314 acts or means hereinafter set forth, namely:

315 a. By any statement, suggestion, promise or threat that such manufacturer will in any manner benefit or injure such
316 new motor vehicle dealer, whether such statement, suggestion, threat or promise is express or implied or made directly or
317 indirectly.

318 b. By any act that will benefit or injure such new motor vehicle dealer.

319 c. By any contract, or any express or implied offer of contract, made directly or indirectly to such new motor
320 vehicle dealer for handling such new motor vehicles on the condition that such new motor vehicle dealer sell, assign or
321 transfer retail installment sales contract thereon, in this State, to a specified finance company or class of such companies or
322 to any other specified person.

323 d. By any express or implied statement or representation made directly or indirectly that such new motor vehicle
324 dealer is under any obligation whatsoever to sell, assign or transfer any retail sales contracts, in this State, on new motor
325 vehicles manufactured or sold by such manufacturer to such finance company, or class of companies, or other specified
326 person, because of any relationship or affiliation between such manufacturer and such finance company or companies or
327 such specified person or persons.

328 (2) Any such statements, threats, promises, acts, contracts or offers of contracts, when the effect thereof may be to
329 lessen or eliminate competition or tend to create a monopoly, are declared unfair trade practices and unfair methods of
330 competition and against the policy of this State, are unlawful and are hereby prohibited.

331 (d) It shall be illegal for any manufacturer or agent or employee of a manufacturer to use a written instrument,
332 agreement or waiver to attempt to nullify any of the provisions of this section and such agreement, written
333 instrument or waiver shall be null and void.

334 (e) If the new motor vehicle dealers of the line-make located in this State are permitted to sell retail customers the
335 same motor vehicle accessory, option, add-on, feature, improvement, or upgrade for a motor vehicle of the line-make
336 manufactured, imported, or distributed by the manufacturer or distributor, the manufacturer or distributor may, on the same
337 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
338 customer or activate for a fee a permanent or temporary motor vehicle accessory, option, add-on, feature, improvement, or
339 upgrade for a motor vehicle of a line-make manufactured, imported, or distributed by the manufacturer or distributor;
340 provided that the accessory, option, add-on, feature, improvement, or upgrade is activated or installed directly on the retail
341 customer's motor vehicle through remote electronic transmission. If such motor vehicle was sold or leased as new by a
342 franchised new motor vehicle dealer in this State within the 5-year period preceding such remote electronic transmission,
343 then the manufacturer or distributor must pay such franchised new motor vehicle dealer a minimum of 20% of the gross
344 revenue received by the manufacturer, distributor, agent, or common entity for such sale or activation and renewals during
345 such 5-year period. The manufacturer or distributor must provide each of its franchised dealers with a quarterly statement of
346 the revenue received by the manufacturer or distributor, its agent, or its common entity during that quarter for such remote
347 sales or activations and renewals relating to those vehicles sold or leased by the dealer during the 5-year period subsequent

348 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
349 the public, the manufacturer or distributor shall provide to the dealer a written disclosure that may be provided to a potential
350 buyer of the new motor vehicle of each accessory or function of the vehicle that may be initiated, updated, changed, or
351 maintained by the manufacturer or distributor through over the air or remote means, and the charge to the customer for
352 initiation, update, change, or maintenance. A manufacturer or distributor may comply with this requirement to provide a
353 written disclosure by notifying the dealer that the information is available on a website or by other digital means.

354 §4920. Association standing.

355 (a) In order to prevent injury or harm to all or a substantial number of its members or to the franchise distribution
356 system of new motor vehicles within this State, any association that has as members at least 50 new motor vehicle dealers
357 or 10 motorcycle dealers, substantially all of whom are new motor vehicle dealers located within the State, and that
358 represents the collective interests of its members, has standing to intervene as a party in any civil or administrative
359 proceeding in any of the courts or administrative agencies of this State, or to file a petition or a civil action or cause of
360 action in any court of competent jurisdiction for itself, or on behalf of any or all of its members, seeking declaratory and
361 injunctive relief.

362 (b) An action brought pursuant to this section may seek a determination of whether one or more manufacturers,
363 factory branches, distributors, or distributor branches doing business in this State have violated any of the provisions of this
364 chapter, or for the determination of any rights created or defined by this chapter, so long as the association alleges an injury
365 to the collective interest of its members cognizable under this section. A cognizable injury to the collective interest of the
366 members of the association shall be deemed to occur if a manufacturer, factory branch, distributor, or distributor branch
367 doing business in this State, or seeking to be licensed in this State in any capacity or to otherwise engage in business in this
368 State, applies for licensure to own, operate, or control a motor vehicle dealership in this State in violation of this chapter or
369 engages in any conduct or takes any action that meets any of the following criteria:

370 (1) The conduct or action has harmed or would harm or has adversely affected or would adversely affect a
371 majority of the association's franchised new motor vehicle dealers in this State or a majority of all franchised new motor
372 vehicle dealers in this State.

373 (2) The conduct or action would erode or cause any other damage or injury to the franchise system of distribution
374 of new motor vehicles within this State, regardless of whether the manufacturer, factory branch, distributor, or distributor
375 branch currently has or proposes to have any franchised dealer in this State.

376 Section 2. Amend Chapter 63, Title 21 of the Delaware Code by making deletions as shown by strike through and
377 insertions as shown by underline as follows:

378 CHAPTER 63. Sale of Motor Vehicles

379 § 6301. Definitions [For application of this section, see 79 Del. Laws, c. 161, § 5].

380 As used in this chapter:

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

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

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

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

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

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

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

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

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

399 f. ~~Either a~~ A manufacturer or distributor who ~~sells or distributes vehicles to licensed dealers or a person employed~~
400 ~~by a manufacturer or distributor to promote the sale of the vehicles of the manufacturer or distributor, if that manufacturer,~~
401 ~~distributor or person does not sell vehicles to retail buyers;~~ buyers, unless the manufacturer or distributor was licensed as a
402 motor vehicle dealer on or before May 15, 2023. A manufacturer or distributor who was licensed as a motor vehicle dealer
403 on or before May 15, 2023 is not eligible to receive any additional licenses.

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

406 (4) “Insurance salvage dealer” means a dealer who buys, sells, or exchanges only vehicles that are deemed a total
407 loss and are not sold as private sales.

408 (5) "New motor vehicle" has the same meaning as defined in § 4902 of Title 6.
409 (6) "New motor vehicle dealer" means a dealer or motor vehicle dealer who sells new motor vehicles.
410 (7) "Used motor vehicle dealer" means a dealer or motor vehicle dealer who exclusively sells used motor vehicles.
411 (8) "Used motor vehicle" means a motor vehicle that has been sold, bargained, exchanged, given away, or title
412 transferred from the person who first acquired it from the manufacturer or importer, dealer or agent of the manufacturer or
413 importer and so used as to have become what is commonly known as "secondhand" within the ordinary meaning thereof.
414 "Used motor vehicle" also includes a motor vehicle that has been used for personal use by an employee or owner of a new
415 motor vehicle dealer, or by a family member of an employee or owner of a new motor vehicle dealer, regardless of whether
416 the motor vehicle would otherwise qualify as a new motor vehicle.

SYNOPSIS

This Act clarifies portions of Chapter 49 of Title 6 and Chapter 63 of Title 21 of the Delaware Code pertaining to motor vehicle dealers. These additions and modifications are intended to further improve our State's franchise laws and ensure that Delaware consumers have a stable, reliable, convenient, and competitive retail network for automobile sales and service. This Act is an effort to continue to ensure that the relationship between dealers and the manufacturers and distributors is as fair and equitable as possible and provides the highest level of consumer protection. The Act includes the following provisions:

Definition Clarifications.

The Act clarifies the definitions of "motor vehicle", "new motor vehicle" and "dealer" to reflect technological advances and changes in industry business practices in the state. The Act also recognizes the limited circumstances issuance of a dealer license to a direct-selling electric motor vehicle manufacturer in 2023. Further, the Act defines motor vehicle selling activities that require licensing and regulation by the state.

Fair Compensation for Required Repairs.

Dealers are required by contract to perform warranty work for manufacturers. The Act ensures that dealers are fairly paid for performing manufacturer-directed repairs related to warranty repairs, maintenance programs and recall work.

Intrusive Audits.

Dealers are required by existing law to wait up to 30 days for payment for motor vehicle warranty repairs in order to allow the manufacturer to review and approve payment submissions. Manufacturers are also allowed to later audit such repairs and payments. The Act affords manufacturers a full 6 months to audit warranty claims but will reasonably prevent intrusive and time-consuming audits after 180 days, unless the audit involves cases of alleged fraud.

Franchise Termination Compensation.

Under existing law, manufacturers must repurchase certain motor vehicles, parts and special tools in the event of the termination of the dealer's franchise agreement. The Act specifies a 90-day timeframe for payment and clarifies that it is the manufacturer's responsibility to cover the cost of returns.

Return of Unnecessary Tools & Equipment.

The Act allows a dealer a limited opportunity to return and be reimbursed for the cost of certain tools and equipment that were required as a part of an electric vehicle program or agreement between that dealer and the manufacturer, if the dealer determines within two years after receipt that such tools and equipment are unnecessary or that sales volume and utilization are low enough to prevent the dealer from realizing a reasonable return on those forced investments.

Sale & Subscription of Over-the-Air Features.

The Act allows manufacturers to directly sell options, add-ons, features, improvements and upgrades by remote transmission to consumers, provided that the dealers are afforded an equal opportunity to sell the same products and services, and further provided that the manufacturer reasonably compensates the dealer for direct sales or subscriptions to the dealer's customers for a specified period of time.

Association Standing.

Franchise laws have been enacted in all 50 states to recognize compelling state interests in protecting consumers and in regulating the disparity in bargaining power between motor vehicle manufacturers and their franchised dealers. Since dealers have a single source for their new motor vehicles, parts and accessories, many are reluctant to raise a single voice to object to unlawful activity by their manufacturer. The Act grants statutory standing to a large association of dealers to bring a legal action, in very limited circumstances, to ensure compliance with applicable law.

Licensing.

The Act provides that a manufacturer or distributor who was licensed as a motor vehicle dealer on or before May 15, 2023 is not eligible to receive any additional licenses.

The Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

The Act is supported by the Delaware Automobile and Truck Dealers' Association, Inc.

Author: Senator Poore