

SENATE BILL NO. 189—COMMITTEE ON TRANSPORTATION
AND HOMELAND SECURITY

MARCH 16, 2005

Referred to Committee on Transportation and Homeland Security

SUMMARY—Makes various changes relating to franchises for sales of vehicles. (BDR 43-1076)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to vehicles; making various changes relating to franchises for sales of vehicles; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prohibits a manufacturer or distributor of vehicles, under certain circumstances, from modifying the franchise of a dealer. A dealer who is aggrieved by such a modification is entitled to protest the matter to, and receive a hearing before, the Director of the Department of Motor Vehicles. (NRS 482.36354)

This bill provides that if a manufacturer or distributor changes the area of primary responsibility of a dealer, the change constitutes a modification of the franchise of the dealer. This bill defines "area of primary responsibility" as the geographic area within which, pursuant to a franchise agreement, a dealer is responsible for selling, servicing and representing the products of a manufacturer or distributor.

Existing law declares that certain acts on the part of a manufacturer, distributor or the factory branch of a manufacturer are unfair practices. (NRS 482.36371-482.36395) For violations and potential violations of the statutes of this State pertaining to franchises for sales of vehicles (NRS 482.36311-482.36425), existing law provides for injunctive relief, civil remedies, and the bringing of civil actions by the Attorney General. (NRS 482.36423, 482.36425)

This bill adds to the list of unfair acts and practices by providing that it is an unfair practice for a manufacturer, distributor or factory branch to: (1) require a dealer to agree to a term or condition of a franchise agreement which violates any provision of the statutes of this State pertaining to franchises for sales of vehicles; or (2) prohibit or prevent a dealer from appealing the results of certain audits, or to require that such an appeal be conducted at a location other than the dealer's place of business.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 482.36354 is hereby amended to read as follows:

482.36354 1. A manufacturer or distributor shall not modify the franchise of a dealer or replace the franchise with another franchise if the modification or replacement would have a substantially adverse effect upon the dealer's investment or his obligations to provide sales and service, unless:

(a) The manufacturer or distributor has given written notice of its intention to the Director and the dealer affected by the intended modification or replacement; and

(b) Either of the following conditions occurs:

(1) The dealer does not file a protest with the Director within 30 days after receiving the notice; or

(2) After a protest has been filed with the Director and the Director has conducted a hearing, the Director issues an order authorizing the manufacturer or distributor to modify or replace the franchise.

2. The notice required by ~~this section~~ **subsection 1** must be given to the dealer and to the Director at least 60 days before the date on which the intended action is to take place.

3. If a manufacturer or distributor changes the area of primary responsibility of a dealer, the change constitutes a modification of the franchise of the dealer for the purposes of NRS 482.36311 to 482.36425, inclusive. As used in this subsection, "area of primary responsibility" means the geographic area in which a dealer, pursuant to a franchise agreement, is responsible for selling, servicing and otherwise representing the products of a manufacturer or distributor.

Sec. 2. NRS 482.3638 is hereby amended to read as follows:

482.3638 It is an unfair act or practice for any manufacturer, distributor or factory branch, directly or through any representative, to:

1. Require a dealer to agree to a release, assignment, novation, waiver or estoppel which purports to relieve any person from liability imposed by this chapter, or require any controversy between a dealer and a manufacturer, distributor or representative to be referred to any person or agency except as set forth in this chapter if that referral would be binding on the dealer, except that this section does not prevent the parties from mutually agreeing to arbitration pursuant to law.

2. Require a dealer to agree to the jurisdiction, venue or tribunal in which a controversy arising under the provisions of the



1 franchise agreement may or may not be submitted for resolution, or
2 prohibit a dealer from bringing an action in any forum allowed by
3 Nevada law.

4 3. *Require a dealer to agree to a term or condition of a*
5 *franchise agreement which violates any provision of NRS*
6 *482.36311 to 482.36425, inclusive.*

7 4. Require a dealer to waive a trial by jury in actions involving
8 the manufacturer, distributor or factory branch.

9 ~~4.1~~ 5. Increase prices of new vehicles which the dealer had
10 ordered for private retail consumers before his receipt of the written
11 official notification of a price increase. A sales contract signed by a
12 retail consumer constitutes evidence of each order. Price changes
13 applicable to new models or series of vehicles at the time of the
14 introduction of the new models or series shall not be deemed a price
15 increase. Price changes caused by:

16 (a) The addition to a vehicle of equipment formerly optional as
17 standard or required equipment pursuant to state or federal law;

18 (b) Revaluation of the United States dollar in the case of
19 foreign-made vehicles; or

20 (c) Transportation cost increases,

21 ➔ are not subject to this subsection.

22 ~~5.1~~ 6. Deny the principal owner the opportunity to designate
23 his spouse, a member of his family, a qualified manager, or a trust
24 or other artificial person controlled by any of them as entitled to
25 participate in the ownership of:

26 (a) The franchised dealership;

27 (b) A successor franchised dealership for 2 years or a longer
28 reasonable time after the incapacity of the principal owner; or

29 (c) A successor franchised dealership after the death of the
30 principal in accordance with NRS 482.36396 to 482.36414,
31 inclusive.

32 ~~6.1~~ 7. Modify unilaterally, replace, enter into, relocate,
33 terminate or refuse to renew a franchise in violation of law.

34 ~~7.1~~ 8. Terminate or refuse to approve a transfer of a franchise
35 for a dealership, or honor the right of succession set forth in a
36 franchise agreement or refuse to approve the transfer of a
37 controlling interest in a dealership because the dealer has, before
38 October 1, 1997, established an additional franchise to sell or
39 service another line or make of new vehicles in the same facility as
40 the existing dealership.

41 ~~8.1~~ 9. Prevent a dealer from establishing, on or after October 1,
42 1997, an additional franchise to sell or service another line or make
43 of new vehicles in the same facility as the existing dealership if the
44 dealer:



1 (a) Submits a written request for approval of the additional
2 franchise to the manufacturer, distributor or factory branch of the
3 existing dealership;

4 (b) Complies with the reasonable requirements for approval set
5 forth in the franchise of the existing dealership; and

6 (c) Obtains the approval of the manufacturer, distributor or
7 factory branch of the existing dealership.

8 ➔ The manufacturer, distributor or factory branch shall notify the
9 dealer in writing of its decision to approve or deny the request
10 within 90 days after receipt of the request. The manufacturer,
11 distributor or factory branch shall not unreasonably withhold its
12 approval. If the request is denied, the material reasons for the denial
13 must be stated. Failure to approve or deny the request, in writing,
14 within 90 days has the effect of approval.

15 **Sec. 3.** NRS 482.36385 is hereby amended to read as follows:

16 482.36385 It is an unfair act or practice for any manufacturer,
17 distributor or factory branch, directly or through any representative,
18 to:

19 1. Compete with a dealer. A manufacturer or distributor shall
20 not be deemed to be competing when operating a previously
21 existing dealership temporarily for a reasonable period, or in a bona
22 fide retail operation which is for sale to any qualified person at a fair
23 and reasonable price, or in a bona fide relationship in which a
24 person has made a significant investment subject to loss in the
25 dealership and can reasonably expect to acquire full ownership of
26 the dealership on reasonable terms and conditions.

27 2. Discriminate unfairly among its dealers, or fail without good
28 cause to comply with franchise agreements, with respect to warranty
29 reimbursement or authority granted to its dealers to make warranty
30 adjustments with retail customers.

31 3. Fail to compensate a dealer fairly for the work and services
32 which he is required to perform in connection with the delivery and
33 preparation obligations under any franchise, or fail to compensate a
34 dealer fairly for labor, parts and other expenses incurred by him
35 under the manufacturer's warranty agreements. The manufacturer
36 shall set forth in writing the respective obligations of a dealer and
37 the manufacturer in the preparation of a vehicle for delivery, and as
38 between them a dealer's liability for a defective product is limited to
39 his obligation so set forth. Fair compensation includes diagnosis and
40 reasonable administrative and clerical costs. The dealer's
41 compensation for parts and labor to satisfy a warranty must not be
42 less than the amount of money charged to its various retail
43 customers for parts and labor that are not covered by a warranty. If
44 parts are supplied by the manufacturer, including exchanged parts
45 and assembled components, the dealer is entitled with respect to



1 each part to an amount not less than his normal retail markup for the
2 part. This subsection does not apply to compensation for any part,
3 system, fixture, appliance, furnishing, accessory or feature of a
4 motor home or recreational vehicle that is designed, used and
5 maintained primarily for nonvehicular, residential purposes.

6 4. Fail to pay all claims made by dealers for compensation for
7 delivery and preparation work, transportation claims, special
8 campaigns and work to satisfy warranties within 30 days after
9 approval, or fail to approve or disapprove such claims within 30
10 days after receipt, or disapprove any claim without notice to the
11 dealer in writing of the grounds for disapproval. Failure to approve
12 or disapprove or to pay within the specified time limits in an
13 individual case does not constitute a violation of this section if the
14 failure is because of reasons beyond the control of the manufacturer,
15 distributor or factory branch.

16 5. Sell a new vehicle to a person who is not licensed as a new
17 vehicle dealer under the provisions of this chapter.

18 6. Use false, deceptive or misleading advertising or engage in
19 deceptive acts in connection with the manufacturer's or distributor's
20 business.

21 7. Perform an audit to confirm a warranty repair, sales
22 incentive or rebate more than 12 months after the date of the
23 transaction.

24 ***8. Prohibit or prevent a dealer from appealing the results of***
25 ***an audit to confirm a warranty repair, sales incentive or rebate, or***
26 ***to require that such an appeal be conducted at a location other***
27 ***than the dealer's place of business.***

28 **Sec. 4.** NRS 482.36423 is hereby amended to read as follows:

29 482.36423 1. Whenever it appears that a person has violated,
30 is violating or is threatening to violate any provision of NRS
31 482.36311 to 482.36425, inclusive, any person aggrieved thereby
32 may apply to the district court in the county where the defendant
33 resides, or in the county where the violation or threat of violation
34 occurs, for injunctive relief to restrain the person from continuing
35 the violation or threat of violation.

36 2. In addition to any other judicial relief, any dealer or person
37 who assumes the operation of a franchise pursuant to NRS
38 482.36396 to 482.36414, inclusive, who is injured in his business or
39 property by reason of a violation of NRS 482.36311 to 482.36425,
40 inclusive, may bring an action in the district court in which the
41 dealership is located, and may recover three times the pecuniary loss
42 sustained by him, and the cost of suit, including a reasonable
43 attorney's fee. The amount of pecuniary loss sustained by a dealer,
44 pursuant to subsection ~~6~~ 7 of NRS 482.3638, is the fair market
45 value of the franchised dealership at the time of notification of



1 termination, refusal to continue or unilateral modification of a
2 franchise.

3 3. Any artificial person created and existing under the laws of
4 any other state, territory, foreign government or the government of
5 the United States, or any person residing outside the State, who
6 grants a franchise to any dealer in this State may be served with any
7 legal process in any action for injunctive relief or civil damages in
8 the following manner:

9 (a) By delivering a copy of the process to the Director; and

10 (b) By mailing to the last known address of the manufacturer or
11 distributor, by certified mail, return receipt requested, a copy of the
12 summons and a copy of the complaint, together with copies of any
13 petition or order for injunctive relief.

14 4. The defendant has 30 days, exclusive of the day of service,
15 within which to answer or plead.

16 5. The method of service provided in this section is cumulative
17 and may be utilized with, after or independently of all other methods
18 of service.



