~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 30, 2009

**S. 630**

Introduced by Senators Land, Setzler, L. Martin, Ford, Nicholson, Lourie, Sheheen, Massey, Reese, Elliott, Peeler, Leatherman, Knotts, Hayes, Verdin, Leventis, Coleman, Matthews, Fair, Scott, Hutto, McGill, Williams, O’Dell, Campbell, Thomas, Rankin, Rose, Davis, Alexander, Shoopman, Anderson, S. Martin, Bright, Grooms, Jackson and Malloy

S. Printed 4/30/09--H. [SEC 5/5/09 4:05 PM]

Read the first time April 23, 2009.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 630) to amend Chapter 15, Title 56 of the 1976 Code by adding Section 56-15-65, relating to motor vehicle dealers, to prohibit motor vehicle manufactures or distributors, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Chapter 15, Title 56 of the 1976 Code is amended by adding:

“Section 56‑15‑65. It is unlawful for any manufacturer, distributor, factory representative, or distributor representative to require, coerce, or attempt to coerce any motor vehicle dealer to change the location of the motor vehicle dealership or to make any substantial alterations to the dealer’s premises or facilities unless:

(1) the manufacturer demonstrates that such change or alteration is reasonable in light of the current market and economic conditions; and

(2) the motor vehicle dealer has been provided written assurance from the manufacturer or distributor of a sufficient supply of motor vehicles to justify such change or alteration.”

SECTION 2. Chapter 15, Title 56 of the 1976 Code is amended by adding:

“Section 56‑15‑75. It is unlawful for any manufacturer, distributor, factory branch, distributor branch, factory representative, or distributor representative to require, coerce, or attempt to coerce any motor vehicle dealer to refrain from participation in the management of, investment in, or acquisition of any other make or line of new motor vehicles or related products if:

(1) the requirements are unreasonable considering current economic conditions and are not otherwise justified by reasonable business considerations;

(2) the motor vehicle dealer has maintained a reasonable line of credit for each make or line of new motor vehicle; and

(3) the motor vehicle dealer remains in compliance with reasonable capital standards and reasonable facilities requirements specified by the manufacturer.

Reasonable facilities requirements shall not include any requirement that a motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space, unless the manufacturer or distributor establishes by a preponderance of the evidence that such requirements are justified by current economic conditions or reasonable business considerations.”

SECTION 3. Section 56‑15‑90 of the 1976 Code is amended to read:

“Section 56‑15‑90. (A) Anything to the contrary notwithstanding, it shall be unlawful for the manufacturer, wholesaler, distributor, or franchisor, without due cause, to fail to renew on terms then equally available to all its motor vehicle dealers of the same line‑make, to terminate a franchise or to unreasonably restrict the transfer of a franchise unless the ~~franchise~~ franchisee shall receive fair and reasonable compensation for the value of the business and compensation for its dealership facilities or location as provided in subsection (C).

(B) In determining the fair and reasonable compensation for a business, pursuant to subsection (A) or (D), the value of the business shall include, but not be limited to:

(1) the dealer cost for all new untitled, undamaged, and unaltered motor vehicles in the dealer’s inventory purchased from the manufacturer or from another same line‑make dealer in the ordinary course of business within eighteen months of termination;

(2) the dealer cost for all new, unused, and undamaged parts listed in the current price catalog and still in the original, resalable merchandising package and in unbroken lots, purchased from the manufacturer or distributor;

(3) the fair market value of signage bearing a trademark or trade name of the manufacturer or line‑make purchased from and required by the manufacturer or distributor;

(4) the fair market value of special tools and automotive service equipment owned by the dealer that were designated as special tools or equipment required by and purchased from the manufacturer or distributor, if the tools and equipment are in useable and good condition, normal wear and tear excepted; and

(5) the reasonable cost of return shipping and handling charges incurred as a result of returning such items.

Provided the new motor vehicle dealer has clear title to the inventory and other items and is in a position to convey that title to the manufacturer, the payments required under this section shall be paid by the manufacturer, wholesaler, distributor, or franchisor within ninety days of the effective date of the termination, nonrenewal, or cancellation of a franchise. If the inventory or other items are subject to a security interest, the manufacturer, wholesaler, distributor, or franchisor may make payment jointly to the dealer and the holder of the security interest.

(C) Within ninety days of the termination, cancellation, or nonrenewal of a franchise by a manufacturer, wholesaler, distributor, or franchisor, due to a dealer’s poor sales and service performance, or due to the discontinuation of a line‑make, the party shall pay the franchisee an amount equal to:

(1) the franchisee’s reasonable cost to rent or lease its dealership facility or location for one year or the unexpired term of the lease or rental period, whichever is less; or

(2) the reasonable rental value of the facilities or location for one year if the franchisee owns the facility or location.

If more than one franchise is being terminated, canceled, or not renewed, the reimbursement shall be prorated equally among the different manufacturers, wholesalers, distributors, and franchisors. If the facility is used for the operations of more than one franchise and only one is being terminated, the reasonable rent shall be paid based upon the prorated portion of new vehicle sales for the previous year attributable to the line‑make being terminated, cancelled, or nonrenewed for the prior one‑year period.

(D) In the event a franchisee terminates the franchise agreement with the manufacturer, wholesaler, distributor, or franchisor, it is unlawful for the manufacturer, wholesaler, distributor, or franchisor to not abide by the provisions included in subsection (B) in determining fair and reasonable compensation to the dealer. However, the requirements of subsection (B) do not apply to a termination, cancellation, or nonrenewal due to the sale of the assets or stock of a motor vehicle franchisee.

(E) In the case of a franchise for motor homes as defined in Section 56‑15‑10(q), subsections (B), (C), and (D) do not apply.”

SECTION 4. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER for Committee.

**A** **BILL**

TO AMEND CHAPTER 15, TITLE 56 OF THE 1976 CODE BY ADDING SECTION 56‑15‑65, RELATING TO MOTOR VEHICLE DEALERS, TO PROHIBIT MOTOR VEHICLE MANUFACTURES OR DISTRIBUTORS FROM REQUIRING DEALERS TO RELOCATE OR MAKE ALTERATIONS TO THEIR DEALERSHIP UNLESS CERTAIN REQUIREMENTS ARE MET; BY ADDING SECTION 56‑15‑75, RELATING TO MOTOR VEHICLE DEALERS, TO PROHIBIT MOTOR VEHICLE MANUFACTURES OR DISTRIBUTORS FROM PREVENTING DEALERS FROM INVESTING IN, MANAGING, OR ACQUIRING ANY OTHER LINE‑MAKE OF NEW MOTOR VEHICLES OR RELATED PRODUCTS IF CERTAIN REQUIREMENTS ARE MET; AND TO AMEND SECTION 56‑15‑90, RELATING TO MOTOR VEHICLE DEALERS, TO PROVIDE FACTORS TO BE CONSIDERED IN CALCULATING THE FAIR AND REASONABLE COMPENSATION FOR THE VALUE OF A MOTOR VEHICLE DEALERSHIP.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 15, Title 56 of the 1976 Code is amended by adding:

“Section 56‑15‑65. It is unlawful for any manufacturer, distributor, factory representative, or distributor representative to require, coerce, or attempt to coerce any motor vehicle dealer to change the location of the motor vehicle dealership or to make any substantial alterations to the dealer’s premises or facilities unless:

(1) the manufacturer demonstrates that such change or alteration is reasonable in light of the current market and economic conditions; and

(2) the motor vehicle dealer has been provided written assurance from the manufacturer or distributor of a sufficient supply of motor vehicles to justify such change or alteration.”

SECTION 2. Chapter 15, Title 56 of the 1976 Code is amended by adding:

“Section 56‑15‑75. It is unlawful for any manufacturer, distributor, factory branch, distributor branch, factory representative, or distributor representative to require, coerce, or attempt to coerce any motor vehicle dealer to refrain from participation in the management of, investment in, or acquisition of any other make or line of new motor vehicles or related products if:

(1) the requirements are unreasonable considering current economic conditions and are not otherwise justified by reasonable business considerations;

(2) the motor vehicle dealer has maintained a reasonable line of credit for each make or line of new motor vehicle; and

(3) the motor vehicle dealer remains in compliance with reasonable capital standards and reasonable facilities requirements specified by the manufacturer.

Reasonable facilities requirements shall not include any requirement that a motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space, unless the manufacturer or distributor establishes by a preponderance of the evidence that such requirements are justified by current economic conditions or reasonable business considerations.”

SECTION 3. Section 56‑15‑90 of the 1976 Code is amended to read:

“Section 56‑15‑90. (A) Anything to the contrary, notwithstanding, it shall be unlawful for the manufacturer, wholesaler, distributor, or franchisor, without due cause, to fail to renew on terms then equally available to all its motor vehicle dealers of the same line‑make, to terminate a franchise or to unreasonably restrict the transfer of a franchise unless the ~~franchise~~ franchisee shall receive fair and reasonable compensation for the value of the business and compensation for its dealership facilities or location as provided in subsection (C).

(B) In determining the fair and reasonable compensation for a business, pursuant to subsection (A) or (D), the value of the business shall include, but not be limited to:

(1) the dealer cost for all new untitled, undamaged, and unaltered motor vehicles in the dealer’s inventory purchased from the manufacturer or from another same line‑make dealer in the ordinary course of business within eighteen months of termination;

(2) the dealer cost for all new, unused, and undamaged parts listed in the current price catalog and still in the original, resalable merchandising package and in unbroken lots, purchased from the manufacturer or distributor;

(3) the fair market value of signage bearing a trademark or trade name of the manufacturer or line‑make purchased from and required by the manufacturer or distributor;

(4) the fair market value of special tools and automotive service equipment owned by the dealer that were designated as special tools or equipment required by and purchased from the manufacturer or distributor, if the tools and equipment are in useable and good condition, normal wear and tear excepted; and

(5) the reasonable cost of return shipping and handling charges incurred as a result of returning such items.

Provided the new motor vehicle dealer has clear title to the inventory and other items and is in a position to convey that title to the manufacturer, the payments required under this section shall be paid by the manufacturer, wholesaler, distributor, or franchisor within ninety days of the effective date of the termination, nonrenewal, or cancellation of a franchise.

(C) Within ninety days of the termination, cancellation, or nonrenewal of a franchise by a manufacturer, wholesaler, distributor, or franchisor, due to a dealer’s poor sales and service performance, or due to the discontinuation of a line-make, the party shall pay the franchisee an amount equal to:

(1) the franchisee’s reasonable cost to rent or lease its dealership facility or location for one year or the unexpired term of the lease or rental period, whichever is less; or

(2) the reasonable rental value of the facilities or location for one year if the franchisee owns the facility or location.

If more than one franchise is being terminated, canceled, or not renewed, the reimbursement shall be prorated equally among the different manufacturers, wholesalers, distributors, and franchisors. If the facility is used for the operations of more than one franchise and only one is being terminated, the reasonable rent shall be paid based upon the prorated portion of new vehicle sales for the previous year attributable to the line‑make being terminated, cancelled, or nonrenewed.

(D) In the event a franchisee terminates the franchise agreement with the manufacturer, wholesaler, distributor, or franchisor, it is unlawful for the manufacturer, wholesaler, distributor, or franchisor to not abide by the provisions included in subsection (B) in determining fair and reasonable compensation to the dealer. However, the requirements of subsection (B) do not apply to a termination, cancellation, or nonrenewal due to the sale of the assets or stock of a motor vehicle franchisee.

(E) In the case of a franchise for motor homes as defined in Section 56‑15‑10(q), subsections (B), (C), and (D) do not apply.”

SECTION 4. This act takes effect upon approval by the Governor.

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