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F I S C A L   I M P A C T   R E P O R T

		ORIGINAL DATE	02/02/10		
SPONSOR	Park	**LAST UPDATED**	02/09/10	**HB**	93/aHBIC/aHJC
SHORT TITLE	Certain Auto Dealer Acts as Unlawful			**SB**	
				ANALYST	Lucero

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	**FY11**		
	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
The Attorney General's Office (AGO)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee (SJC) amendment to House Bill 93 adds that "unless a separate agreement lasting no more than fifteen years has been voluntarily entered into for separate consideration," it is unlawful to require either directly or indirectly a site control agreement or exclusive use agreement.

The amendment also clarifies when returning unsold motorcycles and motor vehicle to the manufacturer or distributor, upon termination of a franchise, only inventory that is "current" and from the "immediately" preceding two model years are required to be purchased back at the dealer's cost if it was purchased from the manufacturer or dealer "fourteen" months prior.

Additionally, in regard to economic loss from idled or underused dealer facility real estate, the amendment clarifies that as a result from "a manufacturer's involuntary" termination a franchise, the dealer shall be compensated 'unless the dealer is in violation of the franchise agreement." Finally, the amendment clarifies that the economic loss is presumed to be at least equal to the value of two years of "fair market rental value."

Synopsis of HBIC Amendment

The House Business and Industry Committee amendment to House Bill 93 clarifies the timeframe for returning of inventory to the manufacturer to “within” 18 months of purchase. The amendment deletes “parts, accessories” from the proposed new section regarding installed equipment that the manufacture or distributor shall pay to the dealer upon termination of the franchise.

The amendment adds: "unless the fair market value is mutually agreed upon by the parties" to the section regarding installed equipment. This gives the parties an opportunity to otherwise agree rather than to leave such determination to a qualified independent appraiser.

The amendment strikes the proposed new subsection (F) on page 12 lines 11 through 14, the deletion rids the definition of “new motor vehicle” which contradicted the existing definitions of new vehicle in the New Mexico Attorney General’s rules regarding advertising.

SUMMARY

Synopsis of Original Bill

The bill proposes to amend Section 57-16-3 NMSA 1978 to add to the existing definition of “manufacturer” and add new definitions for “successor manufacturer,” “predecessor manufacturer,” and “former franchisee.”

The bill also adds to Section 57-16-8 NMSA to add a new paragraph (B) regarding prohibited acts surrounding site control agreements or exclusive use agreements.

Section 3 of the bill a new paragraph (B) to existing Section 57-16-9 NMSA 1978 which defines what constitutes an anticipatory termination of a franchise.

Section 4 of the bill adds a new definition (F) of what constitutes a “new” motor vehicle to existing Section 57-12-9.2 NMSA 1978.

FISCAL IMPLICATIONS

There is no fiscal impact to state agencies.

SIGNIFICANT ISSUES

The HBIC amendment resolves or cures the AGO’s concern regarding the definition of “new” motor vehicle presented below.

Regarding the proposed definition of a new motor vehicle contained on page 12 of this bill:

> *“F. FOR THE PURPOSES OF THIS SECTION, A VEHICLE SHALL BE CONSIDERED NEW IF THAT VEHICLE'S MANUFACTURER'S CERTIFICATE OF ORIGIN HAS NOT BEEN SURRENDERED AND THE VEHICLE HAS NO SIGNIFICANT DAMAGE AND HAS NEVER BEEN REGISTERED."*

The AG notes a conflict with existing definitions of a motor vehicle are located at 12.2.4.7 NMAC and are as follows:

> *"All vehicles may be classified as one of the following:*
> *A. 'Used' shall mean (1) a vehicle that has previously been sold to a retail buyer who has taken possession of the vehicle and the vehicle has been driven a total of at least two hundred (200) miles by one or more retail buyers; or (2) a vehicle for which the manufacturer's certificate of origin or the manufacturer's statement of origin has been surrendered to a registration authority, unless the certificate or statement has subsequently been returned, uncancelled, to the dealer or a substitute certificate or statement has been issued to the dealer.*
>
> *B. 'Demonstrator' shall mean a vehicle which is not used but which has been placed in demonstration or courtesy service regardless of the miles it has been driven.*
>
> *C. 'New' means a vehicle which is neither used nor a demonstrator."*

In the original version of the bill, the definition of "new" motor vehicle would likely trump the existing regulations, which would have presented the following legal ramification, however the HBIC amendment resolves the AGO's concern:

> When a manufacturer terminates a franchise agreement and the dealer returns the inventory to the manufacturer, subsequently the manufacturer arguably will redistribute the inventory either to a new franchisee or to an existing franchisee. This means that the redistributed inventory forseeibly will be advertised as "new" when it may actually really be considered "used" pursuant to 12.2.4.7A1 NMAC, or as a demonstrator pursuant to 12.2.4.7B NMAC. That would no longer protect consumers as intended by the NMAG regs for advertising purposes.

TECHNICAL ISSUES

The HBIC amendment resolves the AGO's concern regarding the definition of "new" motor vehicle. In the original bill, the AGO noted that in order to maintain the consumer protection safeguards in the Attorney General's definitions of classes of motor vehicles, the amendment of Section 4 which adds a definition of what constitutes a "new" motor vehicle should mirror the Attorney General's definitions.

DUPLICATION

Duplicates SB58

DL/mt:mew