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HOUSE BILL 40

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

J. "Andy" Kissner

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO MOTOR VEHICLE DEALER FRANCHISES; PROVIDING FOR
TIME LIMITS RELATED TO SALES AND TRANSFERS; PROHIBITING
CERTAIN PRACTICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 57-16-5 NMSA 1978 (being Laws 1973,
Chapter 6, Section 5, as amended) is amended to read:

"57-16-5. UNLAWFUL ACTS-- MANUFACTURERS-- DISTRIBUTORS--
REPRESENTATIVES.-- It is unlawful for any manufacturer,
distributor or representative to:

A. coerce or attempt to coerce a dealer to order
or accept delivery of any motor vehicle, appliances,
equipment, parts or accessories therefor or any other
commodity that the motor vehicle dealer has not voluntarily
ordered;

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[bracketed material] = delete

1 B. coerce or attempt to coerce a dealer to order
2 or accept delivery of any motor vehicle with special features,
3 appliances, accessories or equipment not included in the list
4 price of the motor vehicles as publicly advertised by the
5 manufacturer;

6 C. coerce or attempt to coerce a dealer to order
7 for any person any parts, accessories, equipment, machinery,
8 tools, appliances or any commodity whatsoever;

9 D. refuse to deliver, in reasonable quantities and
10 within a reasonable time after receipt of dealer's order, to
11 any motor vehicle dealer having a franchise or contractual
12 arrangement for the retail sale of any motor vehicles sold or
13 distributed by the manufacturer, distributor or
14 representative, any such motor vehicles, parts or accessories
15 as are covered by the franchise or contract specifically
16 publicly advertised by the manufacturer, distributor or
17 representative to be available for immediate delivery;
18 provided, however, the failure to deliver any motor vehicle,
19 parts or accessories shall not be considered a violation of
20 Chapter 57, Article 16 NMSA 1978 if such failure is due to an
21 act of God, work stoppage or delay due to a strike or labor
22 difficulty, shortage of materials, freight embargo or other
23 cause over which the manufacturer, distributor or
24 representative or any agent thereof has no control;

25 E. coerce or attempt to coerce any motor vehicle

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1 dealer to enter into any agreement with the manufacturer,
2 distributor or representative or to do any other act
3 prejudicial to the dealer by threatening to cancel any
4 franchise or any contractual agreement existing between the
5 manufacturer, distributor or representative and the dealer;
6 provided, however, that notice in good faith to any motor
7 vehicle dealer of the dealer's violation of any terms or
8 provisions of the franchise or contractual agreement shall not
9 constitute a violation of Chapter 57, Article 16 NMSA 1978;

10 F. terminate or cancel the franchise or selling
11 agreement of any dealer without due cause. Due cause shall
12 require a material breach by a dealer, due to matters within
13 the dealer's control, of a lawful provision of a franchise or
14 selling agreement. As used in this subsection, "material
15 breach" means a contract violation that is substantial and
16 significant. In determining whether due cause exists under
17 this subsection, the court shall take into consideration only
18 the dealer's sales in relation to the business available to
19 the dealer; the dealer's investment and obligations; injury to
20 the public welfare; the adequacy of the dealer's sales and
21 service facilities, equipment and parts; the qualifications of
22 the management, sales and service personnel to provide the
23 consumer with reasonably good service and care of new motor
24 vehicles; the dealer's failure to comply with the requirements
25 of the franchise; and the harm to the manufacturer or

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1 distributor. The nonrenewal of a franchise or selling
2 agreement, without due cause, shall constitute an unfair
3 termination or cancellation regardless of the terms or
4 provisions of the franchise or selling agreement. The
5 manufacturer, distributor or representative shall notify a
6 motor vehicle dealer in writing by registered mail of the
7 termination or cancellation of the franchise or selling
8 agreement of the dealer at least sixty days before the
9 effective date thereof, stating the specific grounds for
10 termination or cancellation; and the manufacturer, distributor
11 or representative shall notify a motor vehicle dealer in
12 writing by registered mail at least sixty days before the
13 contractual term of his franchise or selling agreement expires
14 that the same will not be renewed, stating the specific
15 grounds for nonrenewal in those cases where there is no
16 intention to renew, and in no event shall the contractual term
17 of any franchise or selling agreement expire without the
18 written consent of the motor vehicle dealer involved prior to
19 the expiration of at least sixty days following the written
20 notice. During the sixty-day period, either party may in
21 appropriate circumstances petition a court to modify the
22 sixty-day stay or to extend it pending a final determination
23 of proceedings on the merits. The court shall have authority
24 to grant preliminary and final injunctive relief;

25 G. use false, deceptive or misleading advertising

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1 in connection with his business;

2 H. offer to sell or to sell any motor vehicle to
3 any motor vehicle dealer in this or any other state of the
4 United States at a lower actual price than the actual price
5 offered to any other motor vehicle dealer in this state for
6 the same model vehicle similarly equipped or to utilize any
7 device, including, but not limited to, sales promotion plans
8 or programs that result in such lesser actual price; provided,
9 however, the provisions of this subsection shall not apply to
10 sales to a motor vehicle dealer for resale to any unit of the
11 United States government, the state or any of its political
12 subdivisions; and provided, further, the provisions of this
13 subsection shall not apply to sales to a motor vehicle dealer
14 of any motor vehicle ultimately sold, donated or used by the
15 dealer in a driver education program; and provided, further,
16 that the provisions of this subsection shall not apply so long
17 as a manufacturer, distributor or representative offers to
18 sell or sells new motor vehicles to all motor vehicle dealers
19 at an equal price. For the purposes of this subsection,
20 "actual price" means the price to be paid by the dealer less
21 any incentive paid by the manufacturer, distributor or
22 representative, whether paid to the dealer or the ultimate
23 purchaser of the vehicle. This provision shall not apply to
24 sales by the manufacturer, distributor or representatives to
25 the United States government or any agency thereof. The

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1 provisions of this subsection dealing with vehicle prices in
2 any other state and defining actual price shall not apply to
3 any manufacturer or distributor if all of the manufacturer's
4 or distributor's dealers within fifty miles are given all cash
5 or credit incentives, whether the incentives are offered by
6 the manufacturer or distributor or a finance subsidiary of
7 either, affecting the price or financing terms of a vehicle,
8 which incentives are available in the neighboring state;

9 I. willfully discriminate, either directly or
10 indirectly, in price between different purchasers of a
11 commodity of like grade or quality where the effect of the
12 discrimination may be to lessen substantially competition or
13 tend to create a monopoly or to injure or destroy the business
14 of a competitor;

15 J. offer to sell or to sell parts or accessories
16 to any motor vehicle dealer for use in his own business for
17 the purpose of repairing or replacing the same or a comparable
18 part or accessory at a lower actual price than the actual
19 price charged to any other motor vehicle dealer for similar
20 parts or accessories for use in his own business; provided,
21 however, in those cases where motor vehicle dealers have a
22 franchise to operate and serve as wholesalers of parts and
23 accessories to retail outlets or other dealers, whether or not
24 the dealer is regularly designated as a wholesaler, nothing
25 herein contained shall be construed to prevent a manufacturer,

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1 distributor or representative from selling to the motor
2 vehicle dealer who operates and services as a wholesaler of
3 parts and accessories such parts and accessories as may be
4 ordered by the motor vehicle dealer for resale to retail
5 outlets at a lower actual price than the actual price charged
6 a motor vehicle dealer who does not operate or serve as a
7 wholesaler of parts and accessories;

8 K. prevent or attempt to prevent by contract or
9 otherwise any motor vehicle dealer from changing the capital
10 structure of his dealership or the means by or through which
11 he finances the operation of his dealership, provided the
12 dealer at all times meets any reasonable capital standards
13 agreed to between the dealership and the manufacturer,
14 distributor or representative, and provided such change by the
15 dealer does not result in a change in the executive management
16 control of the dealership;

17 L. prevent or attempt to prevent by contract or
18 otherwise any motor vehicle dealer or any officer, partner or
19 stockholder of any motor vehicle dealer from selling or
20 transferring any part of the interest of any of them to any
21 other person or party; provided, however, that no dealer,
22 officer, partner or stockholder shall have the right to sell,
23 transfer or assign the franchise or power of management or
24 control thereunder without the consent of the manufacturer,
25 distributor or representative except that the manufacturer,

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1 distributor or representative shall not withhold consent to
2 the sale, transfer or assignment of the franchise to a
3 qualified buyer capable of being licensed in New Mexico and
4 who meets the manufacturer's or distributor's uniformly
5 applied requirement for appointment as a dealer. Uniform
6 application shall not prevent the application of a separate
7 standard of consent for sale, transfer or assignment to
8 minority or women dealer candidates, nor require the
9 application of an identical standard to all persons in all
10 situations. The requirement of uniform application shall be
11 met if the manufacturer applies the same set of standards,
12 which takes into account business performance and experience,
13 financial qualifications, facility requirements and other
14 relevant characteristics; provided that, if two dealers,
15 persons or situations are identical, given the characteristics
16 considered in the standards, the two dealers, persons or
17 situations shall be treated identically, except as provided in
18 this subsection. Upon request, a manufacturer or distributor
19 shall provide its dealer with a copy of the standards that are
20 normally relied upon by the manufacturer or distributor to
21 evaluate a proposed sale, transfer or assignment. A
22 manufacturer, distributor or representative shall give or
23 withhold consent to the proposed sale or transfer within
24 thirty calendar days of receiving notice of the proposed sale
25 or transfer, with one exception. If the manufacturer,

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1 distributor or representative requests additional information
2 within twenty calendar days from receiving notice, the thirty-
3 day period shall not begin to run until the date the requester
4 has received the information requested. The manufacturer,
5 distributor or representative shall be deemed to have granted
6 consent and shall be estopped from denying the consent, if the
7 consent has not been expressly withheld during the applicable
8 thirty-day period;

9 M obtain money, goods, services, anything of
10 value or any other benefit from any other person with whom the
11 motor vehicle dealer does business on account of or in
12 relation to the transactions between the dealer and the other
13 person, unless such benefit is promptly accounted for and
14 transmitted to the motor vehicle dealer;

15 N. require a motor vehicle dealer to assent to a
16 release, assignment, novation, waiver or estoppel that would
17 relieve any person from liability imposed by Chapter 57,
18 Article 16 NMSA 1978;

19 O. require any motor vehicle dealer to provide
20 installment financing with a specified financial institution;

21 P. establish an additional franchise, including
22 any franchise for a warranty or service facility outside of
23 the relevant market area of the dealer establishing the
24 facility, but excluding the relocation of existing franchises,
25 for the same line-make in a relevant market area where the

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1 same line-make is presently being served by an existing motor
2 vehicle dealer if such addition would be inequitable to the
3 existing dealer; provided, however, that the sales and service
4 needs of the public shall be given due consideration in
5 determining the equities of the existing dealer. The sole
6 fact that the manufacturer, distributor or representative
7 desires further penetration of the market shall not be grounds
8 for establishing an additional franchise; provided, further,
9 that the manufacturer, distributor or representative shall
10 give a ninety-day written notice by registered mail to all
11 same line-make dealers in a relevant market area of its
12 intention to establish an additional franchise;

13 Q. offer to sell, lease or to sell or lease any
14 new motor vehicle to any person, except a distributor at a
15 lower actual price therefor than the actual price offered and
16 charged to a motor vehicle dealer for the same model vehicle
17 similarly equipped or to utilize any device that results in
18 such lesser actual price;

19 R. sell, lease or provide motorcycles, parts or
20 accessories to any person not a dealer or distributor for the
21 line-make sold, leased or provided. The provisions of this
22 subsection shall not apply to sales, leases or provisions of
23 motor vehicles, parts or accessories by manufacturer,
24 distributor or representative to the United States government
25 or any agency thereof or the state or any of its political

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1 subdivisions;

2 S. offer any finance program, either directly or
3 through any affiliate, based on the physical location of the
4 selling dealer or the residence of the buyer. The provisions
5 of this subsection shall not apply to any manufacturer or
6 distributor that has no dealer within fifty miles of a state
7 line or if all of the manufacturer's or distributor's dealers
8 within fifty miles are given all cash or credit incentives,
9 whether the incentives are offered by the manufacturer or the
10 distributor or a finance subsidiary of either, affecting the
11 price or financing terms of a vehicle, which incentives are
12 available in the neighboring state;

13 T. force a dealer to sell or relocate a franchise
14 with another manufacturer located at the same physical
15 location or consider the existence of another line-make at a
16 dealership for product allocation, successorship, location
17 approval and capitalization; provided that a manufacturer or
18 distributor may require:

19 (1) that the dealership meet the
20 manufacturer's capitalization requirements;

21 (2) that the dealership meet the
22 manufacturer's facilities requirements; and

23 (3) that the dealer not have committed
24 fraudulent acts;

25 U. enforce any right of first refusal or option to

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1 purchase the dealership by a manufacturer or distributor or to
2 require any dealer to grant such right to a manufacturer or
3 distributor;

4 V. be licensed as a dealer or perform warranty or
5 other service or own any interest, directly or indirectly, in
6 a person licensed as a dealer or performing warranty or other
7 service; provided that a manufacturer or distributor may own a
8 person licensed as a dealer for a reasonable time in order to
9 dispose of any interest acquired as a secured party or as part
10 of a dealer development program;

11 W. fail to recognize and approve the transfer of a
12 dealership to any person named as a successor, donee,
13 beneficiary or devisee in any valid testamentary or trust
14 instrument; provided that a manufacturer or distributor may
15 impose standards or criteria used in any transfer;

16 X. impose capitalization requirements not
17 necessary to assure that the dealership can meet its financial
18 obligations; [or]

19 Y. compel a dealer through a finance subsidiary of
20 the manufacturer or distributor to agree to unreasonable
21 operating requirements or directly or indirectly to terminate
22 a dealer, except as allowed by Subsection F of this section
23 [~~57-16-5 NMSA 1978~~], through the actions of a finance
24 subsidiary of the manufacturer or distributor. This
25 subsection shall not limit the right of a financing entity to

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1 engage in business practices in accordance with the usage of
2 the trade in which it is engaged; or
3 Z. set a maximum retail price for any motor
4 vehicle. "

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3
4
5
6 January 28, 1999

7
8 Mr. Speaker:

9
10 Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
11 been referred

12
13 HOUSE BILL 40

14
15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

17 1. On page 8, lines 21 through 25 and on page 9, lines 1
18 through 8, strike the underscored language and insert in lieu
19 thereof:

20
21 "A ~~manufacturer~~, distributor or representative shall send
22 a letter by certified mail approving or withholding consent
23 within sixty calendar days of receiving the completed
24 application forms and related information requested by a
25 manufacturer or distributor as provided below. A ~~manufacturer~~,
distributor or representative shall send its existing motor

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HBIC/HB 40

Page 15

4 vehicle dealer the necessary application forms and identify the
5 related information required within twenty calendar days of
6 receiving written notice from the existing motor vehicle dealer
7 of the proposed sale or transfer. No manufacturer, distributor
8 or representative shall require any information not requested in
9 the twenty-day period, and submission of the information
10 requested within that period together with a completed form of
11 the application provided shall constitute a completed
12 application form. Any request for consent shall be deemed
13 granted, and the manufacturer, distributor or representative
14 shall be estopped from denying the consent, if the consent has
15 not been expressly withheld during the applicable sixty-day
16 period; ". ,

17 and thence referred to the JUDICIARY COMMITTEE.

18
19 Respectfully submitted,

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23 _____
24 Debbie A. Rodella, Vice
25 Chairwoman

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HBIC/HB 40

Page 16

4 Adopted _____ Not Adopted _____
5 (Chief Clerk) (Chief Clerk)

7 Date _____

9 The roll call vote was 10 For 0 Against

10 Yes: 10

11 Excused: Luna, Lutz

12 Absent: None

14 126504. 1

15 J: \99BillSWP\H0040

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1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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5 February 15, 1999
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7 Mr. Speaker:
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9 Your JUDICIARY COMMITTEE, to whom has been referred
10

11 HOUSE BILL 40, as amended
12

13 has had it under consideration and reports same with
14 recommendation that it DO PASS.
15

16 Respectfully submitted,
17

18 _____
19 R. David Pederson, Chairman
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HJ/HB 40, as amended

Page 18

4 Adopted _____ Not Adopted _____

6 (Chief Clerk)

(Chief Clerk)

8 Date _____

10 The roll call vote was 8 For 0 Against

11 Yes: 8

12 Excused: Godbey, Luna, Mallory, Sanchez

13 Absent: None

15 J: \99BillSWP\H0040

underscored material = new
[bracketed material] = delete