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HB 2410: motor vehicle dealers; franchises

Sponsor: Representative Cook, LD 7

Transmitted to the Governor

Overview

Outlines an indemnification process for motor vehicle dealer franchisees against vehicle manufacturers, importers, distributors, factory branches or franchisors and establishes various other requirements and restrictions for vehicle manufacturers, importers, distributors, factory branches or franchisors relating to motor vehicle dealers.

History

A manufacturer of new motor vehicles, factory branch, distributor, distributor branch, field representative, officer or agent of these entities is prohibited from coercing or attempting to coerce a new motor vehicle dealer to:

- 1) accept delivery of a new motor vehicle or vehicles, parts or accessories for the vehicle or vehicles or any other commodities that the dealer has not ordered;
- 2) enter into an agreement with the manufacturer, factory branch, distributor or distributor branch;
- 3) do any other act unfair to the dealer by threatening to cancel or not renew a franchise existing between the manufacturer, factory branch, distributor or distributor branch;
- 4) construct, renovate or make substantial alterations to the dealer's facilities unless the manufacturer, factory branch, distributor or distributor branch demonstrate that the changes are reasonable and justifiable or unless the alteration is reasonably required to effectively display and service a vehicle based on its technology;
- 5) enter a real property use or site control agreement as a condition of awarding a franchise, adding a line-make or dealer agreement to an existing new motor vehicle dealer, renewing a dealer agreement, approving the sale or transfer of the ownership of a dealership or approving the relocation of a dealership; or
- 6) in connection with the sale of a used motor vehicle, other than a used vehicle sold under a factory's certified pre-owned program, require the use of only parts and accessories manufactured by the manufacturer, factory branch, distributor, distributor branch or importer ([A.R.S. § 28-4458](#)).

A factory is prohibited from directly or indirectly competing with or unfairly discriminating amongst its dealers. Statute outlines what consists of competition or unfair discrimination ([A.R.S. § 28-4460](#)).

Provisions

Franchisee Indemnification

1. Prohibits a licensed manufacturer, importer, distributor, distributor branch, factory branch or franchisor from failing or refusing to indemnify an existing or former franchisee or franchisee's successors if a franchisee demands indemnification. (Sec. 1)
2. Assigns any sustained damages, attorney fees and other expenses reasonably incurred by a franchisee to a licensed manufacturer, importer, distributor, distributor branch, factory branch or franchisor if the damages result from a claim made by a third party against the franchisee that result from:
 - a) the condition, characteristic, manufacture, assembly or design of any vehicle, parts or accessories, tools or equipment or the selection or combination of components or parts that are manufactured or distributed by the manufacturer, importer, distributor, distributor branch, factory branch or franchisor;
 - b) service systems, procedures or methods that the manufacturer, importer, distributor, distributor branch, factory branch or franchisor requires the franchisee to use if the franchisee properly used the system, procedure or method;
 - c) the improper use or disclosure by a manufacturer, importer, distributor, distributor branch, factory branch or franchisor of nonpublic personal information obtained from a franchisee relating to a consumer, customer or employee of the franchisee;
 - d) an act or omission of the manufacturer, importer, distributor, distributor branch, factory branch or franchisor for which the franchisee would have a claim for contribution or indemnity under law or the franchise, notwithstanding any prior termination or expiration of the franchise; or
 - e) an act or omission of the franchisee that results from the franchisee's use of a service provided by a digital vendor required by the manufacturer, importer, distributor, distributor branch, factory branch or franchisor if the use of the service violates state or federal law. The indemnity protection does not apply if the claim arises out of the willful misconduct of the franchisee or the franchisee's employee. (Sec. 1)

Direct Current Fast Charging Stations

3. Prohibits a manufacturer of new motor vehicles, factory branch, distributor, distributor branch, field representative, office or agent or any representative of these entities from coercing or attempting to coerce a new motor vehicle dealer to install a customer facing electric vehicle charging station accessible to the general public on the dealer's dealership premises. (Sec. 2)

Competition and Unfair Discrimination

4. Declares that a factory is competing with or discriminating against its dealers if the factory implements or modifies a vehicle reservation system for the sale or lease of motor vehicles unless:
 - a) the vehicle reservation system uses customer dealer selection or other objective criteria to allocate the vehicles; and
 - b) at least 30 days before implementing the vehicle reservation system a factory makes available to its dealers a description of the reservation program rules and requirements through the system. Notice of a material change to the rules and requirements must be provided by the factory to its dealers at least 30 days before the change becomes effective. (Sec. 4)
5. Restricts a factory from *updating* a vehicle or product, service or financing to any retail consumer or lead unless they go through the factory's dealers. (Sec. 4)

6. Prohibits a factory from selling or offering to sell, lease, update or provide to any retail consumer or lead a subscription service for a motor vehicle feature that uses components and hardware that is already installed on the motor vehicle at the time of purchase or lease and would function after activation without ongoing cost to or support by the dealer, manufacturer, factory, distributor or third-party service provider. (Sec. 4)
7. Clarifies that the previous provision does not prohibit a factory from renewing or charging any subscription or connection fees for any in-vehicle electronic wireless communication, information or entertainment systems such as navigation system updates, satellite radio, roadside assistance, software-dependent driver assistance or driver automation features and vehicle-connected services that rely on cellular or other data networks for continued operation. (Sec. 4)

Miscellaneous

8. Specifies that a manufacturer, importer or distributor cannot adopt, change, establish or implement a plan or system for the allocation, scheduling or delivery of new motor vehicles, parts or accessories to its motor vehicle dealers that is not fair, reasonable or equitable to dealers of the manufacturer's, importer's or distributor's line-make. (Sec. 2)
9. States that a manufacturer, importer or distributor is not required to make available or pay incentives or other benefits to a dealer that has not met the eligibility requirements on the same terms that are applied uniformly and equitably to all dealers of the same line-make in this state. (Sec. 2)
10. Prohibits a manufacturer or distributor from using or threatening to use the exercise of the right of first refusal in bad faith. (Sec. 3)
11. Contains an applicability clause that exempts a manufacturer that does not and has never used franchised new motor vehicle dealers to offer, sell or service new motor vehicles manufactured or distributed by a franchisor, manufacturer, importer or distributor from statute regulating motor vehicle dealer franchises. (Sec. 5)
12. Defines terms. (Sec. 1, 2, 4)
13. Makes technical and conforming changes. (Sec. 1, 3, 4)