

Senate Bill 398

By: Senators Watson of the 1st, Jones of the 25th, Hufstetler of the 52nd, Jackson of the 41st,
Mullis of the 53rd and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 10-1-664.1 of the Official Code of Georgia Annotated, relating to
2 restrictions on the ownership, operation, or control of dealerships by manufacturers and
3 franchisors and competing unfairly with new dealers, so as to amend a prohibition on the
4 ownership, operation, and control of motor vehicle dealerships by certain manufacturers,
5 franchisors, and any parent, affiliate, or wholly or partially owned subsidiary thereof; to
6 provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Code Section 10-1-664.1 of the Official Code of Georgia Annotated, relating to restrictions
10 on the ownership, operation, or control of dealerships by manufacturers and franchisors and
11 competing unfairly with new dealers, is amended by revising subsections (a) and (b) as
12 follows:

13 "(a) It shall be unlawful for any manufacturer or franchisor or any parent, affiliate, wholly
14 or partially owned subsidiary, officer, or representative of a manufacturer or franchisor to
15 own, operate, or control or to participate in the ownership, operation, or control of any new
16 motor vehicle dealer in this state within a 15 mile radius of an existing dealer of such

17 manufacturer or franchisor; to own, operate, or control, directly or indirectly, more than a
18 45 percent interest in a dealer or dealership in this state; to establish in this state an additional
19 dealer or dealership in which such person or entity has any interest; or to own, operate, or
20 control, directly or indirectly, any interest in a dealer or dealership in this state unless such
21 person or entity has acquired such interest from a dealer or dealership which has been in
22 operation for at least five years prior to such acquisition; provided, however, that this
23 subsection shall not be construed to prohibit:

24 (1) The ownership, operation, or control by a manufacturer or franchisor of a new motor
25 vehicle dealer for a temporary period, not to exceed one year, during the transition from
26 one owner or operator to another;

27 (2) The ownership, operation, or control of a new motor vehicle dealer by a manufacturer
28 or franchisor during a period in which such new motor vehicle dealer is being sold under
29 a bona fide contract, shareholder agreement, or purchase option to the operator of the
30 dealership;

31 (3) The ownership, operation, or control of a new motor vehicle dealer by a manufacturer
32 or franchisor at the same location at which such manufacturer or franchisor has been
33 engaged in the retail sale of new motor vehicles as the owner, operator, or controller of
34 such dealership for a continuous two-year period of time immediately prior to April 1,
35 1999, where there is no prospective new motor vehicle dealer available to own or operate
36 the dealership in a manner consistent with the public interest;

37 (4) The ownership, operation, or control by a manufacturer which manufactures only
38 motorcycles or motor homes of a retail sales operation engaged in the retail sale of
39 motorcycles or motor homes;

40 (5) The ownership, operation, or control by a manufacturer which is selling motor
41 vehicles directly to the public at an established place of business on January 1, 1999, and
42 which has never sold its line make of new motor vehicles in this state through a

43 franchised new motor vehicle dealer unless and until such manufacturer is wholly or
44 partially acquired by another manufacturer or franchisor;

45 (6) The ownership, operation, or control by a manufacturer which manufactures trucks
46 with a gross vehicle weight rating of 12,500 pounds or more of a new motor vehicle
47 dealer which only sells trucks with a gross vehicle weight rating of 12,500 pounds or
48 more at the same location at which such manufacturer has been engaged in the retail sale
49 of such trucks as the owner, operator, or controller of such dealership for a continuous
50 two-year period of time immediately prior to April 1, 1999, or at one additional location
51 which is not located within the relevant market area of an existing dealer of the same line
52 make of trucks; provided, however, that this exemption shall apply to a manufacturer
53 described in this paragraph only until such manufacturer is wholly or partially acquired
54 by another manufacturer or distributor;

55 (7) A manufacturer from selling new motor vehicles to customers if such vehicles are
56 manufactured or assembled in accordance with custom design specifications of the
57 customer and such sales are limited to no more than 150 vehicles per year; or

58 (8) The ownership, operation, or control by a manufacturer ~~of not more than five~~
59 ~~locations licensed as~~ or any parent, affiliate, or wholly or partially owned subsidiary
60 thereof of new motor vehicle dealerships for the sale of new motor vehicles and any
61 ~~number of locations~~ facilities that engage exclusively in the repair of ~~such manufacturer's~~
62 ~~line make of motor vehicles~~ line make motor vehicles of such manufacturer or its parent,
63 affiliate, or wholly or partially owned subsidiary, provided that such manufacturer ~~was~~
64 ~~selling or otherwise distributing its motor vehicles at an established place of business in~~
65 ~~this state as of January 1, 2015, and~~ or its parent, affiliate, or wholly or partially owned
66 subsidiary:

67 (A) Manufactures ~~The manufacturer manufactures~~ or assembles zero emissions motor
68 vehicles exclusively and has never sold its line make of motor vehicles in this state
69 through a franchised new motor vehicle dealer; ~~and~~

70 (B) ~~Has~~ ~~The manufacturer has~~ not acquired a controlling interest in a franchisor or a
71 subsidiary or other entity controlled by such franchisor, or sold or transferred a
72 controlling interest in such manufacturer or its parent, affiliate, or wholly or partially
73 owned subsidiary to a franchisor or subsidiary or other entity controlled by such
74 franchisor;

75 (C) Maintains, itself or through an authorized agent, service and repair facilities in this
76 state in order to satisfy the manufacturer's or its parent, affiliate, or wholly or partially
77 owned subsidiary's obligation to consumers under Article 28 of Chapter 1 of Title 10,
78 the 'Georgia Lemon Law';

79 (D) Is domiciled in the United States; and

80 (E) Maintains a physical location in the United States for the direction, control, and
81 coordination of its activities.

82 (b) It shall be unlawful for a manufacturer or franchisor or any parent, affiliate, wholly or
83 partially owned subsidiary, officer, or representative of a manufacturer or franchisor to
84 compete unfairly with a its new motor vehicle dealer of the same line make, operating
85 under a franchise, in the State of Georgia, and, except as otherwise provided in this
86 subsection, the mere ownership, operation, or control of a new motor vehicle dealer by a
87 manufacturer or franchisor under the conditions set forth in paragraphs (1) through (8) of
88 subsection (a) of this Code section shall not constitute a violation of this subsection. For
89 purposes of this Code section, a manufacturer or franchisor or any parent, affiliate, wholly
90 or partially owned subsidiary, officer, or representative of a manufacturer or franchisor
91 shall be conclusively presumed to be competing unfairly if it gives any preferential
92 treatment to a dealer or dealership of which any interest is directly or indirectly owned,
93 operated, or controlled by such manufacturer or franchisor or any ~~partner~~ parent, affiliate,
94 wholly or partially owned subsidiary, officer, or representative of such manufacturer or
95 franchisor, expressly including, but not limited to, preferential treatment regarding the
96 direct or indirect cost of vehicles or parts, the availability or allocation of vehicles or parts,

97 the availability or allocation of special or program vehicles, the provision of service and
98 service support, the availability of or participation in special programs, the administration
99 of warranty policy, the availability and use of after warranty adjustments, advertising, floor
100 planning, financing or financing programs, or factory rebates.”

101 **SECTION 2.**

102 All laws and parts of laws in conflict with this Act are repealed.