

AN ACT

RELATING TO MOTOR VEHICLE DEALER FRANCHISING; MAKING CERTAIN UNFAIR ACTS AND PRACTICES UNLAWFUL FOR MOTOR VEHICLE MANUFACTURERS; DECLARING AN EMERGENCY.

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

Section 1. Section 57-16-3 NMSA 1978 (being Laws 1973, Chapter 6, Section 3, as amended) is amended to read:

"57-16-3. DEFINITIONS.--As used in Chapter 57, Article 16 NMSA 1978:

A. "motor vehicle" means every self-propelled vehicle, having two or more wheels, by which a person or property may be transported on a public highway and includes recreational vehicles;

B. "motor vehicle dealer" or "dealer" means any person who sells or solicits or advertises the sale of new or used motor vehicles. "Motor vehicle dealer" or "dealer" shall not include:

(1) receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court;

(2) public officers while performing their duties as such officers;

(3) persons making casual sales of their own vehicles duly registered and licensed to them by the state; or

(4) finance companies, banks and other lending institutions covering sales of repossessed vehicles;

C. "person" means every natural person, partnership, corporation, association, trust, estate or any other legal entity;

D. "prospective purchaser" means a person who has a bona fide written agreement to purchase a franchise;

E. "manufacturer" means any person who manufactures or assembles new motor vehicles either within or outside of this state and may include a predecessor manufacturer or a successor manufacturer;

F. "distributor" means any person who distributes or sells new or used motor vehicles to dealers and who is not a manufacturer;

G. "representative" means any person who is or acts as an agent, employee or representative of a manufacturer or distributor and who performs any duties in this state relating to promoting the distribution or sale of new or used motor vehicles or contacts dealers in this state on behalf of a manufacturer or distributor;

H. "franchise" means an oral or written arrangement for a definite or indefinite period in which a manufacturer, distributor or representative grants to a motor vehicle dealer a license to use a trade name, service mark or related characteristic and in which there is a community of

interest in the marketing of motor vehicles or services related to marketing, service or repair of motor vehicles at wholesale, retail, leasing or otherwise;

I. "fraud" includes, in addition to its normal legal connotation, the following:

(1) a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact;

(2) a promise or representation not made honestly and in good faith; and

(3) an intentional failure to disclose a material fact;

J. "sale" includes:

(1) the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation or mortgage in any form, whether by transfer in trust or otherwise, of any motor vehicle or interest therein or of any franchise related thereto; and

(2) any option, subscription or other contract or solicitation looking to a sale or offer or attempt to sell in any form, whether spoken or written. A gift or delivery of any motor vehicle or franchise with respect thereto with, or as, a bonus on account of the sale of anything shall be deemed a sale of such motor vehicle or franchise;

K. "motorcycle" means any motor vehicle used on or off a public highway that has an unladen weight of less than one thousand five hundred pounds;

L. "recreational vehicle" means any motor vehicle with a camping body that either has its own motive power or is drawn by another vehicle;

M. "designated family member" means a spouse, child, grandchild, parent, brother or sister of a deceased or incapacitated dealer who is entitled to inherit the dealer's ownership interest in the dealership under the terms of a will or the laws of intestate succession in this state. In the case of an incapacitated dealer, the term means the person appointed by a court as the legal representative of the dealer's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased dealer. However, the term shall be limited to mean only that individual designated by a dealer in a written document filed with the manufacturer, distributor or representative in the event that such a document has been filed;

N. "current price" means an amount equal to the price listed in the manufacturer's or distributor's printed price list in effect when the franchise is terminated, less applicable trade and cash discounts;

O. "dealer cost" means an amount equal to the sum

of the original invoice price that the dealer paid for inventory and the cost of the delivery of the inventory from the manufacturer or distributor to the dealer, less applicable discounts;

P. "inventory" means new or unused motorcycles, motor vehicles, motorcycle attachments and motorcycle and motor vehicle repair parts that are provided by a manufacturer or distributor to a dealer under a franchise agreement and that are purchased within thirty-six months of the termination of the franchise or are listed in the manufacturer's or distributor's current sales manual or price list at the time that the franchise is terminated;

Q. "relevant market area" means an area of a size specified in this subsection around an existing motor vehicle dealer's place of business. The size of the area shall be the greater of the area of responsibility specified in the dealer's franchise or a circle with a center at the dealer's place of business and a radius of:

(1) seven miles, if the population of the county in which the dealership is located is two hundred fifty thousand or more;

(2) fifteen miles, if the population of the county in which the dealership is located is less than two hundred fifty thousand but is thirty-five thousand or more; or

(3) twenty miles in all other cases.

If the existing and proposed dealerships are in different counties, the lesser of the applicable mileage limitations shall be used. For purposes of this subsection, the population of any area shall be determined in accordance with the most recent decennial census or the most recent population update from the national planning data corporation or other similar recognized source, whichever is later;

R. "successor manufacturer" means a motor vehicle manufacturer that, on or after January 1, 2010, acquires, succeeds to or assumes any part of the business of a predecessor manufacturer as the result of:

(1) a change in ownership, operation or control of the predecessor manufacturer;

(2) the termination, suspension or cessation of all or a part of the business operation of the predecessor manufacturer;

(3) the discontinuance of the sale of a product line; or

(4) a change in the distribution system by the predecessor manufacturer, whether through a change in distributor or the predecessor manufacturer's decision to cease conducting business through a distributor;

S. "predecessor manufacturer" means a manufacturer that is acquired, succeeded by or assumed by a successor manufacturer; and

T. "former franchisee":

(1) means a dealer that has entered into a franchise agreement with a manufacturer and that has:

(a) entered into a termination agreement or deferred termination agreement with the manufacturer related to the franchise; or

(b) has had the franchise canceled, terminated or otherwise ended; and

(2) includes the designated successor of the former franchisee in the event the former franchisee is deceased or disabled."

Section 2. Section 57-16-8 NMSA 1978 (being Laws 1973, Chapter 6, Section 8) is amended to read:

"57-16-8. UNREASONABLE RESTRICTIONS--SITE CONTROL AGREEMENTS--EXCLUSIVE USE AGREEMENTS.--

A. It is unlawful to, directly or indirectly, impose unreasonable restrictions on the motor vehicle dealer or franchise relative to transfer, sale, right to renew, termination discipline, noncompetitive covenants, site-control whether by sublease, collateral pledge of lease or otherwise, right of first refusal to purchase, option to purchase, compliance with subjective standards and assertion of legal or equitable rights.

B. Unless a separate agreement lasting no more than fifteen years has been voluntarily entered into for

separate consideration, it is unlawful to, directly or indirectly, require a site control agreement or exclusive use agreement as a condition of:

- (1) awarding a franchise to a prospective motor vehicle dealer;
- (2) adding a line make or franchise to an existing dealer;
- (3) renewing the franchise of an existing dealer;
- (4) approving the relocation of an existing dealer's facility; or
- (5) approving the sale or transfer of ownership of a franchise.

C. As used in this section, "site control agreement" or "exclusive use agreement" means any agreement that has the effect of:

- (1) requiring a dealer to establish or maintain exclusive dealership facilities;
- (2) restricting the ability of a dealer or a dealer's lessor to transfer, sell, lease or change the use of the dealership premises; or
- (3) preventing or attempting to prevent a dealer from acquiring, adding or maintaining a sales or service operation for another line make of motor vehicles at the same or expanded facility at which the dealer currently

operates a dealership, provided that the dealer complies with any reasonable facilities requirements of the manufacturer, successor manufacturer or distributor."

Section 3. Section 57-16-9 NMSA 1978 (being Laws 1973, Chapter 6, Section 9, as amended) is amended to read:

"57-16-9. FRANCHISE RENEWAL--TERMINATION--ANTICIPATORY TERMINATION.--

A. Anything to the contrary notwithstanding, it is unlawful for the manufacturer, distributor or representative without due cause to fail to renew a franchise on terms then equally available to all its motor vehicle dealers or their prospective purchasers, to terminate a franchise or to restrict the transfer of a franchise unless the dealer receives fair and reasonable compensation for the value of the business. A prospective purchaser may enforce the provisions of this section whether or not the person is a dealer.

B. A public announcement by a manufacturer or distributor of an intention to cease manufacturing or distribution of a motor vehicle brand within three years of the announcement or upon expiration of a dealers' current franchise or selling agreement may at the option of an affected dealer be deemed an anticipatory involuntary termination of the dealer's franchise."

Section 4. Section 57-16-9.2 NMSA 1978 (being Laws 1991, Chapter 49, Section 2, as amended) is amended to read:

"57-16-9.2. MOTOR VEHICLE DEALERS--TERMINATION OF
FRANCHISE--RETURN OF INVENTORY.--

A. If on termination of a franchise the dealer delivers to the manufacturer or distributor the inventory, vehicle brand-specific tools, signage and other specialized systems, equipment and real estate required by the manufacturer that was purchased from the manufacturer or distributor and that is held by the dealer on the date of termination, the manufacturer or distributor shall pay to the dealer:

(1) the dealer cost of the new, unsold and undamaged motorcycles and motor vehicles from the current and immediately preceding two model years and purchased from the manufacturer or distributor within fourteen months prior to receipt of a notice of termination;

(2) an amount equal to ninety-five percent of the current price of new, unused and undamaged motorcycle attachments and motor vehicle repair parts;

(3) an amount equal to an additional five percent of the current price of new, unused and undamaged motorcycle attachments and motor vehicle repair parts, unless the manufacturer or distributor performs the handling, packing and loading of the parts, in which case no additional amount is required under this paragraph;

(4) the fair market value, determined by

appraisal as if installed for continuous use in an operating dealership, of all vehicle brand-specific special tools, signage and other specialized systems and equipment required by the manufacturer or distributor for dealership operations. The fair market value will be determined by a qualified independent appraiser agreed upon by the manufacturer or distributor and the dealer unless the fair market value is mutually agreed upon by the parties; and

(5) the economic loss to the dealer resulting from idled or underused dealer facility real estate due to a manufacturer's involuntary termination, determined by any reasonable means, including appraisal, unless the dealer is in violation of the franchise agreement. Economic loss is presumed to be at least equal to the value of two years of dealer facility fair market rental value, as if the facility were an operating dealership; real estate property tax; and property insurance.

B. The manufacturer or distributor may subtract from the sum due under Subsection A of this section the amount of debts owed by the dealer to the manufacturer or distributor. The manufacturer or distributor and the dealer are each responsible for one-half of the cost of delivering the inventory to the manufacturer or distributor.

C. The manufacturer or distributor shall pay the amount due under this section before the sixty-first day after

the day that the manufacturer or distributor receives inventory from the dealer.

D. On payment of the amount due under this section, title to the inventory is transferred to the manufacturer or distributor.

E. The provisions of this section shall not apply to recreational travel trailer or motor home manufacturers or dealers."

Section 5. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.
