

## 10 M.R.S. § 1171

Current through Chapters 649, 652, 661-662, 676, 732, 746-749, and 759 of the 2022 Second Regular Session of the 130th Maine Legislature.

*Maine Revised Statutes Annotated by LexisNexis® > TITLE 10. Commerce and Trade (Pts. 1 — 15) > PART 3. Regulation of Trade (Chs. 201 — 233) > CHAPTER 204. Business Practices Between Motor Vehicle Manufacturers, Distributors and Dealers (Subchs. 1 — 2) > SUBCHAPTER 1. Regulation of Business Practices Between Motor Vehicle Manufacturers, Distributors and Dealers (§§ 1171 — 1186)*

### § 1171. Definitions

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As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

**1. Distributor or wholesaler.** “Distributor” or “wholesaler” means any person who sells or distributes new or used motor vehicles to motor vehicle dealers or who maintains distributor representatives within this State.

**1-A. Designated family member.** “Designated family member” means the spouse, child, grandchild, parent, brother or sister of the owner of a new motor vehicle dealer who, in the case of the owner’s death, is entitled to inherit the ownership interest in the new motor vehicle dealer under the terms of the owner’s will, or who, in the case of an incapacitated owner of a new motor vehicle dealer, has been appointed by a court as the legal representative of the new motor vehicle dealer’s property.

**1-B. Broker.** “Broker” means a person who, for a fee, commission or other valuable consideration, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle and who is not:

**A.** A franchised dealer or a bona fide employee of a franchised dealer when acting on behalf of a franchised dealer;

**B.** A manufacturer or distributor or a bona fide employee of a manufacturer or distributor when acting on behalf of a manufacturer or distributor; or

**C.** At any point in the transaction the bona fide owner of the vehicle involved in the transaction.

**1-C. Board.** “Board” means the Maine Motor Vehicle Franchise Board created pursuant to section 1187.

**2. Distributor branch.** “Distributor branch” means a branch office maintained by a distributor or wholesaler who or which sells or distributes new or used motor vehicles to motor vehicle dealers.

**3. Distributor representative.** “Distributor representative” means a representative employed by a distributor branch, distributor or wholesaler.

**3-A. Essential tool.** “Essential tool” means a tool, implement or other device required by the manufacturer, including but not limited to a tablet, scanner, diagnostic machine, computer, computer program, computer software, website, website portal or similar tool, with respect to which there is no other similar tool or device available from any source other than the manufacturer or the representative of a manufacturer that will perform the function necessary to the diagnosis or repair of a manufacturer’s express warranty claim on a new motor vehicle.

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- 4. Factory branch.** “Factory branch” means a branch office maintained by a manufacturer which manufactures or assembles motor vehicles for sale to distributors or motor vehicle dealers or which is maintained for directing and supervising the representatives of the manufacturer.
- 5. Factory representative.** “Factory representative” means a representative employed by a manufacturer or employed by a factory branch for the purpose of making or promoting the sale of motor vehicles or for supervising, servicing, instructing or contracting motor vehicle dealers or prospective motor vehicle dealers.
- 6. Franchise.** “Franchise” means an oral or written arrangement for a definite or indefinite period in which a manufacturer, distributor or wholesaler 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 thereto at wholesale, retail, leasing or otherwise.
- 7. Franchisee.** “Franchisee” means a motor vehicle dealer to whom a franchise is offered or granted.
- 8. Franchisor.** “Franchisor” means a manufacturer, distributor or wholesaler who grants a franchise to a motor vehicle dealer.
- 9. Fraud.** “Fraud” includes in addition to its normal legal connotation the following: an intentionally false representation; a promise or representation not made honestly and in good faith; and an intentional failure to disclose a material fact.
- 9-A. Good faith.** “Good faith” means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade as is defined and interpreted in the Uniform Commercial Code, Title 11, section 1-1201, subsection (20).
- 9-B. Line make.** “Line make” means motor vehicles that are offered for sale, lease or distribution under a common name, trademark, service mark or brand name.
- 10. Manufacturer.** “Manufacturer” means a person, partnership, firm, association, corporation or trust, resident or nonresident, who manufactures or assembles new motor vehicles or imports for distribution through distributors of motor vehicles or any partnership, firm, association, joint venture, corporation or trust, resident or nonresident, that is controlled by the manufacturer. The term “manufacturer” includes the terms “franchisor,” “distributor,” “distributor branch,” “factory branch” and “factory representative.”
- 11. Motor vehicle.** “Motor vehicle” means any motor-driven vehicle, except motorcycles and recreational vehicles defined under section 1432, subsection 18-A, required to be registered under Title 29-A, chapter 5.
- 12. Motor vehicle dealer.** “Motor vehicle dealer” means a person other than a manufacturer, distributor, distributor branch, distributor representative, factory branch or factory representative who sells or solicits or advertises the sale of new or used motor vehicles. “Motor vehicle dealer” does not include receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court or public officers while performing their duties as public officers.
- 13. New motor vehicle.** “New motor vehicle” means a motor vehicle that has not been previously sold to any person except a distributor, wholesaler or motor vehicle dealer for resale by a franchise.
- 14. Person.** “Person” means a natural person, corporation, partnership, trust or other entity, and, in case of an entity, it shall include any other entity in which it has a majority interest or effectively controls as well as the individual officers, directors and other persons in active control of the activities of each such entity.
- 15. Sale.** “Sale” means the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, 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 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.

**16. Successor manufacturer; predecessor manufacturer.** “Successor manufacturer” means any manufacturer that succeeds, or assumes any part of the business of, another manufacturer, referred to as the “predecessor manufacturer,” as the result of:

- A. A change in ownership, operation or control of the predecessor manufacturer by sale or transfer of assets, corporate stock or other equity interest, assignment, merger, consolidation, combination, joint venture, redemption, court-approved sale, operation of law or otherwise;
- B. The termination, suspension or cessation of a part or all of the business operations of the predecessor manufacturer;
- C. The noncontinuation of the sale of the product line; or
- D. A change in 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 altogether.

## History

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### Section History

PL 1975, c. 573 (NEW). PL 1981, c. 331, §§1-3 (AMD). PL 1995, c. 65, §A14 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 1997, c. 473, §1 (AMD). PL 1997, c. 521, §§1-4 (AMD). PL 2003, c. 356, §3 (AMD). PL 2009, c. 367, §1 (AMD). PL 2009, c. 432, §1 (AMD). PL 2009, c. 562, §1 (AMD). RR 2013, c. 2, §13 (COR). PL 2013, c. 534, §1 (AMD).

Annotations

## Notes to Decisions

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**Business & Corporate Law: Distributorships & Franchises: Causes of Action: Restraints of Trade**

**Business & Corporate Law: Distributorships & Franchises: Terminations: General Overview**

**Governments: Legislation: Statutory Remedies & Rights**

**Transportation Law: Commercial Vehicles: Licensing & Registration**

**Business & Corporate Law: Distributorships & Franchises: Causes of Action: Restraints of Trade**

Motor vehicle manufacturer's efforts to notify its dealers that a sales program would end were insufficient because compliance was mandatory, the manufacturer did not provide the dealer with 90 days' written notice by certified mail, and the superior court properly found that the use of “franchise” in connection with an “arrangement” included the program. *Ford Motor Co. v. Darling's*, 86 A.3d 35, 2014 Me. LEXIS 7 (Me. 2014).

**Business & Corporate Law: Distributorships & Franchises: Terminations: General Overview**

Integrating the definitions in Me. Rev. Stat. Ann. tit. 29-A, § 101(59), (91), (92) and Me. Rev. Stat. Ann. tit. 29-A, § 351, the term “motor vehicle,” for purposes of Me. Rev. Stat. Ann. tit. 10, § 1171(11) of the Maine Motor Vehicle Dealers Act meant any motor driven device for the conveyance of persons or property on a road, highway, parkway,

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street, or bridge used for vehicular traffic, whether public or private, that was operated or remained on a public way; because motorized graders were not “motor vehicles” within the meaning of tit. 10, § 1171(11), a dealer was not entitled to the protections in the Maine Motor Vehicle Dealers Act when a manufacturer terminated its distributor agreement. *N.A. Burkitt v. Champion Rd. Mach.*, 763 A.2d 106, 2000 Me. LEXIS 216 (Me. 2000).

**Governments: Legislation: Statutory Remedies & Rights**

Integrating the definitions in Me. Rev. Stat. Ann. tit. 29-A, § 101(59), (91), (92) and Me. Rev. Stat. Ann. tit. 29-A, § 351, the term “motor vehicle,” for purposes of Me. Rev. Stat. Ann. tit. 10, § 1171(11) of the Maine Motor Vehicle Dealers Act meant any motor driven device for the conveyance of persons or property on a road, highway, parkway, street, or bridge used for vehicular traffic, whether public or private, that was operated or remained on a public way; because motorized graders were not “motor vehicles” within the meaning of tit. 10, § 1171(11), a dealer was not entitled to the protections in the Maine Motor Vehicle Dealers Act when a manufacturer terminated its distributor agreement. *N.A. Burkitt v. Champion Rd. Mach.*, 763 A.2d 106, 2000 Me. LEXIS 216 (Me. 2000).

**Transportation Law: Commercial Vehicles: Licensing & Registration**

Integrating the definitions in Me. Rev. Stat. Ann. tit. 29-A, § 101(59), (91), (92) and Me. Rev. Stat. Ann. tit. 29-A, § 351, the term “motor vehicle,” for purposes of Me. Rev. Stat. Ann. tit. 10, § 1171(11) of the Maine Motor Vehicle Dealers Act meant any motor driven device for the conveyance of persons or property on a road, highway, parkway, street, or bridge used for vehicular traffic, whether public or private, that was operated or remained on a public way; because motorized graders were not “motor vehicles” within the meaning of tit. 10, § 1171(11), a dealer was not entitled to the protections in the Maine Motor Vehicle Dealers Act when a manufacturer terminated its distributor agreement. *N.A. Burkitt v. Champion Rd. Mach.*, 763 A.2d 106, 2000 Me. LEXIS 216 (Me. 2000).

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### § 1171-A. Corporate affiliates

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A franchisor may not use any subsidiary corporation, affiliated corporation, other corporation in which it owns or controls more than 5% of the stock or other corporation, partnership, association or person to accomplish what would otherwise be prohibited conduct under this chapter on the part of the franchisor. This section does not limit the right of any entity included within the scope of this section to engage in reasonable and appropriate business practices in accordance with the usage of the trade in which it is engaged.

### History

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#### Section History

PL 1997, c. 521, §5 (NEW).

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## 10 M.R.S. § 1171-B

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### § 1171-B. Manufacturer; license

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- 1. License.** Effective January 1, 1999, the Secretary of State may grant a manufacturer license under the following conditions.
  - A.** Except as provided by this section, a person may not engage in business or serve in the capacity of or act as a manufacturer or distributor without obtaining a license for each line make maintained in the State as provided in this section.
  - B.** An application for a license for a manufacturer or distributor must be on a form prescribed by the Secretary of State. The applicant shall file a separate application for each separate line make. The application must contain the manufacturer or distributor's address of its principal place of business, the address where notices should be sent and the address of its registered agent in this State and must be accompanied by its annual report and a list of its franchised new motor vehicle dealers in this State.
  - C.** All licensees may apply for issuance of a license for each succeeding year by complying with the application process specified by this section and rules of the Secretary of State. A license or renewal of a license is issued subject to provisions of this chapter and rules of the Secretary of State.
  - D.** The annual fee for a license is \$1,500.
  - E.** Manufacturers and distributors of motorcycles and recreational vehicles are exempt from the manufacturer licensing requirements.
- 2. Sanctions, denial, revocation or suspension of license.** The Secretary of State shall sanction, deny, revoke or suspend a license under the following conditions.
  - A.** The Secretary of State may deny an application for a license, revoke or suspend an outstanding license, place on probation a person whose license has been suspended or reprimand a licensee for any of the following reasons:
    - (1)** Material misrepresentation in any application or other information filed under this section or rules of the Secretary of State; or
    - (2)** Failure to maintain the qualifications for a license.
  - B.** A license may not be denied, revoked or suspended and disciplinary action may not be taken under this section except after a hearing conducted by the Secretary of State in accordance with the Maine Administrative Procedure Act.
- 3. Civil penalty.** If the board determines after a proceeding conducted in accordance with this chapter that a manufacturer or distributor is violating or has violated any provision of this chapter or any rule or order of the board issued pursuant to this chapter, the board shall levy a civil penalty of not less than \$1,000 nor more than \$10,000 for each violation. If the violation involves multiple transactions within a 60-day period, these multiple transactions are deemed a single violation.

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In determining the amount of a civil penalty levied under this chapter, the board shall consider:

- A. The seriousness of the violation, including but not limited to the nature, circumstances, extent and gravity of the prohibited acts and the harm or potential harm created to the safety of the public;
- B. The economic damage to the public caused by the violation;
- C. Any previous violations;
- D. The amount necessary to deter future violations;
- E. Efforts made to correct the violation; and
- F. Any other matters that justice may require.

**4. Rules.** Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

**5. License fees collected.** License fees collected under subsection 1, paragraph D and subsection 3 are deposited in the Highway Fund.

## History

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### Section History

PL 1997, c. 521, §5 (NEW). PL 1999, c. 470, §2 (AMD). PL 2003, c. 356, §4 (AMD). PL 2003, c. 434, §1 (AMD). PL 2003, c. 434, §37 (AFF).

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## 10 M.R.S. § 1173

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### **§ 1173. Attorney General and civil remedies**

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**1. Civil remedies.** Any franchisee or motor vehicle dealer who suffers financial loss of money or property, real or personal, or who has been otherwise adversely affected as a result of the use or employment by a franchisor of an unfair method of competition or an unfair or deceptive act or any practice declared unlawful by this chapter may bring an action for damages and equitable relief, including injunctive relief. When the franchisee or dealer prevails, the court shall award attorney's fees to the franchisee or dealer, regardless of the amount in controversy, and assess costs against the opposing party. For the purpose of the award of attorney's fees and costs, whenever the franchisee or dealer is seeking injunctive or other relief, the franchisee or dealer may be considered to have prevailed when a judgment or other final order providing equitable relief is entered in its favor. A final judgment, order or decree rendered against a person in any civil, criminal or administrative proceeding under the United States antitrust laws, under the Federal Trade Commission Act, under the Maine Revised Statutes or under this chapter is regarded as prima facie evidence against the person subject to the conditions set forth in the United States antitrust laws, 15 United States Code, Section 16.

### **History**

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#### **Section History**

PL 1975, c. 573 (NEW). PL 1997, c. 521, §6 (AMD).

Annotations

### **Notes to Decisions**

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**Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: Franchise Agreements**

**Business & Corporate Law: Distributorships & Franchises: Remedies**

**Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: Franchise Agreements**

Automobile dealer's damages for a manufacturer's failure to give the dealer notice of a modification of the parties' franchise agreement were not limited to sums payable during the time the dealer could have contested the manufacturer's modification because (1) the modification was ineffective without giving notice, (2) the manufacturer



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chose not to give notice, and (3) the Business Practices Between Motor Vehicle Manufacturers, Distributors, and Dealers Act created no temporal limitation on damages. *Ford Motor Co. v. Darling's*, 151 A.3d 507, 2016 Me. LEXIS 195 (Me. 2016).

**Business & Corporate Law: Distributorships & Franchises: Remedies**

Automobile dealer's damages for a manufacturer's failure to give the dealer notice of a modification of the parties' franchise agreement were not limited to sums payable during the time the dealer could have contested the manufacturer's modification because (1) the modification was ineffective without giving notice, (2) the manufacturer chose not to give notice, and (3) the Business Practices Between Motor Vehicle Manufacturers, Distributors, and Dealers Act created no temporal limitation on damages. *Ford Motor Co. v. Darling's*, 151 A.3d 507, 2016 Me. LEXIS 195 (Me. 2016).

Motor Vehicle Franchise Board lacked jurisdiction to assess damages under the Business Practices Between Motor Vehicle Manufacturers, Distributors, and Dealers Act. *Ford Motor Co. v. Darling's*, 86 A.3d 35, 2014 Me. LEXIS 7 (Me. 2014).

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### § 1174. Prohibited conduct

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The following acts shall be deemed unfair methods of competition and unfair and deceptive practices. It shall be unlawful for any:

- 1. Damage to public.** Manufacturer, factory branch, factory representative, distributor or wholesaler, distributor branch, distributor representative or motor vehicle dealer to engage in any action which is arbitrary, in bad faith or unconscionable and which causes damage to any of said parties or to the public;
- 2. Coercion involving deliveries and orders.** Manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division, or officer, agent or other representative thereof, to coerce or attempt to coerce, any motor vehicle dealer:
  - A.** To order or accept delivery of any motor vehicle or vehicles, appliances, equipment, parts or accessories therefor, or any other commodity or commodities which such motor vehicle dealer has not voluntarily ordered, or to order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of said motor vehicles as publicly advertised by the manufacturer thereof; or
  - B.** To order for any person any parts, accessories, equipment, machinery, tools, appliances or any commodity whatsoever;
- 3. Certain interference in dealer's business.** Manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, or officer, agent or other representative thereof:
  - A.** To refuse to deliver in reasonable quantities and within a reasonable time after receipt of a dealer's order to any motor vehicle dealer having a franchise or contractual arrangement for the retail sale of new motor vehicles sold or distributed by that manufacturer, distributor, distributor branch or division, factory branch or division any motor vehicles or parts or accessories to motor vehicles covered by that franchise or contract specifically publicly advertised by that manufacturer, distributor, distributor branch or division, factory branch or division or wholesale branch or division to be available for delivery. The allocation of new motor vehicles in this State must be made on a fair and equitable basis and must consider the needs of those dealerships with a relevant market area radius of more than 5 miles as defined in section 1174-A, subsection 1. The manufacturer has the burden of establishing the fairness of its allocation system. A failure by a manufacturer to provide to a dealer a fair and adequate supply and mix of vehicles, including the allocation of vehicles under any separate dealer designation, including but not limited to "premier," "business class or elite" or any other designation not available to all new motor vehicle dealers for that franchise, that results in an effort to terminate a new motor vehicle dealer for, in whole or in part, poor sales performance or market penetration may be evidence that the termination was not for

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good cause. The failure to deliver any motor vehicle is not considered a violation of this chapter if the failure is due to an act of God, work stoppage or delay due to a strike or labor difficulty, shortage of materials, freight embargo or other cause over which the manufacturer, distributor or any agent of the manufacturer or distributor has no control. A separate dealer agreement is not required of a new motor vehicle dealer already a party to a dealer agreement or franchise agreement for the retail sale of any particular new motor vehicle model made or distributed by a manufacturer, distributor, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof, except that a manufacturer or distributor may require a dealer to purchase special tools or equipment, stock reasonable quantities of certain parts, purchase reasonable quantities of promotional materials or participate in training programs that are reasonably necessary for the dealer to sell or service such a new motor vehicle model. Any special tools, parts or signs not used within 2 years of receipt by the dealer may be returned by the dealer to the manufacturer or distributor for a full refund of cost of those special tools, parts and signs;

**B.** To coerce, or attempt to coerce, a motor vehicle dealer to enter into an agreement with that manufacturer, distributor, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof, or to do any other act prejudicial to the dealer by threatening to cancel a franchise or a contractual agreement existing between that manufacturer, distributor, distributor branch or division, factory branch or division or wholesale branch or division and that dealer or by threatening or attempting to modify a franchise during the term of the franchise or upon its renewal, if the modification substantially and adversely affects the motor vehicle dealer's rights, obligations, investment or return on investment, without giving 90 days' written notice by certified mail of the proposed modification to the motor vehicle dealer, unless the modification is required by law or board order. Within the 90-day notice period, the motor vehicle dealer may file with the board and serve notice upon the manufacturer a protest requesting a determination of whether there is good cause for permitting the proposed modification. The manufacturer has the burden of proving good cause. The board shall promptly schedule a hearing and decide the matter within 180 days from the date the protest is filed. Multiple protests pertaining to the same proposed modification must be consolidated for hearing. The proposed modification may not take effect pending the determination of the matter. In determining whether there is good cause for permitting a proposed modification, any relevant factors must be considered, including, but not limited to:

- (1) The reasons for the proposed modification;
- (2) Whether the proposed modification is applied to or affects all motor vehicle dealers in a nondiscriminatory manner;
- (3) Whether the proposed modification will have a substantial and adverse effect upon the motor vehicle dealer's investment or return on investment;
- (4) Whether the proposed modification is in the public interest;
- (5) Whether the proposed modification is necessary to the orderly and profitable distribution; and
- (6) Whether the proposed modification is offset by other modifications beneficial to the motor vehicle dealer.

Notice in good faith to a motor vehicle dealer of that dealer's violation of the terms or provisions of the franchise or contractual agreement does not constitute a violation of this chapter;

**C.** [1981, ch. 331, § 4 (RP).]

**C-1.** To discriminate, directly or indirectly, against a dealer or to take any action to terminate a dealer's franchise based solely upon the results of a survey of a dealer's customers conducted on behalf of a manufacturer, distributor, distributor branch or division, factory branch or division,

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wholesale branch or division or officer or agent thereof that is intended or otherwise purports to measure the performance of a dealer, except a sales contest or other recognition program based on reasonable sales and service criteria;

**C-2.** To discriminate, directly or indirectly, or to use an unreasonable, arbitrary or unfair sales or other performance standard in determining a franchise motor vehicle dealer's compliance with a franchise agreement. The manufacturer has the burden of proving the reasonableness of its performance standards by clear and convincing evidence;

**C-3.** To fail to compensate a motor vehicle dealer for the reconditioning expenses and for all labor and parts the manufacturer requires a dealer to use to repair a new or used vehicle subject to a recall, if the dealer holds a franchise of the same line make as the vehicle. The manufacturer shall process and pay the claim in the same manner as for a claim for warranty reimbursement under section 1176;

**C-4.** To fail to compensate a motor vehicle dealer for a used motor vehicle that is subject to a do not drive order or stop sale order as required by this paragraph, if the dealer holds a franchise of the same line make as the vehicle.

(1) If a used motor vehicle is subject to a do not drive order or stop sale order and a remedy or part necessary to repair the used motor vehicle is not available within 30 days, the manufacturer shall compensate a motor vehicle dealer for each affected used motor vehicle in the inventory of the dealer at a prorated rate of at least 1.5% of the value of the used motor vehicle per month, commencing on the 30th day after the order was issued and ending on the date that the remedy and all parts necessary to repair or service the used motor vehicle are made available to the dealer. A manufacturer is not required by this subparagraph to pay more than the total value of the used motor vehicle to a motor vehicle dealer.

(2) A used motor vehicle is considered to be part of the inventory of the motor vehicle dealer under subparagraph (1) if the used motor vehicle is in the possession of the dealer on the date the do not drive order or stop sale order is issued or if the dealer obtains the used motor vehicle as a result of a trade-in or a lease return after the date that the order is issued but before the remedy and all parts necessary to repair the used motor vehicle are made available to the dealer. The manufacturer may establish the method by which a motor vehicle dealer demonstrates that an affected motor vehicle is part of the inventory of the dealer as described in this subparagraph. The method may not be unreasonable, be unduly burdensome or require the motor vehicle dealer to provide information to the manufacturer that is not necessary for payment.

(3) A manufacturer may not reduce compensation to a motor vehicle dealer, process a charge back to a dealer, reduce the amount that the manufacturer owes a dealer under an incentive program or remove a dealer from an incentive program in response to the dealer submitting a claim or receiving compensation pursuant to this paragraph. This subparagraph does not prohibit a manufacturer from modifying or discontinuing an incentive program prospectively or from making ordinary business decisions.

(4) As used in this paragraph, the following terms have the following meanings.

(a) "Do not drive order" means a notice issued by the Federal Government or a manufacturer advising a motor vehicle dealer or owner of a motor vehicle not to drive the vehicle until the vehicle has been repaired because the vehicle has a safety defect, fails to comply with a federal motor vehicle safety standard, fails to comply with a federal emissions standard or fails to comply with an emissions standard adopted pursuant to Title 38, chapter 4.

(b) "Stop sale order" means a notice issued by the Federal Government or a manufacturer prohibiting a motor vehicle dealer from leasing or selling and delivering at wholesale or retail a motor vehicle in the inventory of the dealer until the vehicle has been repaired

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because the vehicle has a safety defect, fails to comply with a federal motor vehicle safety standard, fails to comply with a federal emissions standard or fails to comply with an emissions standard adopted pursuant to Title 38, chapter 4.

**(c)** "Value of the used motor vehicle" means the average trade-in value indicated in an independent 3rd-party guide for a used motor vehicle of the same year, make, model and mileage;

**C-5.** To use any data, calculations or statistical determinations of the sales performance of a motor vehicle dealer for any purpose for any period of time during which the dealer has at least 5% of its total new and used motor vehicle inventory subject to a stop sale order or do not drive order. For purposes of this paragraph, "stop sale order" and "do not drive order" have the same meaning as in paragraph C-4;

**D.** To resort to or use any false or misleading advertisement in connection with the business as a manufacturer, distributor, distributor branch or division, factory branch or division, wholesaler branch or division or officer, agent or other representative thereof or to force any dealer or association of dealers formed to advertise the sale of new motor vehicles to participate in any advertising campaign or contest or to purchase any promotional materials, display devices or display decorations or materials at the expense of the new motor vehicle dealer;

**E.** To offer to sell or to sell any new motor vehicle at a lower actual price therefor than the actual price offered to any other motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device including, but not limited to, sales promotion plans or programs which result in such lesser actual price; provided, however, this paragraph shall not apply to sales to a motor vehicle dealer for resale to any unit of the United States Government; and provided, further, the provisions of this paragraph shall not apply to sales to a motor vehicle dealer of any motor vehicle ultimately sold, donated or used by said dealer in a driver education program; and provided further, that this paragraph shall not apply so long as a manufacturer, distributor, wholesaler or any agent thereof, offers to sell or sells new motor vehicles to all motor vehicle dealers at an equal price. This paragraph shall not apply to sales by a manufacturer, distributor or wholesaler to the United States Government or any agency thereof;

**F.** To offer to sell or lease or to sell or lease a new motor vehicle to any person except a distributor at a lower actual price than the actual price offered and charged to a motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device that results in a lesser actual price;

**F-1.** To vary or change the cost or the markup in any fashion or through any device whatsoever to any dealer for any motor vehicle of that line make based on:

- (1)** The purchase by any dealer of furniture or other fixtures from any particular source; or
- (2)** The purchase by any dealer of computers or other technology from any particular source.

A manufacturer that designates any tool as special or essential, or who requires the purchase of hardware or software, whether or not designated as an essential tool, may recover from the dealer only the actual costs of providing any such tool, the actual costs of user fees, the actual costs of maintenance fees and other costs of any nature of software for any such tool, as long as the tool is directly available only from the manufacturer or its wholly owned subsidiary;

**G.** To offer to sell or to sell parts or accessories to any new motor vehicle dealer for use in that dealer's own business for the purpose of replacing or repairing the same or a comparable part or accessory, at a lower actual price therefor than the actual price charged to any other new motor vehicle dealer for similar parts or accessories for use in that dealer's own business; provided, however, in those cases where motor vehicle dealers operate and serve as wholesalers of parts and accessories to retail outlets, nothing contained in this chapter shall be construed to prevent a manufacturer, distributor, wholesaler or any agent thereof from selling to a motor vehicle dealer who operates and services as a wholesaler of parts and accessories, such parts and accessories

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as may be ordered by such motor vehicle dealer for resale to retail outlets, at a lower price than the actual price charged a motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories;

**H.** To prevent or attempt to prevent by contract or otherwise any motor vehicle dealer from changing the capital structure of that dealer's dealership or the means by or through which that dealer finances the operation of the dealership, provided the dealer at all times meets any reasonable capital standards agreed to between the dealership and the manufacturer, distributor or wholesaler, and provided such change by the dealer does not result in a change in the executive management control of the dealership;

**I.** To prevent or attempt to prevent by contract or otherwise a motor vehicle dealer or an officer, partner or stockholder of a motor vehicle dealer from selling or transferring any part of the interest of any of them to any other person or persons or party or parties, except that a dealer, officer, partner or stockholder does not have the right to sell, transfer or assign the franchise or power of management or control under that franchise without the consent of the manufacturer, distributor or wholesaler, which may not be unreasonably withheld.

A franchisor may not exercise a right of first refusal or other right to acquire a motor vehicle franchise from a franchisee as a means to influence the consideration or other terms offered by a person in connection with the acquisition of the franchise or to influence a person to refrain from entering into, or to withdraw from, negotiations for the acquisition of the franchise.

A franchisor may exercise a right of first refusal or other right to acquire a franchise from a franchisee if all of the following requirements are met:

- (1)** At the election of the franchisee, the franchisor assumes the lease for or acquires the real property on which the franchise is conducted on the same terms as those on which the real property or lease was to be sold or transferred to the acquiring transferee in connection with the sale of the franchise, unless otherwise agreed to by the franchisee and the franchisor;
- (2)** The franchisor assumes all of the obligations of the underlying agreement or proposal that entitles the franchisor to exercise the right of first refusal; and
- (3)** The franchisor reimburses the acquiring transferee of the motor vehicle franchise for the reasonable expenses paid or incurred by the transferee in evaluating and investigating the franchise and negotiating and pursuing the acquisition of the franchise prior to the franchisor's exercise of the right of first refusal or other right to acquire the franchise. For purposes of this subsection, expenses to evaluate and investigate the franchise include, in addition to any other expenses associated with the evaluation and investigation of the franchise, legal and accounting expenses and expenses associated with the evaluation and investigation of any real property on which the franchise is conducted, including, but not limited to, expenses associated with title examinations, environmental assessments and other expenses directly related to the acquisition or lease of the real property by the acquiring transferee. Upon reimbursement, any title reports or other reports or studies received by the acquiring transferee as a result of the evaluation or investigation of the franchise or the real property on which the franchise is conducted must be provided to the franchisor. The acquiring transferee shall submit an itemized list of the expenses to be reimbursed along with supporting documents, if any, to the franchisor no later than 30 days after receipt of a written request for an itemized list of the expenses from the franchisor. The franchisor shall make payment within 30 days after the exercise of the right of first refusal.

For purposes of this paragraph, "acquiring transferee" means the person who made the offer that entitles the franchisor to exercise a right of first refusal.

The right of first refusal does not apply in any right of succession established in section 1174-C unless the franchisor and either the franchisee, if the franchisee is not deceased or incapacitated, or, if the franchisee is deceased or incapacitated, the designated family member or other person

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authorized to succeed the franchisee pursuant to section 1174-C, subsection 1, paragraphs A to C agree to the exercise of a right of first refusal;

**J.** To obtain money, goods, services, anything of value, or any other benefit from any other person with whom the motor vehicle dealer does business, on account of or in relation to the transactions between the dealer and said other person, unless such benefit is promptly accounted for and transmitted to the motor vehicle dealer;

**K.** To compete with a motor vehicle dealer by directly or indirectly through any subsidiary or affiliated entity holding any ownership interest in or operating or controlling any motor vehicle dealership of any line make, unless the board determines, after a hearing, that there is no independent motor vehicle dealer available in the relevant market area to own and operate a dealership of the same line make in a manner consistent with the public interest and this chapter. For purposes of this paragraph, the relevant market area must be determined exclusively by equitable principles. A manufacturer or distributor does not violate this paragraph by operating a dealership either temporarily for a reasonable period, in any case not to exceed one year, or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions and except that a distributor is not considered to be competing when a wholly owned subsidiary corporation or the distributor sells motor vehicles at retail if, for at least 3 years prior to January 1, 1975, the subsidiary corporation has been a wholly owned subsidiary of the distributor and engaged in the sale of motor vehicles at retail. The provisions of this paragraph apply to a successor manufacturer or a distributor;

**L.** To require a motor vehicle dealer to assent to a release assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this chapter;

**M.** To require, coerce or attempt to coerce a franchisee to refrain from participation in the management of, investment in or the acquisition of any other line of new motor vehicle or related products as long as the franchisee maintains a reasonable line of credit for each franchise and the franchisee remains in substantial compliance with reasonable facilities requirements of the franchisor. The reasonable facilities requirements may not include any requirement that a franchisee establish or maintain exclusive facilities, personnel or display space;

**N.** To require any new motor vehicle dealer to change the location of the new motor vehicle dealership or during the course of the agreement or as a condition of renewal of a franchise agreement to make any substantial alterations to the dealership premises when to do so would be unreasonable. A manufacturer may not require any substantial alterations or renovations to the dealership's premises without written assurance of a sufficient supply of new motor vehicles so as to justify an expansion in light of the current market and economic conditions or require any new motor vehicle dealer to use a specific product or service provider in relation to any dealership premises or facilities alterations or renovations unless the manufacturer reimburses the dealer for a substantial portion, which may not be less than 55%, of the cost of the product or service provider. However, a new motor vehicle dealer may elect to use a vendor selected by the dealer if the product or service is substantially similar in quality and design to that required by the manufacturer, subject to the manufacturer's approval, which may not be unreasonably withheld. A manufacturer may not require any substantial renovation or alteration to dealership premises or facilities without providing, upon a dealer's request, a dealer-specific detailed economic analysis of the impact of the alteration or renovation on sales, service and dealer profitability that substantiates the need for the alteration or renovation or require a new motor vehicle dealer to make any substantial alterations or renovations more than once every 10 years. A dealer-specific economic analysis provided by the manufacturer may not be interpreted as a guaranty of a return on investment by the dealer. Nothing in this paragraph creates an exemption from the requirements of state health and safety laws or local zoning laws or restricts the requirement to comply with alterations or renovations that are necessary to adequately sell or service a vehicle due to the technology of the vehicle. Nothing in this paragraph allows a dealer or vendor to infringe upon or impair a manufacturer's intellectual

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property or trademark and trade dress rights. A manufacturer is not required to reimburse a dealer for the cost of signs or other materials bearing that manufacturer's own trademark;

**O.** To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new motor vehicle dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise and notwithstanding the terms or provisions of any waiver, unless a manufacturer has:

- (1) Satisfied the notice requirement of paragraph R;
- (2) Acted in good faith as defined in this chapter; and
- (3) Has good cause for the cancellation, termination, nonrenewal or noncontinuance.

The manufacturer has the burden of proof for showing that it has acted in good faith, that the notice requirements have been complied with and that there was good cause for the franchise termination, cancellation, nonrenewal or noncontinuance;

**P.** To terminate, fail to renew or refuse to continue any franchise relationship with a licensed new motor vehicle dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise or the terms or provisions of any waiver, unless good cause exists. Good cause may not be shown or based solely on the desire of the manufacturer, distributor, distributor branch or division or officer, agent or other representative thereof for market penetration. Good cause exists for the purposes of a termination, cancellation, nonrenewal or noncontinuance when:

- (1) There is a failure by the new motor vehicle dealer to comply with a provision of the franchise, which provision is both reasonable and of material significance to the franchise relationship, as long as compliance on the part of the new motor vehicle dealer is reasonably possible and the manufacturer first acquired actual or constructive knowledge of the failure not more than 180 days prior to the date on which notification is given pursuant to paragraph R.

When the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, the failure of the new motor vehicle dealer to effectively carry out the performance provisions of the franchise is good cause if:

- (a) The new motor vehicle dealer was apprised by the manufacturer in writing of that failure; the notification stated that notice was provided of failure of performance pursuant to this section; and the new motor vehicle dealer was afforded a reasonable opportunity for a period of not less than 180 days to exert good faith efforts to carry out the performance provisions;
  - (b) The failure thereafter continued within the period that began not more than 180 days before the date notification of termination, cancellation, noncontinuance or nonrenewal was given pursuant to paragraph R; and
  - (c) The new motor vehicle dealer has not substantially complied with reasonable performance criteria established by the manufacturer and communicated to the dealer; or
- (3) The dealer and the manufacturer or distributor agree not to renew the franchise, although the dealer is entitled to the protections set forth in paragraph S in any termination, cancellation, nonrenewal or noncontinuance, whether by the manufacturer or the dealer; however, a termination, cancellation, nonrenewal or noncontinuance resulting from a sale of the assets or stock of the dealer or when a franchisee of motor homes, as defined in Title 29-A, section 101, subsection 40, voluntarily terminates a motor home franchise is exempt from the requirements of paragraph S;

**Q.** To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new motor vehicle dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise or notwithstanding the terms or provisions of any waiver, based on any of the following items, which do not constitute good cause:



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**(1)** The change of ownership of the new motor vehicle dealer's dealership. This subparagraph does not authorize any change in ownership that would have the effect of the sale of the franchise without the manufacturer's or distributor's written consent. This consent may not be unreasonably withheld. The burden of establishing the reasonableness is on the manufacturer or distributor;

**(2)** The fact that the new motor vehicle dealer unreasonably refused to purchase or accept delivery of any new motor vehicle parts, accessories or any other commodity or services not ordered by the new motor vehicle dealer, except that the manufacturer may require that the dealer stock a reasonable supply of parts or accessories as required to perform campaign, recall or warranty work and except that this provision is not intended to modify or supersede any requirement of the franchise that dealers market a representative line of those motor vehicles that the manufacturer is publicly advertising;

**(3)** The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of or holds a license for the sale of another make or line of new motor vehicle or that the new motor vehicle dealer has established another make or line of new motor vehicle in the same dealership facilities as those of the manufacturer, provided that the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle and that the new motor vehicle dealer remains in substantial compliance with reasonable facilities' requirements of the manufacturer;

**(4)** The fact that the new motor vehicle dealer sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new motor vehicle dealer's spouse, son or daughter and the manufacturer shall give effect to that change in the ownership in the franchise unless the transfer of the new motor vehicle dealer's license is denied or the new owner is unable to license. This paragraph does not authorize any changes in ownership that have the effect of the sale of the franchise without the manufacturer's or distributor's written consent. This consent may not be unreasonably withheld. The burden of establishing the reasonableness is on the manufacturer or distributor; or

**(4-A)** The fact that there is a survey or surveys of a dealer's customers conducted by or on behalf of the manufacturer, distributor, distributor branch or distributor representative, factory branch or factory representative that is intended or otherwise purports to measure the performance of a dealer;

**R.** To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new motor vehicle dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise or the terms or provisions of any waiver, without first furnishing notification of the termination to the new motor vehicle dealer as follows:

**(1)** Notification under this paragraph must be in writing, must be by certified mail or personally delivered to the new motor vehicle dealer and must contain:

**(a)** A statement of intention to terminate the franchise, cancel the franchise or not to renew the franchise;

**(b)** A statement of the reasons for the termination, cancellation or nonrenewal; and

**(c)** The date on which the termination, cancellation or nonrenewal takes effect;

**(2)** The notice described in this paragraph may not be less than 90 days prior to the effective date of the termination, cancellation or nonrenewal; or

**(3)** The notice described in this paragraph may not be less than 15 days prior to the effective date of the termination, cancellation or nonrenewal with respect to any of the following:

**(a)** Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

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- (b)** The business operations of the franchised motor vehicle dealer have been abandoned or closed for 7 consecutive business days unless the closing is due to an act of God, strike or labor difficulty;
- (c)** Conviction of or plea of nolo contendere of a franchised motor vehicle dealer, or one of its principal owners, of any Class A, B or C crime, as defined in the Maine Criminal Code, Title 17-A, in which a sentence of imprisonment of one year or more is imposed under Title 17-A, sections 1603 and 1604; or
- (d)** Revocation of the franchised motor vehicle dealer's license pursuant to Title 29-A, section 903;

**S.** To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new motor vehicle dealer without providing fair and reasonable compensation to the licensed new motor vehicle dealer for:

- (1)** All unsold new model motor vehicle inventory of the current and previous model year purchased from the manufacturer;
- (2)** Supplies and parts purchased from the manufacturer or its approved sources that are listed in the current parts catalog or identical to a part in the current parts catalog except for the number assigned to the part, and that can be used for repairs under the terms of a manufacturer's new motor vehicle warranty;
- (3)** Equipment and furnishings purchased from the manufacturer or its approved sources less a reasonable allowance for normal wear and tear; and
- (4)** Special tools and automotive service equipment owned by the dealer that were designated as special tools or equipment and required by and purchased from the manufacturer or its approved sources, if the tools and equipment are in useable and good condition, normal wear and tear excepted.

Except for a termination related to a conviction and imprisonment for a felony involving moral turpitude that is substantially related to the qualifications, functions or duties of a franchisee, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to one year's rent or, if the new motor vehicle dealer owns the facilities, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the facilities for one year, prorated for each line make at the facility based on total sales volume of each line make at the facility for the calendar year prior to the involuntary termination, cancellation, noncontinuance or nonrenewal. The manufacturer shall pay the new motor vehicle dealer the sum equivalent to the rent or the reasonable rental value of the facilities when possible within 90 days of the effective date of the termination, cancellation, noncontinuance or nonrenewal if the new motor vehicle dealer has notified the manufacturer of the amount of rent or reasonable rental value to which the dealer is entitled.

The fair and reasonable compensation for the items listed in subparagraphs (1) to (4) may in no instance be less than the acquisition price and must be paid by the manufacturer when possible within 90 days of the effective date of the termination, cancellation, noncontinuance or nonrenewal, provided that the new motor vehicle dealer has clear title to the inventory and other items and is in a position to convey that title to the manufacturer. These items must be paid for by the manufacturer when possible within 90 days of the effective date of the termination, cancellation, noncontinuance or nonrenewal.

In order to be entitled to rental assistance from the manufacturer, the dealer is obligated to mitigate rental assistance by listing the dealership facilities for lease or sublease with a licensed real estate agent within 30 days after the effective date of the termination of the franchise and thereafter by reasonably cooperating with the real estate agent in the performance of the agent's duties and

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responsibilities. In the event that the dealer is able to lease or sublease the dealership facilities on terms that are consistent with local zoning requirements to preserve the right to sell motor vehicles from the dealership facilities and the terms of the dealer's lease, the dealer is required to pay the manufacturer the net revenue received from such mitigation, but only following receipt of rental assistance payments pursuant to this paragraph and only up to the total amount of rental assistance payments that the dealer has received. If the facility is used for the operations of more than one franchise, the dealer does not have a duty to list the dealership facilities, and the reasonable rental assistance must be paid based upon the portion of the facility used by the franchise being terminated, cancelled, noncontinued or nonrenewed for one year unless the space is filled with another product line, in which case no rental payments are required.

In lieu of any injunctive relief or any other damages, if the manufacturer fails to prove there was good cause for the termination, cancellation, noncontinuance or nonrenewal, or if the manufacturer fails to prove that it acted in good faith, then the manufacturer may pay the new motor vehicle dealer fair and reasonable compensation for the value of the dealership as an ongoing business;

**T.** To act as, offer to act as or purport to be a broker;

**U.** To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new motor vehicle dealer not less than 180 days prior to the effective date of such termination, cancellation, noncontinuance or nonrenewal that occurs in whole or in part as a result of any change in ownership, operation or control of all or any part of the business of the manufacturer, whether by sale or transfer of assets, corporate stock or other equity interest, assignment, merger, consolidation, combination, joint venture, redemption, operation of law or otherwise; or the termination, suspension or cessation of a part or all of the business operations of the manufacturer; or discontinuance of the sale of the product line or a change in distribution system by the manufacturer, whether through a change in distributors or the manufacturer's decision to cease conducting business through a distributor altogether.

In addition to any other payments or requirements in this chapter, if a termination, cancellation, noncontinuance or nonrenewal was premised in whole or in part upon any of the occurrences set forth in this paragraph, the manufacturer is liable to the licensed new motor vehicle dealer in an amount at least equivalent to the fair market value of the franchise arising from the termination, cancellation, noncontinuance or nonrenewal of the franchise.

**(1)** If liability is based on the fair market value of the franchise, which must include diminution in value of the facilities leased or owned by the dealer as a result of the loss of the franchise to operate in the facilities, the fair market value must be computed on the date in divisions (a) to (c) that yields the highest fair market value:

**(a)** The date the manufacturer announces the action that results in termination, cancellation, noncontinuance or nonrenewal;

**(b)** The date the action that results in termination, cancellation, noncontinuance or nonrenewal first becomes general knowledge; or

**(c)** The date 12 months prior to the date on which the notice of termination, cancellation, noncontinuance or nonrenewal is issued.

If the termination, cancellation, noncontinuance or nonrenewal is due to the manufacturer's change in distributors, the manufacturer may avoid paying fair market value to the licensed new motor vehicle dealer if the new distributor or the manufacturer offers the dealer a franchise agreement with terms acceptable to the dealer.

If an entity other than the original manufacturer of a line make becomes the manufacturer for the line make and intends to distribute motor vehicles of that line make in this State, that entity shall honor the franchise agreements of the original manufacturer and its licensed new motor vehicle dealers or offer those dealers of that line make, or of motor vehicles historically of that line make

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that are substantially similar in their design and specifications and are manufactured in the same facility or facilities, a new franchise agreement with substantially similar terms and conditions; or

**V.** Except as expressly authorized in this paragraph, to require a motor vehicle dealer to provide its customer lists, customer information, consumer contact information, transaction data or service files.

**(1)** The following definitions apply to this paragraph.

**(a)** “Dealer management computer system” means a computer hardware and software system that is owned or leased by the dealer, including a dealer’s use of web applications, software or hardware, whether located at the dealership or provided at a remote location, and that provides access to customer records and transactions by a motor vehicle dealer and that allows the motor vehicle dealer timely information in order to sell vehicles, parts or services through that motor vehicle dealership.

**(b)** “Dealer management computer system vendor” means a seller or reseller of dealer management computer systems, a person that sells computer software for use on dealer management computer systems or a person that services or maintains dealer management computer systems, but only to the extent the seller, reseller or other person listed is engaged in such activities.

**(c)** “Security breach” means an incident of unauthorized access to and acquisition of records or data containing dealership or dealership customer information through which unauthorized use of the dealership or dealership customer information has occurred or is reasonably likely to occur or that creates material risk of harm to a dealership or a dealership’s customer. An incident of unauthorized access to and acquisition of records or data containing dealership or dealership customer information, or an incident of disclosure of dealership customer information to one or more 3rd parties that was not specifically authorized by the dealer or customer, constitutes a security breach.

**(2)** Any requirement by a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof that a new motor vehicle dealer provide its customer lists, customer information, consumer contact information, transaction data or service files as a condition of the dealer’s participation in any incentive program or contest, for a customer or dealer to receive any incentive payments otherwise earned under an incentive program or contest, for the dealer to obtain customers or customer leads or for the dealer to receive any other benefits, rights, merchandise or services that the dealer would otherwise be entitled to obtain under the franchise or any other contract or agreement or that are customarily provided to dealers is voidable at the option of the dealer, unless all of the following conditions are satisfied:

**(a)** The customer information requested relates solely to the specific program requirements or goals associated with such manufacturers’ or distributors’ own new vehicle makes or specific vehicles of their own make that are certified preowned vehicles and the dealer is not required to provide general customer information or other information related to the dealer;

**(b)** The requirement is lawful and would not require the dealer to allow any customer the right to opt out under the federal Gramm-Leach-Bliley Act, 15 United States Code, Chapter 94, Subchapter I; and

**(c)** The dealer is not required to allow the manufacturer, distributor or a 3rd party to have direct access to the dealer’s dealer management computer system, but the dealer is instead permitted to provide the same dealer, consumer or customer data or information specified by the manufacturer or distributor by timely obtaining and pushing or otherwise furnishing the required data in a widely accepted file format in accordance with subparagraph (1).

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**(3)** Nothing contained in this section limits the ability of a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof to require that the dealer provide, or use in accordance with law, customer information related solely to that manufacturer's or distributor's own vehicle makes to the extent necessary to:

- (a)** Satisfy any safety or recall notice obligations;
- (b)** Complete the sale and delivery of a new motor vehicle to a customer;
- (c)** Validate and pay customer or dealer incentives; or
- (d)** Submit to the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof claims under section 1176.

**(4)** At the request of a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof, a dealer may be required to provide customer information related solely to that manufacturer's, distributor's, wholesaler's, distributor branch's or division's, factory branch's or division's or wholesale branch's or division's own vehicle makes for reasonable marketing purposes, market research, consumer surveys, market analysis and dealership performance analysis, except that the dealer is required to provide such customer information only if the provision of the information is lawfully permissible, the requested information relates solely to specific program requirements or goals associated with the manufacturer's or distributor's own vehicle makes and does not require the dealer to provide general customer information or other information related to the dealer and the requested information can be provided without requiring that the dealer allow any customer the right to opt out under the federal Gramm-Leach-Bliley Act, 15 United States Code, Chapter 94, Subchapter I.

**(5)** A manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent, dealer management computer system vendor or other representative thereof, or a 3rd party acting on behalf of a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agency, dealer management computer system vendor or other representative thereof, may not access or obtain dealer or customer data from or write dealer or customer data to a dealer management computer system used by a motor vehicle dealer or require or coerce a motor vehicle dealer to use a particular dealer management computer system, unless the dealer management computer system allows the dealer to reasonably maintain the security, integrity and confidentiality of the data maintained in the system. A manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent, dealer management computer system vendor or other representative thereof, or a 3rd party acting on behalf of a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agency, dealer management computer system vendor or other representative thereof, may not prohibit a dealer from providing a means to regularly and continually monitor the specific data accessed from or written to the dealer's dealer management computer system or from complying with applicable state and federal laws, rules and regulations. Nothing in this subparagraph imposes an obligation on a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent, dealer management computer system vendor or other representative thereof, or a 3rd party acting on behalf of a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agency, dealer management computer system vendor or other representative thereof, to provide such capability.

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**(6)** A manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof or dealer management computer system vendor, or a 3rd party acting on behalf of a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof or dealer management computer system vendor may not access or use customer or prospect information maintained in a dealer management computer system used by a motor vehicle dealer for purposes of soliciting a customer or prospect on behalf of, or directing a customer or prospect to, any other dealer. The limitations in this subsection do not apply to:

**(a)** A customer that requests a reference to another dealership;

**(b)** A customer that moves more than 60 miles away from the dealer whose data were accessed;

**(c)** Customer or prospect information that was provided to the dealer by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof; or

**(d)** Customer or prospect information obtained by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof in which the dealer agrees to allow the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof or dealer management computer system vendor or a 3rd party acting on behalf of a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof or dealer management computer system vendor the right to access and use the customer or prospect information maintained in the dealer's dealer management computer system for purposes of soliciting a customer or prospect of the dealer on behalf of or directing a customer or prospect to any other dealer in a separate, stand-alone written instrument dedicated solely to such an authorization.

**(7)** A manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof or dealer management computer system vendor or a 3rd party acting on behalf of a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof or dealer management computer system vendor may not provide access to customer or dealership information maintained in a dealer management computer system used by a motor vehicle dealer without first obtaining the dealer's prior express written consent, revocable by the dealer upon 5 days' written notice, to provide such access. Prior to obtaining such consent and prior to entering into an initial contract or renewal of a contract with a dealer, the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof or dealer management computer system vendor or a 3rd party acting on behalf of or through a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof or dealer management computer system vendor shall provide to the dealer a written list of all specific 3rd parties to whom any data obtained from the dealer have actually been provided within the 12-month period ending November 1st of the prior year. The list must describe the scope and specific fields of the data provided. In addition to the initial list, a dealer management computer system vendor or a 3rd party acting on behalf of or through a dealer management computer system vendor must provide to the dealer an annual list of 3rd parties to whom such data are actually being provided on November 1st of each year and to whom the data have actually been provided in the preceding 12 months and describe the scope and specific fields of the data provided. Lists

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required pursuant to this subparagraph must be provided to the dealer by January 1st of each year. A dealer management computer system vendor's contract that directly relates to the transfer or accessing of dealer or dealer customer information must conspicuously state: "NOTICE TO DEALER: THIS AGREEMENT RELATES TO THE TRANSFER AND ACCESSING OF CONFIDENTIAL INFORMATION AND CONSUMER-RELATED DATA." Consent in accordance with this subparagraph does not change any such person's obligations to comply with the terms of this section and any additional state or federal laws, rules and regulations. A dealer management computer system vendor may not refuse to provide a dealer management computer system to a motor vehicle dealer if the dealer refuses to provide consent under this subparagraph.

**(8)** A dealer management computer system vendor or 3rd party acting on behalf of or through a dealer management computer system vendor may not access or obtain data from or write data to a dealer management computer system used by a motor vehicle dealer unless the dealer management computer system allows the dealer to reasonably maintain the security, integrity and confidentiality of customer and dealer information maintained in the system. A dealer management computer system vendor or 3rd party acting on behalf of or through a dealer management computer system vendor may not prohibit a dealer from providing a means to regularly and continually monitor the specific data accessed from or written to the dealer management computer system and from complying with applicable state and federal laws, rules and regulations. This subparagraph does not impose on a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof or dealer management computer system vendor or a 3rd party acting on behalf of or through a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof or dealer management computer system vendor an obligation to provide such capability.

**(9)** A manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof or dealer management computer system vendor or a 3rd party acting on behalf of or through a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof or dealer management computer system vendor that has electronic access to customer or motor vehicle dealership data in a dealer management computer system used by a motor vehicle dealer shall provide notice to the dealer of any security breach of dealership or customer data obtained through that access, which at the time of the security breach was in the possession or custody of the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof or dealer management computer system vendor or a 3rd party. The disclosure notification must be made without unreasonable delay by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof or dealer management computer system vendor or a 3rd party following discovery by the person, or notification to the person, of the security breach. The disclosure notification must describe measures reasonably necessary to determine the scope of the security breach and corrective actions that may be taken in an effort to restore the integrity, security and confidentiality of the data; these measures and corrective actions must be implemented as soon as practicable by all persons responsible for the security breach.

**(10)** Nothing in this section precludes, prohibits or denies the right of the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof to receive customer or dealership information from a motor vehicle dealer for the purposes of complying with federal or state safety requirements or implement any steps related to manufacturer recalls at such times as necessary in order to comply with federal and state requirements or manufacturer recalls as

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long as receiving this information from the dealer does not impair, alter or reduce the security, integrity and confidentiality of the customer and dealership information collected or generated by the dealer.

**(11)** Notwithstanding any of the terms or provisions contained in this subparagraph or in any consent, authorization, release, novation, franchise or other contract or agreement, whenever any manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof or dealer management computer system vendor or a 3rd party acting on behalf of or through a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof or dealer management computer system vendor requires that a new motor vehicle dealer provide any dealer, consumer or customer data or information through direct access to a dealer's dealer management computer system, the dealer is not required to provide, and may not be required to consent to provide in a written agreement, that direct access to its dealer management computer system. The dealer may instead provide the same dealer, consumer or customer data or information specified by the requesting party by timely obtaining and furnishing the requested data to the requesting party in a widely accepted file format except that, when a dealer would otherwise be required to provide direct access to its dealer management computer system under the terms of a consent, authorization, release, novation, franchise or other contract or agreement, a dealer that elects to provide data or information through other means may be charged a reasonable initial setup fee and a reasonable processing fee based on actual incremental costs incurred by the party requesting the data for establishing and implementing the process for the dealer. A term or provision contained in a consent, authorization, release, novation, franchise or other contract or agreement that is inconsistent with this subsection is voidable at the option of the dealer.

**(12)** Notwithstanding the terms or conditions of any consent, authorization, release, novation, franchise or other contract or agreement, a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof or dealer management computer system vendor or a 3rd party acting on behalf of or through a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof or dealer management computer system vendor that has electronic access to consumer or customer data or other information in a dealer management computer system used by a new motor vehicle dealer, or who has otherwise been provided consumer or customer data or other information by the dealer, shall fully indemnify and hold harmless a dealer from whom it has acquired that consumer or customer data or other information from all damages, costs and expenses incurred by that dealer, including, but not limited to, judgments, settlements, fines, penalties, litigation costs, defense costs, court costs and attorney's fees arising out of complaints, claims, civil or administrative actions and, to the fullest extent allowable under the law, governmental investigations and prosecutions to the extent caused by the access, storage, maintenance, use, sharing, disclosure or retention of that dealer's consumer or customer data or other information by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof or dealer management computer system vendor or a 3rd party acting on behalf of or through a manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division or officer, agent or other representative thereof or dealer management computer system vendor.

**W.** [2015, ch. 329, § C-3 (RP).]

**3-A. Successor manufacturer.** Successor manufacturer, for a period of 5 years from the date of acquisition of control by that successor manufacturer, to offer a franchise to any person for a line make of a predecessor manufacturer in any franchise market area in which the predecessor manufacturer



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previously cancelled, terminated, noncontinued, failed to renew or otherwise ended a franchise agreement with a franchisee who had a franchise facility in that franchise market area without first offering the franchise to the former franchisee at no cost, unless:

- A.** Within 30 days of the former franchisee's cancellation, termination, noncontinuance or nonrenewal, the predecessor manufacturer had consolidated the line make with another of its line makes for which the predecessor manufacturer had a franchisee with a then-existing franchise facility in that franchise market area;
- B.** The successor manufacturer has paid the former franchisee the fair market value of the former franchisee's motor vehicle dealership in accordance with this subsection; or
- C.** The successor manufacturer proves that the former franchisee is not competent to be a franchisee.

For purposes of this subsection, "franchise market area" means the area located within 15 miles of the territorial limits of the municipality in which the former franchisee's franchise facility was located.

For purposes of this subsection, the fair market value of a former franchisee's motor vehicle dealership must be calculated as of the date of the following that yields the highest fair market value: the date the predecessor manufacturer announced the action that resulted in the cancellation, termination, noncontinuance or nonrenewal; the date the action that resulted in cancellation, termination, noncontinuance or nonrenewal became final; or the date 12 months prior to the date that the predecessor manufacturer announced the action that resulted in the cancellation, termination, noncontinuance or nonrenewal;

**4. Dealer violations.** Motor vehicle dealer:

- A.** To require a purchaser of a new motor vehicle, as a condition of sale and delivery thereof, to also purchase special features, appliances, equipment, parts or accessories not desired or requested by the purchaser; provided, however, that this prohibition does not apply as to special features, appliances, equipment, parts or accessories that are already installed on the car when received by the dealer; provided further, that the motor vehicle dealer prior to the consummation of the purchase reveals to the purchaser the substance of this paragraph;
- B.** To represent and sell as a new motor vehicle, without disclosure, any motor vehicle that has been used and operated for demonstration purposes or is otherwise a used motor vehicle;
- C.** To resort to or use any false or misleading advertisement in connection with business as a motor vehicle dealer;
- D.** To fail to disclose conspicuously in writing the motor vehicle dealer's policy in relation to the return of deposits received from any person. A dealer shall require that a person making a deposit sign the form on which the disclosure appears;
- E.** To fail to disclose in writing to a purchaser of a new motor vehicle before entering into a sales contract that the new motor vehicle has been damaged and repaired if the dealer has knowledge of the damage or repair and if the damage calculated at the retail cost of repair to the new motor vehicle exceeds 5% of the manufacturer's suggested retail price, except that a new motor vehicle dealer is not required to disclose to a purchaser that any glass, bumpers, audio system, instrument panel, communication system or tires were damaged at any time if the glass, bumpers, audio system, instrument panel, communication system or tires have been replaced with original or comparable equipment; or
- F.** To fail to disclose in writing to a potential purchaser or lessee of a motor vehicle that the motor vehicle had previously been returned to the manufacturer pursuant to either a lemon law arbitration decision or a lemon law settlement agreement in a state other than this State if known to the dealer. If that information is known to the dealer, this disclosure must be clear and conspicuous. For the purpose of this section, "lemon law" refers to any state's certified dispute settlement law

that establishes a state-certified arbitration procedure to settle consumer complaints that the consumer had been sold a vehicle that did not conform to all manufacturer express warranties and that the manufacturer had not been able to repair or correct the defect or condition that impaired the vehicle; and

**5. Discovered recall and warranty repairs.** Manufacturer to deny a claim by a motor vehicle dealer for performing a covered warranty repair or required recall repair on a vehicle if the dealer discovered the need for the repair during the course of a separate repair request by the customer.

## History

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### Section History

PL 1975, c. 573 (NEW). PL 1979, c. 498, §1 (AMD). PL 1981, c. 331, §§4-6 (AMD). PL 1981, c. 470, §§A23-A25 (AMD). PL 1995, c. 65, §A15 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 1995, c. 269, §1 (AMD). PL 1997, c. 521, §§8-22 (AMD). PL 1999, c. 766, §§1,2 (AMD). PL 2003, c. 356, §§6-8 (AMD). RR 2009, c. 1, §§12, 13 (COR). PL 2009, c. 53, §1 (AMD). PL 2009, c. 367, §§2-6 (AMD). PL 2009, c. 432, §2 (AMD). RR 2013, c. 1, §§13-20 (COR). RR 2013, c. 2, §14 (COR). PL 2013, c. 534, §§2-6 (AMD). PL 2015, c. 329, Pt. C, §§1-3 (AMD). PL 2015, c. 329, Pt. C, §4 (AFF). PL 2017, c. 217, §§1-5 (AMD). PL 2019, c. 113, Pt. C, §4 (AMD).; 2021 ch. 676, § A-16, effective May 2, 2022.

Annotations

## Notes

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### Amendment Notes

The 2015 amendments to this section by ch. 329 repealed (3)(W); and made related changes.

The 2017 amendments to this section by ch. 217 added (3)(C-2) through (3)(C-5); rewrote (3)(K); added (5); and made related changes.

The 2019 amendment to this section by ch. 113 substituted “must” for “shall” three times in the introductory language of (3)(R)(1); substituted “may” for “shall” in (3)(R)(2) and in the introductory language of (3)(R)(3); substituted “receivership” for “receivership” in (3)(R)(3)(a); and substituted “sections 1603 and 1604” for “sections 1251 and 1252” in (3)(R)(3)(c).

## Notes to Decisions

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**Antitrust & Trade Law: Trade Practices & Unfair Competition: General Overview**

**Bankruptcy Law: Case Administration: Administrative Powers: Executory Contracts & Unexpired Leases: Rejections**

**Business & Corporate Law: Distributorships & Franchises: Causes of Action: Restraints of Trade**

**Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: General Overview**

**Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: Franchise Agreements**

**Business & Corporate Law: Distributorships & Franchises: Remedies**

**Civil Procedure: Appeals: Appellate Jurisdiction: State Court Review****Constitutional Law: Supremacy Clause: Federal Preemption****Contracts Law: Remedies****Governments: Legislation: Interpretation****Antitrust & Trade Law: Trade Practices & Unfair Competition: General Overview**

Court of appeals affirmed the district court's judgment finding that Me. Rev. Stat. Ann. tit. 10, § 1176 did not prohibit a motor vehicle manufacturer from requiring one of its dealers to use a multistep process to claim reimbursement for warranty work it performed, and that the manufacturer did not violate § 1176 because it required the dealer to provide a vehicle identification number and the date it performed the work. The court also rejected the dealer's claim that the manufacturer's practices constituted unfair or deceptive trade practices, in violation of Me. Rev. Stat. Ann. tit. 10, § 1174. *GMC v. Darling's*, 444 F.3d 98, 2006 U.S. App. LEXIS 9313 (1st Cir. Me. 2006).

Because the court found no violation of Me. Rev. Stat. Ann. tit. 10, § 1176 and no other indication of behavior on an auto manufacturer's part that was arbitrary, in bad faith, or unconscionable and that caused damage to the owner and operator of the dealerships or the public, there was no basis on which to conclude that the manufacturer had violated Me. Rev. Stat. Ann. tit. 10, § 1174. *GMC v. Darling's*, 324 F. Supp. 2d 257, 2004 U.S. Dist. LEXIS 13048 (D. Me. 2004), *aff'd*, 444 F.3d 98, 2006 U.S. App. LEXIS 9313 (1st Cir. Me. 2006).

**Bankruptcy Law: Case Administration: Administrative Powers: Executory Contracts & Unexpired Leases: Rejections**

Statutory protections under Me. Rev. Stat. Ann. tit. 10, § 1174(3) granted to existing automobile dealerships against adverse action by a successor to an automobile manufacturer were unenforceable against the purchaser of assets of bankruptcy debtors which were automobile manufacturers, since the state statute was preempted by the debtors' federal bankruptcy right to reject executory dealership contracts. *Old Carco LLC v. Kroger (In re Old Carco LLC)*, 442 B.R. 196, 2010 U.S. Dist. LEXIS 131107 (S.D.N.Y. 2010).

**Business & Corporate Law: Distributorships & Franchises: Causes of Action: Restraints of Trade**

Motor vehicle manufacturer's efforts to notify its dealers that a sales program would end were insufficient because compliance was mandatory, the manufacturer did not provide the dealer with 90 days' written notice by certified mail, and the superior court properly found that the use of "franchise" in connection with an "arrangement" included the program. *Ford Motor Co. v. Darling's*, 86 A.3d 35, 2014 Me. LEXIS 7 (Me. 2014).

**Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: General Overview**

Court of appeals affirmed the district court's judgment finding that Me. Rev. Stat. Ann. tit. 10, § 1176 did not prohibit a motor vehicle manufacturer from requiring one of its dealers to use a multistep process to claim reimbursement for warranty work it performed, and that the manufacturer did not violate § 1176 because it required the dealer to provide a vehicle identification number and the date it performed the work. The court also rejected the dealer's claim that the manufacturer's practices constituted unfair or deceptive trade practices, in violation of Me. Rev. Stat. Ann. tit. 10, § 1174. *GMC v. Darling's*, 444 F.3d 98, 2006 U.S. App. LEXIS 9313 (1st Cir. Me. 2006).

Because the court found no violation of Me. Rev. Stat. Ann. tit. 10, § 1176 and no other indication of behavior on an auto manufacturer's part that was arbitrary, in bad faith, or unconscionable and that caused damage to the owner and operator of the dealerships or the public, there was no basis on which to conclude that the manufacturer had

violated Me. Rev. Stat. Ann. tit. 10, § 1174. *GMC v. Darling's*, 324 F. Supp. 2d 257, 2004 U.S. Dist. LEXIS 13048 (D. Me. 2004), aff'd, 444 F.3d 98, 2006 U.S. App. LEXIS 9313 (1st Cir. Me. 2006).

### **Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: Franchise Agreements**

Automobile dealer's damages for a manufacturer's failure to give the dealer notice of a modification of the parties' franchise agreement were not limited to sums payable during the time the dealer could have contested the manufacturer's modification because (1) the modification was ineffective without giving notice, (2) the manufacturer chose not to give notice, and (3) the Business Practices Between Motor Vehicle Manufacturers, Distributors, and Dealers Act created no temporal limitation on damages. *Ford Motor Co. v. Darling's*, 151 A.3d 507, 2016 Me. LEXIS 195 (Me. 2016).

When an automobile manufacturer was found to have failed to give an automobile dealer statutorily required notice of a unilateral amendment to the parties' franchise agreement, and the matter was remanded for a new trial on damages, the manufacturer was not entitled to present evidence of the circumstances that would have existed but for the manufacturer's violation, to try to show good cause for the manufacturer's proposed modification, because a finding of good cause for a modification, which only the Maine Motor Vehicle Franchise Board could make, was not triggered until the manufacturer gave the dealer statutorily required notice of the modification, which the manufacturer declined to give. *Ford Motor Co. v. Darling's*, 151 A.3d 507, 2016 Me. LEXIS 195 (Me. 2016).

### **Business & Corporate Law: Distributorships & Franchises: Remedies**

Automobile dealer's damages for a manufacturer's failure to give the dealer notice of a modification of the parties' franchise agreement were not limited to sums payable during the time the dealer could have contested the manufacturer's modification because (1) the modification was ineffective without giving notice, (2) the manufacturer chose not to give notice, and (3) the Business Practices Between Motor Vehicle Manufacturers, Distributors, and Dealers Act created no temporal limitation on damages. *Ford Motor Co. v. Darling's*, 151 A.3d 507, 2016 Me. LEXIS 195 (Me. 2016).

When an automobile manufacturer was found to have failed to give an automobile dealer statutorily required notice of a unilateral amendment to the parties' franchise agreement, payments the manufacturer made to the dealer after terminating payments required under the parties' franchise agreement were deducted from the dealer's damages award because the later payments were a substitute for the terminated payments. *Ford Motor Co. v. Darling's*, 151 A.3d 507, 2016 Me. LEXIS 195 (Me. 2016).

### **Civil Procedure: Appeals: Appellate Jurisdiction: State Court Review**

In an action seeking an interpretation of Me. Rev. Stat. Ann. tit. 10, § 1174(4)(A), a section of the Regulation of Business Practices Between Motor Vehicle Manufacturers, Distributors and Dealers Act, the action was dismissed because an agreed statement of facts was insufficient to permit the court to determine whether a prohibited tying arrangements existed; the requirement of Me. R. Civ. P. 72(b), that there be agreement as to all material facts, was not met. *Maine Auto. Dealers Asso. v. Tierney*, 425 A.2d 187, 1981 Me. LEXIS 729 (Me. 1981).

### **Constitutional Law: Supremacy Clause: Federal Preemption**

Statutory protections under Me. Rev. Stat. Ann. tit. 10, § 1174(3) granted to existing automobile dealerships against adverse action by a successor to an automobile manufacturer were unenforceable against the purchaser of assets of bankruptcy debtors which were automobile manufacturers, since the state statute was preempted by the debtors' federal bankruptcy right to reject executory dealership contracts. *Old Carco LLC v. Kroger (In re Old Carco LLC)*, 442 B.R. 196, 2010 U.S. Dist. LEXIS 131107 (S.D.N.Y. 2010).

**Contracts Law: Remedies**

When an automobile manufacturer was found to have failed to give an automobile dealer statutorily required notice of a unilateral amendment to the parties' franchise agreement, payments the manufacturer made to the dealer after terminating payments required under the parties' franchise agreement were deducted from the dealer's damages award because the later payments were a substitute for the terminated payments. *Ford Motor Co. v. Darling's*, 151 A.3d 507, 2016 Me. LEXIS 195 (Me. 2016).

**Governments: Legislation: Interpretation**

In an action seeking an interpretation of Me. Rev. Stat. Ann. tit. 10, § 1174(4)(A), a section of the Regulation of Business Practices Between Motor Vehicle Manufacturers, Distributors and Dealers Act, the action was dismissed because an agreed statement of facts was insufficient to permit the court to determine whether a prohibited tying arrangements existed; the requirement of Me. R. Civ. P. 72(b), that there be agreement as to all material facts, was not met. *Maine Auto. Dealers Asso. v. Tierney*, 425 A.2d 187, 1981 Me. LEXIS 729 (Me. 1981).

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## 10 M.R.S. § 1174-A

Current through Chapters 649, 652, 661-662, 676, 732, 746-749, and 759 of the 2022 Second Regular Session of the 130th Maine Legislature.

*Maine Revised Statutes Annotated by LexisNexis® > TITLE 10. Commerce and Trade (Pts. 1 — 15) > PART 3. Regulation of Trade (Chs. 201 — 233) > CHAPTER 204. Business Practices Between Motor Vehicle Manufacturers, Distributors and Dealers (Subchs. 1 — 2) > SUBCHAPTER 1. Regulation of Business Practices Between Motor Vehicle Manufacturers, Distributors and Dealers (§§ 1171 — 1186)*

### § 1174-A. Limitations on establishing or relocating dealerships

No new motor vehicle dealership may be established and no existing motor vehicle dealership may be relocated, except as follows.

**1. Notification.** In the event that a manufacturer seeks to enter into a franchise establishing an additional new motor vehicle dealership or relocating an existing new motor vehicle dealership, within or into a relevant market area where the same line make is then represented, the manufacturer shall, in writing, first notify each new motor vehicle dealer in the line make in the relevant market area of the intention to establish an additional dealership or to relocate an existing dealership within or into that market area. The relevant market area shall be a radius of 5 miles around an existing dealership in the following cities: Augusta; Auburn; Bangor; Biddeford; Brewer; Falmouth; Lewiston; Portland; Saco; South Portland; Waterville; and Westbrook. The relevant market area shall be a radius of 10 miles around all other existing dealerships.

Within 30 days of receiving the notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any such new motor vehicle dealership may file a complaint in the Superior Court of the county in which the dealership is located, protesting the establishing or relocating of the new motor vehicle dealership. When such a complaint is filed, the manufacturer may not establish or relocate the proposed new motor vehicle dealership until a hearing has been held on the merits, nor thereafter, if the court has determined that there is good cause for not permitting the new motor vehicle dealership. For the purposes of this section, the reopening in a relevant market area of a new motor vehicle dealership that has not been in operation for one year or more is deemed the establishment of an additional new motor vehicle dealership.

**2. Good cause.** In determining whether good cause has been established for not entering into or relocating an additional franchise for the same line make, the court shall take into consideration the existing circumstances, including, but not limited to:

- A. Permanency of the investment of both the existing and proposed new motor vehicle dealers;
- B. Effect on the retail new motor vehicle business and the consuming public in the relevant market area;
- C. Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
- D. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the line make in the market area which includes the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts and qualified service personnel;

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E. Whether the establishment of an additional new motor vehicle dealership would increase competition and therefore be in the public interest; and

F. The effect on the relocating dealer as a result of not being permitted to relocate.

## History

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### Section History

PL 1981, c. 331, §7 (NEW).

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## 10 M.R.S. § 1174-B

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### § 1174-B. Transportation damages

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**1. Liability of a new dealer after acceptance.** Notwithstanding the terms, provisions or conditions of any agreement or franchise, the new motor vehicle dealer is solely liable for damages to new motor vehicles after acceptance from the carrier and before delivery to the ultimate purchaser.

**2. Liability of manufacturer.** Notwithstanding the terms, provisions or conditions of any agreement or franchise, the manufacturer is liable for all damages to motor vehicles before delivery to a carrier or transporter.

**3. Additional liability of dealer.** The new motor vehicle dealer is liable for damages to new motor vehicles after delivery to the carrier only if the dealer selects the method of transportation, mode of transportation and the carrier. In all other instances, the manufacturer is liable for carrier-related new motor vehicle damage, except that the new motor vehicle dealer must annotate the bill of lading or other carrier document indicating damages observed at the time of delivery to the motor vehicle dealer, and that the dealer shall promptly notify the manufacturer of any concealed damage discovered after delivery.

### History

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#### Section History

PL 1981, c. 331, §7 (NEW).

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## 10 M.R.S. § 1174-C

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### § 1174-C. Survivorship

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**1. Right of family member.** The right of a designated family member to succeed in dealer ownership is governed by the following provisions.

**A.** A designated family member of a deceased, incapacitated or retiring new motor vehicle dealer, which family member has been designated under the will of the dealer or in writing to the manufacturer, distributor, factory branch, factory representative, wholesaler, distributor branch or distributor representative, may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement if the designated family member gives the manufacturer, distributor, factory branch, factory representative, wholesaler, distributor branch or distributor representative of new motor vehicles written notice of the intention to succeed to the dealership within 120 days of the dealer's death, incapacity or retirement and unless there exists good cause for refusal to honor the succession on the part of the manufacturer, factory branch, factory representative, distributor, wholesaler, distributor branch or distributor representative. The manufacturer has the burden of demonstrating good cause by clear and convincing evidence.

**B.** The manufacturer, distributor, factory branch, factory representative or importer may request and the designated family member shall provide, upon the request, on forms provided for that purpose, personal and financial data that is reasonably necessary to determine whether the succession shall be honored.

**C.** In addition to a designated family member, a person who has been a general manager or other employee with significant and varied managerial experience for a dealer for at least 5 years may be designated by that dealer to succeed in dealer ownership, and the designee has the same rights and status as a designated family member.

**2. Refusal to honor; notice required.** The refusal to honor the succession to ownership is governed by the following provisions.

**A.** If a manufacturer, distributor, factory branch, factory representative or importer believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a family member of a deceased or incapacitated new motor vehicle dealer under the existing franchise agreement, the manufacturer, distributor, factory branch, factory representative or importer may, within 60 days of receipt of the information requested in subsection 1, paragraph B, serve upon the designated family member notice of its refusal to honor the succession or its intent to discontinue the existing franchise agreement with the dealership no sooner than 90 days from the date the notice is served.

**B.** The notice shall state the specific grounds for the refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 90 days from the date the notice is served.

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**C.** If notice of refusal and discontinuance is not timely served upon the family member, the franchise agreement shall continue in effect subject to termination only as otherwise permitted by this section.

**3. Written designation of succession unaffected.** This section does not preclude a new motor vehicle dealer from designating any person as his successor by written instrument filed with the manufacturer, distributor, factory branch, factory representative or importer.

## History

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### Section History

PL 1981, c. 331, §7 (NEW). PL 1997, c. 521, §§23,24 (AMD). PL 1997, c. 521, §24 (AMD). PL 2003, c. 356, §9 (AMD). PL 2017, c. 217, §6 (AMD).

Annotations

## Notes

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### Amendment Notes

The 2017 amendment to this section by ch. 217, in (1)(A), substituted “wholesaler, distributor branch or distributor representative” for “or importer” three times in the first sentence; and added the second sentence.

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## 10 M.R.S. § 1174-D

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### § 1174-D. Compensation for new vehicles with safety defect

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- 1. Compensation required.** A manufacturer must compensate a motor vehicle dealer pursuant to 49 United States Code, Section 30116 (2016). A manufacturer is not required by this subsection to pay more than the total value of the affected new motor vehicle to a dealer.
- 2. Civil action; statute of limitations.** If a manufacturer refuses to comply with subsection 1, the motor vehicle dealer may file a complaint with the board pursuant to section 1188 or bring a civil action to recover damages, court costs and reasonable attorney's fees. Notwithstanding section 1183, the action must be commenced within 3 years after the cause of action accrues.

### History

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#### Section History

PL 2017, c. 217, §7 (NEW).

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## 10 M.R.S. § 1175

Current through Chapters 649, 652, 661-662, 676, 732, 746-749, and 759 of the 2022 Second Regular Session of the 130th Maine Legislature.

***Maine Revised Statutes Annotated by LexisNexis® > TITLE 10. Commerce and Trade (Pts. 1 — 15) > PART 3. Regulation of Trade (Chs. 201 — 233) > CHAPTER 204. Business Practices Between Motor Vehicle Manufacturers, Distributors and Dealers (Subchs. 1 — 2) > SUBCHAPTER 1. Regulation of Business Practices Between Motor Vehicle Manufacturers, Distributors and Dealers (§§ 1171 — 1186)***

### § 1175. Delivery and preparation obligations; product liability and implied warranty complaints

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Every manufacturer shall specify to the dealer the delivery and preparation obligations of its motor vehicle dealers prior to delivery of new motor vehicles to retail buyers. The delivery and preparation obligations of its motor vehicle dealers and a schedule of the compensation to be paid to its motor vehicle dealers for the work and services they shall be required to perform in connection with such delivery and preparation obligations shall constitute any such dealer's only responsibility for product liability as between such dealer and such manufacturer. The compensation as set forth on said schedule shall be reasonable.

In any action or claim brought against the dealer on a product liability complaint in which it is later determined that the manufacturer is liable, the dealer shall be entitled, from the manufacturer, to receive its reasonable costs and attorney's fees incurred in defending the claim or action.

In any action or claim brought against the dealer on a breach of implied warranty complaint in which it is later determined that the manufacturer is liable, the dealer shall be entitled, from the manufacturer, to receive its reasonable costs and attorney's fees incurred in defending the claim or action. In any such implied warranty action, a dealer shall have the rights of a buyer under Title 11, section 2-607, subsection (5).

The court shall consider the dealer's share in the responsibility for the damages in awarding costs and attorney's fees.

### History

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#### Section History

PL 1975, c. 573 (NEW). PL 1979, c. 498, §2 (AMD). PL 1985, c. 221 (AMD).

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## 10 M.R.S. § 1176

Current through Chapters 649, 652, 661-662, 676, 732, 746-749, and 759 of the 2022 Second Regular Session of the 130th Maine Legislature.

***Maine Revised Statutes Annotated by LexisNexis® > TITLE 10. Commerce and Trade (Pts. 1 — 15) > PART 3. Regulation of Trade (Chs. 201 — 233) > CHAPTER 204. Business Practices Between Motor Vehicle Manufacturers, Distributors and Dealers (Subchs. 1 — 2) > SUBCHAPTER 1. Regulation of Business Practices Between Motor Vehicle Manufacturers, Distributors and Dealers (§§ 1171 — 1186)***

### § 1176. Warranty

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If a motor vehicle franchisor requires or permits a motor vehicle franchisee to perform labor or provide parts in satisfaction of a warranty created by the franchisor, the franchisor shall properly and promptly fulfill its warranty obligations, in the case of motor vehicles over 10,000 pounds gross vehicle weight rating, shall adequately and fairly compensate the franchisee for any parts so provided and, in the case of all other motor vehicles, shall reimburse the franchisee for any parts so provided at the retail rate customarily charged by that franchisee for the same parts when not provided in satisfaction of a warranty. A franchisor may not otherwise recover its costs for reimbursing a franchisee for parts and labor pursuant to this section. For purposes of this section, the retail rate customarily charged by the franchisee for parts may be established by submitting to the franchisor 100 sequential nonwarranty customer-paid service repair orders or 60 days of nonwarranty customer-paid service repair orders, whichever is less in terms of total cost, covering repairs made no more than 180 days before the submission and declaring the average percentage markup. The average percentage markup so declared is the retail rate, which goes into effect 30 days following the declaration, subject to audit of the submitted repair orders by the franchisor and adjustment of the average percentage markup based on that audit. Only retail sales not involving warranty repairs, not involving state inspection, not involving routine maintenance such as changing the oil and oil filter and not involving accessories may be considered in calculating the average percentage markup. A franchisor may not require a franchisee to establish the average percentage markup by an unduly burdensome or time-consuming method or by requiring information that is unduly burdensome or time-consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations. A franchisee may not change the average percentage markup more than 2 times in one calendar year. Further, the franchisor shall reimburse the franchisee for any labor so performed at the retail rate customarily charged by that franchisee for the same labor when not performed in satisfaction of a warranty; as long as the franchisee's rate for labor not performed in satisfaction of a warranty is routinely posted in a place conspicuous to its service customer. A franchisor is not required to pay the price charged by the dealer to retail customers for parts of systems, appliances, furnishings, accessories and fixtures of a motor home as defined in Title 29-A, section 101, subsection 40 that are designed, used and maintained primarily for nonvehicular residential purposes. Any claim made by a franchisee for compensation for parts provided or for reimbursement for labor performed in satisfaction of a warranty must be paid within 60 days of its approval. All the claims must be either approved or disapproved within 60 days of their receipt. A claim may be submitted within 90 days after the performance of services. When a claim is disapproved, the franchisee that submitted the claim must be notified in writing of the claim's disapproval within that period, together with the specific reasons for its disapproval. A franchisor may not, by agreement, by restriction upon reimbursement, or otherwise, restrict the nature or extent of labor performed or parts provided so that such restriction impairs the franchisee's ability to satisfy a warranty created by the franchisor by performing labor in a professional manner or by providing parts required in accordance with generally accepted standards.

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In any claim that is disapproved by the manufacturer, and the dealer brings legal action to collect the disapproved claim and is successful in the action, the court shall award the dealer the cost of the action together with reasonable attorney fees. Reasonable attorney fees shall be determined by the value of the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the dealer.

It is unlawful for a franchisor, manufacturer, factory branch, distributor branch or subsidiary to own, operate or control, either directly or indirectly, a motor vehicle warranty or service facility located in the State except on an emergency or interim basis or if no qualified applicant has applied for appointment as a dealer in a market previously served by a new motor vehicle dealer of that manufacturer, factory branch, distributor branch or subsidiary's line make.

A franchisor may not deny those elements of a warranty claim that are based on a dealer's incidental failure to comply with a claim requirement or a clerical error or other technicality, regardless of whether the franchisor contests any other element of that warranty claim, as long as the dealer corrects any such clerical error or other technicality according to licensee guidelines.

## History

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### Section History

PL 1975, c. 573 (NEW). PL 1979, c. 498, §3 (AMD). PL 1979, c. 698, §1 (AMD). PL 1991, c. 328 (AMD). PL 1995, c. 65, §A16 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 1997, c. 521, §25 (AMD). PL 2003, c. 356, §10 (AMD). PL 2013, c. 534, §7 (AMD).

Annotations

## Notes to Decisions

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**Antitrust & Trade Law: Consumer Protection: Vehicle Warranties: General Overview**

**Antitrust & Trade Law: Sherman Act: General Overview**

**Antitrust & Trade Law: Trade Practices & Unfair Competition: General Overview**

**Business & Corporate Law: Distributorships & Franchises: Causes of Action: Breach of Contract**

**Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: General Overview**

**Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: Franchise Agreements**

**Civil Procedure: Summary Judgment: Standards: General Overview**

**Civil Procedure: Trials: Jury Trials: Jury Instructions: Requests for Instructions**

**Civil Procedure: Judgments: Relief From Judgment: Motions to Alter & Amend**

**Constitutional Law: Congressional Duties & Powers: Commerce Clause: General Overview**

**Constitutional Law: Congressional Duties & Powers: Contracts Clause: General Overview**

**Contracts Law: Contract Conditions & Provisions: Express Warranties**

**Contracts Law: Defenses: Public Policy Violations**

**Governments: Legislation: Interpretation****Transportation Law: Interstate Commerce: Restraints of Trade****Antitrust & Trade Law: Consumer Protection: Vehicle Warranties: General Overview**

Me. Rev. Stat. Ann. tit. 10, § 1176 simply ensures that manufacturers pay market price when they will otherwise be sheltered from the market because of the disparity in bargaining power between automobile manufacturers and their dealers. It is the market and not the State, therefore, that establishes the price paid for a part. *Acadia Motors v. Ford Motor Co.*, 844 F. Supp. 819, 1994 U.S. Dist. LEXIS 2118 (D. Me. 1994), *aff'd in part and rev'd in part*, 44 F.3d 1050, 1995 U.S. App. LEXIS 1303 (1st Cir. Me. 1995).

**Antitrust & Trade Law: Sherman Act: General Overview**

Me. Rev. Stat. Ann. tit. 10, § 1176 does not violate the Sherman Act, 15 U.S.C.S. § 1, because the challenged restraint is clearly articulated and affirmatively expressed as state policy, and the policy is actively supervised by the state itself. *Acadia Motors v. Ford Motor Co.*, 844 F. Supp. 819, 1994 U.S. Dist. LEXIS 2118 (D. Me. 1994), *aff'd in part and rev'd in part*, 44 F.3d 1050, 1995 U.S. App. LEXIS 1303 (1st Cir. Me. 1995).

**Antitrust & Trade Law: Trade Practices & Unfair Competition: General Overview**

Court of appeals affirmed the district court's judgment finding that Me. Rev. Stat. Ann. tit. 10, § 1176 did not prohibit a motor vehicle manufacturer from requiring one of its dealers to use a multistep process to claim reimbursement for warranty work it performed, and that the manufacturer did not violate § 1176 because it required the dealer to provide a vehicle identification number and the date it performed the work. The court also rejected the dealer's claim that the manufacturer's practices constituted unfair or deceptive trade practices, in violation of Me. Rev. Stat. Ann. tit. 10, § 1174. *GMC v. Darling's*, 444 F.3d 98, 2006 U.S. App. LEXIS 9313 (1st Cir. Me. 2006).

**Business & Corporate Law: Distributorships & Franchises: Causes of Action: Breach of Contract**

The former language of Me. Rev. Stat. Ann. tit. 10, § 1176 (1997 & Supp. 2002) explicitly required a manufacturer to either approve or disapprove a dealership's warranty repair claims within 30 days; a manufacturer violated the statute by charging-back paid claims after the 30-day period; summary judgment and judgment in favor of the dealership was proper. *Darling's v. Ford Motor Co.*, 892 A.2d 461, 2006 Me. LEXIS 20 (Me. 2006).

Because Me. Rev. Stat. Ann. tit. 10, § 1176-A's audit provision only applied to customer or dealer incentives and did not apply to the warranty claims that were the subject of the franchisor's audits of payments previously made to the franchisee, the trial court erred in granting a summary judgment in favor of the franchisor. *Darling's v. Ford Motor Co.*, 817 A.2d 877, 2003 Me. LEXIS 24 (Me.), *sub. op.*, 825 A.2d 344, 2003 Me. LEXIS 119 (Me. 2003).

**Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: General Overview**

Court of appeals affirmed the district court's judgment finding that Me. Rev. Stat. Ann. tit. 10, § 1176 did not prohibit a motor vehicle manufacturer from requiring one of its dealers to use a multistep process to claim reimbursement for warranty work it performed, and that the manufacturer did not violate § 1176 because it required the dealer to provide a vehicle identification number and the date it performed the work. The court also rejected the dealer's claim that the manufacturer's practices constituted unfair or deceptive trade practices, in violation of Me. Rev. Stat. Ann. tit. 10, § 1174. *GMC v. Darling's*, 444 F.3d 98, 2006 U.S. App. LEXIS 9313 (1st Cir. Me. 2006).

## 10 M.R.S. § 1176

Court denied an automobile manufacturer's motion to amend a judgment to provide that it could exercise its rights to audit and charge back after the statutory period for approval or disapproval of a warranty reimbursement claim set forth in Me. Rev. Stat. Ann. tit. 10, § 1176 had passed because the plain language of the statute did not allow for the same. *GMC v. Darling's*, 330 F. Supp. 2d 9, 2004 U.S. Dist. LEXIS 16747 (D. Me. 2004), *aff'd*, 444 F.3d 98, 2006 U.S. App. LEXIS 9313 (1st Cir. Me. 2006).

Auto manufacturer was required to contest warranty payments to a dealer and charge back sums improperly paid within the 60-day period under Me. Rev. Stat. Ann. tit. 10, § 1176, even though the contract between the manufacturer and the dealer allowed audits after approval without a stated time limit. *GMC v. Darling's*, 330 F. Supp. 2d 9, 2004 U.S. Dist. LEXIS 16747 (D. Me. 2004), *aff'd*, 444 F.3d 98, 2006 U.S. App. LEXIS 9313 (1st Cir. Me. 2006).

In a case which was the latest installment in a line of cases arising from disagreement over the meaning and application of Me. Rev. Stat. Ann. tit. 10, § 1176, it was held that: (1) Me. Rev. Stat. Ann. tit. 10, § 1176 did not by its terms require that dealers be reimbursed for warranty repairs in a single payment; (2) the two-step system used by the manufacturer to reimburse Maine dealers for warranty repairs at their retail rates was not unlawful; (3) the manufacturer's refusal to increase the dealerships' owner's initial reimbursement labor rate did not constitute a violation of Me. Rev. Stat. Ann. tit. 10, § 1176, (4) the manufacturer had a contractual right to require the dealerships' owner to include the vehicle identification number and date of service on supplemental warranty reimbursement claims; (5) the manufacturer's contractual right was not restricted by Me. Rev. Stat. Ann. tit. 10, § 1176, as interpreted by the Maine Supreme Judicial Court; (6) the manufacturer had a contractual right to charge back amounts paid to the dealerships' owner for warranty reimbursement where the owner failed to comply with the terms of the contract regarding parts retention, and (7) Me. Rev. Stat. Ann. tit. 10, § 1176 was not violated when this charge-back right was exercised during the statutory period for approval or disapproval of a warranty reimbursement claim. *GMC v. Darling's*, 324 F. Supp. 2d 257, 2004 U.S. Dist. LEXIS 13048 (D. Me. 2004), *aff'd*, 444 F.3d 98, 2006 U.S. App. LEXIS 9313 (1st Cir. Me. 2006).

Having examined the plain language of Me. Rev. Stat. Ann. tit. 10, § 1176 in the context of the statutory scheme, the court found no indication that the Maine Legislature intended to dictate the mechanism by which dealers would be reimbursed for warranty repairs. *GMC v. Darling's*, 324 F. Supp. 2d 257, 2004 U.S. Dist. LEXIS 13048 (D. Me. 2004), *aff'd*, 444 F.3d 98, 2006 U.S. App. LEXIS 9313 (1st Cir. Me. 2006).

Me. Rev. Stat. Ann. tit. 10, § 1176 did not prohibit a franchiser from imposing a surcharge to compensate it for reimbursements paid to its automobile franchisees for motor vehicle warranty repairs in compliance with the statute. *Acadia Motors, Inc. v. Ford Motor Co.*, 799 A.2d 1228, 2002 Me. LEXIS 134 (Me. 2002).

Me. Rev. Stat. Ann. tit. 10, § 1176 is clear and does not prohibit a surcharge on motor vehicle dealers imposed by a manufacturer to recover its costs of compliance in reimbursing motor vehicle warranty repair costs. *Acadia Motors, Inc. v. Ford Motor Co.*, 799 A.2d 1228, 2002 Me. LEXIS 134 (Me. 2002).

Dealer was required to submit a sufficiently individualized warranty claim to enable a manufacturer to satisfy its obligations under the motor vehicle warranty reimbursement statute, Me. Rev. Stat. Ann. tit. 10, § 1176; flat rate labor pricing was permitted under § 1176. *Darling's v. Ford Motor Co.*, 719 A.2d 111, 1998 Me. LEXIS 258 (Me. 1998).

In an action filed by a dealer against a manufacturer wherein the dealer claimed that the manufacturer's auto warranty reimbursement policies did not satisfy Me. Rev. Stat. Ann. tit. 10, § 1176, the court found, contrary to the manufacturer's contention, that the dealer satisfied the requirement of Me. Rev. Stat. Ann. tit. 10, § 1176 by submitting a claim that specified the original computerized claim number, the retail amount claimed, the amount the dealer received under the nationalized system, the nature of the claim, and the difference between the amount received and the retail price. *Darling's v. Ford Motor Co.*, 719 A.2d 111, 1998 Me. LEXIS 258 (Me. 1998).

In an action filed by a dealer against a manufacturer wherein the dealer claimed that the manufacturer's auto warranty reimbursement policies did not satisfy statutory requirements, the dealer satisfied the labor rate posting requirement set forth in Me. Rev. Stat. Ann. tit. 29-A, § 1805, and thereby met the posting requirement of Me. Rev.



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Stat. Ann. tit. 10, § 1176 sufficiently enough to recover its flat rate price in a warranty claim. *Darling's v. Ford Motor Co.*, 719 A.2d 111, 1998 Me. LEXIS 258 (Me. 1998).

Me. Rev. Stat. Ann. tit. 10, § 1176 was constitutional because it did not violate the contract clause of either the State or Federal Constitution. *Acadia Motors v. Ford Motor Co.*, 844 F. Supp. 819, 1994 U.S. Dist. LEXIS 2118 (D. Me. 1994), *aff'd in part and rev'd in part*, 44 F.3d 1050, 1995 U.S. App. LEXIS 1303 (1st Cir. Me. 1995).

**Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: Franchise Agreements**

Jury reasonably found that the price paid for the disputed parts excluded the core charge as this section was silent, and the franchisee did not in actuality charge its non-warranty customers a markup on core charges when it sold parts, but simultaneously debited and credited the core charge to the customer upon payment; although the franchisee had ostensibly paid core charges to procure new parts, those amounts were automatically and consistently refunded by the franchisor once the defective part was returned to the franchisor for remanufacturing purposes, thereby making the core charge and its associated refund, in essence, a zero-sum transaction. *Darling's Auto Mall v. GM LLC*, 135 A.3d 819, 2016 Me. LEXIS 49 (Me. 2016).

**Civil Procedure: Summary Judgment: Standards: General Overview**

Because Me. Rev. Stat. Ann. tit. 10, § 1176-A's audit provision only applied to customer or dealer incentives and did not apply to the warranty claims that were the subject of the franchisor's audits of payments previously made to the franchisee, the trial court erred in granting a summary judgment in favor of the franchisor. *Darling's v. Ford Motor Co.*, 817 A.2d 877, 2003 Me. LEXIS 24 (Me.), *sub. op.*, 825 A.2d 344, 2003 Me. LEXIS 119 (Me. 2003).

**Civil Procedure: Trials: Jury Trials: Jury Instructions: Requests for Instructions**

Franchisee's requested jury instructions were properly not given, even though they did not reference this section, as to include the statute would have required an interpretation of the provision, and statutory interpretation was a task for the courts, not for juries. *Darling's Auto Mall v. GM LLC*, 135 A.3d 819, 2016 Me. LEXIS 49 (Me. 2016).

**Civil Procedure: Judgments: Relief From Judgment: Motions to Alter & Amend**

Court denied an automobile manufacturer's motion to amend a judgment to provide that it could exercise its rights to audit and charge back after the statutory period for approval or disapproval of a warranty reimbursement claim set forth in Me. Rev. Stat. Ann. tit. 10, § 1176 had passed because the plain language of the statute did not allow for the same. *GMC v. Darling's*, 330 F. Supp. 2d 9, 2004 U.S. Dist. LEXIS 16747 (D. Me. 2004), *aff'd*, 444 F.3d 98, 2006 U.S. App. LEXIS 9313 (1st Cir. Me. 2006).

**Constitutional Law: Congressional Duties & Powers: Commerce Clause: General Overview**

Amendment to Me. Rev. Stat. Ann. tit. 10, § 1176, which barred automobile manufacturers from recouping any portion of the monies it reimbursed to dealers in the state for warranty work, did not violate the Commerce Clause because it did not have a discriminatory purpose or effect, and there was no evidence of an improper extraterritorial reach. *Alliance of Auto. Mfrs. v. Gwadosky*, 430 F.3d 30, 2005 U.S. App. LEXIS 25609 (1st Cir. Me. 2005), *cert. denied*, 547 U.S. 1143, 126 S. Ct. 2034, 164 L. Ed. 2d 806, 2006 U.S. LEXIS 3703 (U.S. 2006).

**Constitutional Law: Congressional Duties & Powers: Contracts Clause: General Overview**

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Amendment to Me. Rev. Stat. Ann. tit. 10, § 1176, which barred automobile manufacturers from recouping any portion of the monies it reimbursed to its franchised dealers in the state for warranty work, did not violate the Contracts Clause because the bar was tailored carefully to achieve the purpose of protecting the state's consumers and prevent an unfair price differential between warranty and non-warranty repair work. *Alliance of Auto. Mfrs. v. Gwadosky*, 430 F.3d 30, 2005 U.S. App. LEXIS 25609 (1st Cir. Me. 2005), cert. denied, 547 U.S. 1143, 126 S. Ct. 2034, 164 L. Ed. 2d 806, 2006 U.S. LEXIS 3703 (U.S. 2006).

Me. Rev. Stat. Ann. tit. 10, § 1176 was constitutional because it did not violate the contract clause of either the State or Federal Constitution. *Acadia Motors v. Ford Motor Co.*, 844 F. Supp. 819, 1994 U.S. Dist. LEXIS 2118 (D. Me. 1994), aff'd in part and rev'd in part, 44 F.3d 1050, 1995 U.S. App. LEXIS 1303 (1st Cir. Me. 1995).

**Contracts Law: Contract Conditions & Provisions: Express Warranties**

The former language of Me. Rev. Stat. Ann. tit. 10, § 1176 (1997 & Supp. 2002) explicitly required a manufacturer to either approve or disapprove a dealership's warranty repair claims within 30 days; a manufacturer violated the statute by charging-back paid claims after the 30-day period; summary judgment and judgment in favor of the dealership was proper. *Darling's v. Ford Motor Co.*, 892 A.2d 461, 2006 Me. LEXIS 20 (Me. 2006).

Because Me. Rev. Stat. Ann. tit. 10, § 1176-A's audit provision only applied to customer or dealer incentives and did not apply to the warranty claims that were the subject of the franchisor's audits of payments previously made to the franchisee, the trial court erred in granting a summary judgment in favor of the franchisor. *Darling's v. Ford Motor Co.*, 817 A.2d 877, 2003 Me. LEXIS 24 (Me.), sub. op., 825 A.2d 344, 2003 Me. LEXIS 119 (Me. 2003).

**Contracts Law: Defenses: Public Policy Violations**

Auto manufacturer was required to contest warranty payments to a dealer and charge back sums improperly paid within the 60-day period under Me. Rev. Stat. Ann. tit. 10, § 1176, even though the contract between the manufacturer and the dealer allowed audits after approval without a stated time limit. *GMC v. Darling's*, 330 F. Supp. 2d 9, 2004 U.S. Dist. LEXIS 16747 (D. Me. 2004), aff'd, 444 F.3d 98, 2006 U.S. App. LEXIS 9313 (1st Cir. Me. 2006).

**Governments: Legislation: Interpretation**

Franchisee's requested jury instructions were properly not given, even though they did not reference this section, as to include the statute would have required an interpretation of the provision, and statutory interpretation was a task for the courts, not for juries. *Darling's Auto Mall v. GM LLC*, 135 A.3d 819, 2016 Me. LEXIS 49 (Me. 2016).

**Transportation Law: Interstate Commerce: Restraints of Trade**

Me. Rev. Stat. Ann. tit. 10, § 1176 does not violate the Sherman Act, 15 U.S.C.S. § 1, because the challenged restraint is clearly articulated and affirmatively expressed as state policy, and the policy is actively supervised by the state itself. *Acadia Motors v. Ford Motor Co.*, 844 F. Supp. 819, 1994 U.S. Dist. LEXIS 2118 (D. Me. 1994), aff'd in part and rev'd in part, 44 F.3d 1050, 1995 U.S. App. LEXIS 1303 (1st Cir. Me. 1995).

## 10 M.R.S. § 1176-A

Current through Chapters 649, 652, 661-662, 676, 732, 746-749, and 759 of the 2022 Second Regular Session of the 130th Maine Legislature.

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### § 1176-A. Audits

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A manufacturer may reasonably and periodically audit a new motor vehicle dealer to determine the validity of paid claims or any charge-backs for customer or dealer incentives. Audits of incentive payments may be only for the 12-month period immediately preceding the date notifying the dealer that an audit is to be conducted.

A franchisor may not deny those elements of a paid claim or customer or dealer incentive that are based on a dealer's incidental failure to comply with a claim requirement or a clerical error or other technicality, regardless of whether the franchisor contests any other element of that claim, as long as the dealer corrects the clerical error or other technicality according to licensee guidelines.

### History

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#### Section History

PL 1997, c. 521, §26 (NEW). PL 2013, c. 534, §8 (AMD). PL 2017, c. 217, §8 (AMD).

Annotations

### Notes

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#### Amendment Notes

The 2017 amendment to this section by ch. 217 added the second paragraph.

### Notes to Decisions

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**Business & Corporate Law: Distributorships & Franchises: Causes of Action: Breach of Contract**

**Civil Procedure: Summary Judgment: Standards: General Overview**

**Contracts Law: Contract Conditions & Provisions: Express Warranties**

**Business & Corporate Law: Distributorships & Franchises: Causes of Action: Breach of Contract**

Where an automobile dealer/franchisee sought to recoup warranty repair reimbursement claims from an automobile manufacturer/franchisor, which the franchisor had previously approved and paid but had charged back to the franchisee after conducting an audit, it was error under Me. R. Civ. P. 56(c), (h) to grant summary judgment in favor of the franchisor because Me. Rev. Stat. Ann. tit. 10, § 1176-A, a statutory audit provision, only applied to customer or dealer incentives and did not apply to the franchisee's warranty claims that were the subject of the franchisor's audits of payments previously made to the franchisee. *Darling's v. Ford Motor Co.*, 825 A.2d 344, 2003 Me. LEXIS 119 (Me. 2003).

Because Me. Rev. Stat. Ann. tit. 10, § 1176-A's audit provision only applied to customer or dealer incentives and did not apply to the warranty claims that were the subject of the franchisor's audits of payments previously made to the franchisee, the trial court erred in granting a summary judgment in favor of the franchisor. *Darling's v. Ford Motor Co.*, 817 A.2d 877, 2003 Me. LEXIS 24 (Me.), sub. op., 825 A.2d 344, 2003 Me. LEXIS 119 (Me. 2003).

**Civil Procedure: Summary Judgment: Standards: General Overview**

Because Me. Rev. Stat. Ann. tit. 10, § 1176-A's audit provision only applied to customer or dealer incentives and did not apply to the warranty claims that were the subject of the franchisor's audits of payments previously made to the franchisee, the trial court erred in granting a summary judgment in favor of the franchisor. *Darling's v. Ford Motor Co.*, 817 A.2d 877, 2003 Me. LEXIS 24 (Me.), sub. op., 825 A.2d 344, 2003 Me. LEXIS 119 (Me. 2003).

**Contracts Law: Contract Conditions & Provisions: Express Warranties**

Because Me. Rev. Stat. Ann. tit. 10, § 1176-A's audit provision only applied to customer or dealer incentives and did not apply to the warranty claims that were the subject of the franchisor's audits of payments previously made to the franchisee, the trial court erred in granting a summary judgment in favor of the franchisor. *Darling's v. Ford Motor Co.*, 817 A.2d 877, 2003 Me. LEXIS 24 (Me.), sub. op., 825 A.2d 344, 2003 Me. LEXIS 119 (Me. 2003).

## 10 M.R.S. § 1177

Current through Chapters 649, 652, 661-662, 676, 732, 746-749, and 759 of the 2022 Second Regular Session of the 130th Maine Legislature.

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### § 1177. Unreasonable restrictions

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It shall be unlawful directly or indirectly to impose unreasonable restrictions on the motor vehicle dealer or franchisee relative to transfer, sale, right to renew, termination, discipline, noncompetition covenants, site-contract 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.

### History

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#### Section History

PL 1975, c. 573 (NEW).

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## 10 M.R.S. § 1178

Current through Chapters 649, 652, 661-662, 676, 732, 746-749, and 759 of the 2022 Second Regular Session of the 130th Maine Legislature.

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### § 1178. Covered under written or oral agreements

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**1. Agreements subject to this chapter.** Written or oral agreements between a manufacturer, wholesaler or distributor with a motor vehicle dealer including, but not limited to, the franchise offering, the franchise agreement, sales agreements, policies and procedures agreements, bulletins or manuals, sales of goods, services or advertising, leases or mortgages of real or personal property, promises to pay, security interests, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts, and all other such agreements in which the manufacturer, wholesaler or distributor has any direct or indirect interest, are subject to this chapter.

**2. Copy of agreement or amendments.** Before any new selling agreement or any amendment thereto between said parties shall become effective, the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, wholesale branch or division, or officer, agent or other representative thereof shall, 90 days prior to the effective date thereof, forward a copy of such agreement or amendment to the dealer.

### History

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#### Section History

PL 1975, c. 573 (NEW). PL 2003, c. 356, §11 (AMD).

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## 10 M.R.S. § 1179

Current through Chapters 649, 652, 661-662, 676, 732, 746-749, and 759 of the 2022 Second Regular Session of the 130th Maine Legislature.

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### § 1179. Franchise interest, vested rights

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Notwithstanding any other provision of law, it shall be unlawful for the manufacturer, wholesaler, distributor or franchisor without due cause, to fail to renew a franchise on terms then equally available to all its motor vehicle dealers, to terminate a franchise or to restrict the transfer of a franchise unless the franchisee shall receive fair and reasonable compensation for the value of the business.

### History

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#### Section History

PL 1975, c. 573 (NEW).

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## 10 M.R.S. § 1180

Current through Chapters 649, 652, 661-662, 676, 732, 746-749, and 759 of the 2022 Second Regular Session of the 130th Maine Legislature.

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### **§ 1180. Franchisee's right to associate**

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Any franchisee shall have the right of free association with other franchisees for any lawful purpose.

### **History**

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#### **Section History**

PL 1975, c. 573 (NEW).

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## 10 M.R.S. § 1181

Current through Chapters 649, 652, 661-662, 676, 732, 746-749, and 759 of the 2022 Second Regular Session of the 130th Maine Legislature.

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### § 1181. Discounts and other inducements

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In connection with a sale of a motor vehicle or vehicles to the State or to any political subdivision of the State, a manufacturer, distributor, wholesaler or corporate affiliate may not offer any discounts, refunds or any other similar type of inducement to any dealer without making the same offer or offers to all other of its dealers within the relevant market area, and if such inducements are made, the manufacturer, distributor or wholesaler shall give simultaneous notice of the inducements to all of its dealers within the relevant market area.

### History

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#### Section History

PL 1975, c. 573 (NEW). PL 1999, c. 766, §3 (AMD).

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## 10 M.R.S. § 1182

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### § 1182. Public policy

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Any contract or part thereof or practice thereunder in violation of any provision of this chapter shall be deemed against public policy and shall be void and unenforceable.

The Legislature finds that the manufacture, distribution and sale of motor vehicles in the State vitally affects the general economy of the State and the public interest and public welfare; that the manufacturers of motor vehicles whose physical manufacturing facilities are not located within the State and distributors are doing business in the State through their control over and relationship and transactions with their dealers in the State; that the geographical location of the State makes it necessary to ensure the availability of motor vehicles and parts and dependable service for motor vehicles throughout the State to protect and preserve the transportation system, the public safety and welfare and the investments of its residents. The Legislature declares, on the basis of these findings, that it is necessary to regulate and to license motor vehicle manufacturers and distributors and their branches and representatives, motor vehicle dealers and any other person engaged in the business of selling or purchasing vehicles in the State in order to prevent frauds, impositions and other abuses against residents and to protect and preserve the economy, the investments of residents, the public safety and the transportation system of the State.

### History

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#### Section History

PL 1975, c. 573 (NEW). PL 1997, c. 521, §27 (AMD).

Annotations

### Notes to Decisions

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**Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: Franchise Agreements**

**Business & Corporate Law: Distributorships & Franchises: Remedies**

**Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: Franchise Agreements**

## 10 M.R.S. § 1182

Automobile dealer's damages for a manufacturer's failure to give the dealer notice of a modification of the parties' franchise agreement were not limited to sums payable during the time the dealer could have contested the manufacturer's modification because (1) the modification was ineffective without giving notice, (2) the manufacturer chose not to give notice, and (3) the Business Practices Between Motor Vehicle Manufacturers, Distributors, and Dealers Act created no temporal limitation on damages. *Ford Motor Co. v. Darling's*, 151 A.3d 507, 2016 Me. LEXIS 195 (Me. 2016).

**Business & Corporate Law: Distributorships & Franchises: Remedies**

Automobile dealer's damages for a manufacturer's failure to give the dealer notice of a modification of the parties' franchise agreement were not limited to sums payable during the time the dealer could have contested the manufacturer's modification because (1) the modification was ineffective without giving notice, (2) the manufacturer chose not to give notice, and (3) the Business Practices Between Motor Vehicle Manufacturers, Distributors, and Dealers Act created no temporal limitation on damages. *Ford Motor Co. v. Darling's*, 151 A.3d 507, 2016 Me. LEXIS 195 (Me. 2016).

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## 10 M.R.S. § 1184

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### § 1184. Construction

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In construing this chapter the courts may be guided by the interpretations of the Federal Trade Commission Act(15 U.S.C. 45), as from time to time amended.

If any provision of this chapter is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this chapter and the applicability thereof to persons and circumstances shall not be affected thereby.

### History

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#### Section History

PL 1975, c. 573 (NEW). PL 1981, c. 331, §8 (AMD).

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## 10 M.R.S. § 1185

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### § 1185. Jurisdiction

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Any person who shall violate any provisions of this chapter shall be subject to the jurisdiction of the courts of this State, upon service of process in accordance with Title 14, chapter 203, and consistent with the maximum limits of due process as decided by the United States Supreme Court.

### History

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#### Section History

PL 1975, c. 573 (NEW).

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## 10 M.R.S. § 1186

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### § 1186. Penalty

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Any person who violates any provision of this chapter other than section 1174-D commits a Class E crime.

### History

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#### Section History

PL 1975, c. 573 (NEW). PL 1979, c. 127, §58 (AMD). PL 2017, c. 217, §10 (AMD).

Annotations

### Notes

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#### Amendment Notes

The 2017 amendment to this section by ch. 217 substituted “violates any provision of this chapter other than section 1174-D commits a” for “violates this chapter shall be guilty of a.”

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