

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 896

Final Reading

Introduced by Fischer, 43; Hadley, 37.

Read first time January 09, 2012

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to the Motor Vehicle Industry Regulation Act; to
2 amend section 60-1437, Revised Statutes Supplement, 2011;
3 to prohibit certain actions and provide procedures for
4 incentive compensation; to repeal the original section;
5 and to declare an emergency.

6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 60-1437, Revised Statutes Supplement,
2 2011, is amended to read:

3 60-1437 In addition to the restrictions imposed by
4 section 60-1436, a manufacturer or distributor shall not:

5 (1) Fail to deliver new motor vehicles or new motor
6 vehicle parts or accessories within a reasonable time and in
7 reasonable quantities relative to the new motor vehicle dealer's
8 market area and facilities, unless the failure is caused by acts or
9 occurrences beyond the control of the manufacturer or distributor or
10 unless the failure results from an order by the new motor vehicle
11 dealer in excess of quantities reasonably and fairly allocated by the
12 manufacturer or distributor;

13 (2) Refuse to disclose to a new motor vehicle dealer the
14 method and manner of distribution of new motor vehicles by the
15 manufacturer or distributor or, if a line-make is allocated among new
16 motor vehicle dealers, refuse to disclose to any new motor vehicle
17 dealer that handles the same line-make the system of allocation,
18 including, but not limited to, a complete breakdown by model, and a
19 concise listing of dealerships with an explanation of the derivation
20 of the allocation system, including its mathematical formula in a
21 clear and comprehensible form;

22 (3) Refuse to disclose to a new motor vehicle dealer the
23 total number of new motor vehicles of a given model which the
24 manufacturer or distributor has sold during the current model year
25 within the dealer's marketing district, zone, or region, whichever

1 geographical area is the smallest;

2 (4) Increase the price of any new motor vehicle which the
3 new motor vehicle dealer had ordered and delivered to the same retail
4 consumer for whom the vehicle was ordered, if the order was made
5 prior to the dealer's receipt of the written official price increase
6 notification. A sales contract signed by a private retail consumer
7 and binding on the dealer shall constitute evidence of such order. In
8 the event of manufacturer or distributor price reduction or cash
9 rebate, the amount of any reduction or rebate received by a dealer
10 shall be passed on to the private retail consumer by the dealer. Any
11 price reduction in excess of five dollars shall apply to all vehicles
12 in the dealer's inventory which were subject to the price reduction.
13 A price difference applicable to a new model or series of motor
14 vehicles at the time of the introduction of the new model or series
15 shall not be considered a price increase or price decrease. This
16 subdivision shall not apply to price changes caused by the following:

17 (a) The addition to a motor vehicle of required or
18 optional equipment pursuant to state or federal law;

19 (b) In the case of foreign-made vehicles or components,
20 revaluation of the United States dollar; or

21 (c) Any increase in transportation charges due to an
22 increase in rates charged by a common carrier or other transporter;

23 (5) Fail or refuse to sell or offer to sell to all
24 franchised new motor vehicle dealers in a line-make every new motor
25 vehicle sold or offered for sale to any franchised new motor vehicle

1 dealer of the same line-make. However, the failure to deliver any
2 such new motor vehicle shall not be considered a violation of this
3 section if the failure is due to a lack of manufacturing capacity or
4 to a strike or labor difficulty, a shortage of materials, a freight
5 embargo, or any other cause over which the franchisor has no control.
6 A manufacturer or distributor shall not require that any of its new
7 motor vehicle dealers located in this state pay any extra fee,
8 purchase unreasonable or unnecessary quantities of advertising
9 displays or other materials, or remodel, renovate, or recondition the
10 new motor vehicle dealer's existing facilities in order to receive
11 any particular model or series of vehicles manufactured or
12 distributed by the manufacturer for which the dealers have a valid
13 franchise. Notwithstanding the provisions of this subdivision,
14 nothing contained in this section shall be deemed to prohibit or
15 prevent a manufacturer from requiring that its franchised dealers
16 located in this state purchase special tools or equipment, stock
17 reasonable quantities of certain parts, or participate in training
18 programs which are reasonably necessary for those dealers to sell or
19 service any model or series of new motor vehicles. This subdivision
20 shall not apply to manufacturers of recreational vehicles;

21 (6) Fail to offer dealers of a specific line-make a new
22 franchise agreement containing substantially similar terms and
23 conditions for sales of the line-make if the ownership of the
24 manufacturer or distributor changes or there is a change in the plan
25 or system of distribution;

1 (7) Take an adverse action against a dealer because the
2 dealer sells or leases a motor vehicle that is later exported to a
3 location outside the United States. A franchise provision that allows
4 a manufacturer or distributor to take adverse action against a dealer
5 because the dealer sells or leases a motor vehicle that is later
6 exported to a location outside the United States is enforceable only
7 if, at the time of the original sale or lease, the dealer knew or
8 reasonably should have known that the motor vehicle would be exported
9 to a location outside the United States. A dealer is presumed to have
10 no knowledge that a motor vehicle the dealer sells or leases will be
11 exported to a location outside the United States if, under the laws
12 of a state of the United States (a) the motor vehicle is titled, (b)
13 the motor vehicle is registered, and (c) applicable state and local
14 taxes are paid for the motor vehicle. Such presumption may be
15 rebutted by direct, clear, and convincing evidence that the dealer
16 knew or reasonably should have known at the time of the original sale
17 or lease that the motor vehicle would be exported to a location
18 outside the United States. Except as otherwise permitted by
19 subdivision (7) of this section, a franchise provision that allows a
20 manufacturer or distributor to take adverse action against a dealer
21 because the dealer sells or leases a motor vehicle that is later
22 exported to a location outside the United States is void and
23 unenforceable;

24 (8) Discriminate against a dealer holding a franchise for
25 a line-make of the manufacturer or distributor in favor of other

1 dealers of the same line-make in this state by:

2 (a) Selling or offering to sell a new motor vehicle to a
3 dealer at a lower actual price, including the price for vehicle
4 transportation, than the actual price at which the same model
5 similarly equipped is offered to or is available to another dealer in
6 this state during a similar time period; or

7 (b) Using a promotional program or device or an
8 incentive, payment, or other benefit, whether paid at the time of the
9 sale of the new motor vehicle to the dealer or later, that results in
10 the sale or offer to sell a new motor vehicle to a dealer at a lower
11 price, including the price for vehicle transportation, than the price
12 at which the same model similarly equipped is offered or is available
13 to another dealer in this state during a similar time period. This
14 subdivision shall not prohibit a promotional or incentive program
15 that is functionally available to competing dealers of the same line-
16 make in this state on substantially comparable terms;

17 (9) Refuse to pay a new motor vehicle dealer for sales
18 incentives, service incentives, rebates, or other forms of incentive
19 compensation within thirty days after their approval by the
20 manufacturer or distributor. The manufacturer or distributor shall
21 either approve or disapprove each claim by the dealer within thirty
22 days after receipt of the claim in a proper form generally used by
23 the manufacturer or distributor. Any claims not specifically
24 disapproved in writing within thirty days after receipt shall be
25 considered to be approved;

1 (10) Perform an audit to confirm payment of a sales
2 incentive, service incentive, rebate, or other form of incentive
3 compensation more than twelve months after the date of payment of the
4 claim or twelve months after the end of the incentive program by the
5 new motor vehicle dealer unless the claim is fraudulent;

6 (11) Reduce the amount to be paid to a new motor vehicle
7 dealer for a sales incentive, service incentive, rebate, or other
8 form of incentive compensation or charge back a new motor vehicle
9 dealer subsequent to the payment of the claim for a sales incentive,
10 service incentive, rebate, or other form of incentive compensation
11 unless the manufacturer or distributor shows that the claim lacks
12 required documentation or is alleged to be false, fraudulent, or
13 based on a misrepresentation.

14 A manufacturer or distributor may not deny a claim based
15 solely on a new motor vehicle dealer's incidental failure to comply
16 with a specific claim processing requirement, such as a clerical
17 error, that does not put into question the legitimacy of the claim.
18 No reduction in the amount to be paid to the new motor vehicle dealer
19 and no charge back subsequent to the payment of a claim may be made
20 until the new motor vehicle dealer has had notice and an opportunity
21 to correct any deficiency and resubmit the claim and to participate
22 in all franchisor internal appeal processes as well as all available
23 legal processes. If a charge back is the subject of adjudication,
24 internal appeal, mediation, or arbitration, no charge back shall be
25 made until, in the case of an adjudication or legal action, a final

1 order has been issued.

2 A claim for reimbursement by the manufacturer or
3 distributor of sums due following an audit must be presented to the
4 dealer within ninety days after completion of the audit of the item
5 subject to the claim. A manufacturer or distributor may not setoff or
6 otherwise take control over funds owned or under the control of the
7 new motor vehicle dealer or which are in an account designated for
8 the new motor vehicle dealer when such action is based upon the
9 findings of an audit or other claim with respect thereto until a
10 final decision is issued with respect to any challenge or appeal by
11 either party of any such audit or claim.

12 Any ambiguity or inconsistency in submission guidelines
13 shall be construed against the manufacturer or distributor;

14 ~~(9)~~—(12) Make any express or implied statement or
15 representation directly or indirectly that the dealer is under any
16 obligation whatsoever to offer to sell or sell any extended service
17 contract, extended maintenance plan, gap policy, gap waiver, or other
18 aftermarket product or service offered, sold, backed by, or sponsored
19 by the manufacturer or distributor or to sell, assign, or transfer
20 any of the dealer's retail sales contracts or leases in this state on
21 motor vehicles manufactured or sold by the manufacturer or
22 distributor to a finance company or class of finance companies,
23 leasing company or class of leasing companies, or other specified
24 person, because of any relationship or affiliation between the
25 manufacturer or distributor and the finance company or companies,

1 leasing company or leasing companies, or the specified person or
2 persons; or

3 ~~(10)~~(13) Prohibit a franchisee from acquiring a line-
4 make of new motor vehicles solely because the franchisee owns or
5 operates a franchise of the same line-make in a contiguous market.

6 Any such statements, threats, promises, acts, contracts,
7 or offers of contracts, when their effect may be to lessen or
8 eliminate competition or tend to create a monopoly, are declared
9 unfair trade practices and unfair methods of competition and are
10 prohibited.

11 Sec. 2. Original section 60-1437, Revised Statutes
12 Supplement, 2011, is repealed.

13 Sec. 3. Since an emergency exists, this act takes effect
14 when passed and approved according to law.