

SB0668/650311/2

BY: Environmental Matters Committee

AMENDMENTS TO SENATE BILL 668
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 7, strike “certain factors under certain circumstances” and substitute “accurate information”; strike beginning with “prohibiting” in line 7 down through “circumstances” in line 9 and substitute “authorizing a dealer that claims that application of a performance standard or program is unfair or unreasonable to request a certain hearing under certain circumstances; establishing that a manufacturer, distributor, or factory branch has a certain burden of proof”; and in line 11, after “dealers” insert “of the same line make”.

On page 2, in line 3, strike “or a proposed change in the executive management of a dealer’s business” and substitute “; requiring a manufacturer, distributor, or factory branch to pay certain expenses when exercising a certain right of first refusal under certain circumstances”; strike beginning with “establishing” in line 17 down through “circumstances;” in line 18; in line 24, after “branch” insert “, or a manufacturer of motor homes,”; and in lines 24 and 25, strike “a dealer” and substitute “certain dealers”.

AMENDMENT NO. 2

On page 3, in line 6, after “**DEALERS**” insert “**OF THE SAME LINE MAKE**”.

AMENDMENT NO. 3

On page 4, strike beginning with “, **INCLUDING:**” in line 8 down through “**AREA**” in line 15; strike beginning with “**A**” in line 16 down through “**CONSUMER**” in line 20 and substitute “**A DEALER THAT CLAIMS THAT THE APPLICATION OF A PERFORMANCE STANDARD, SALES OBJECTIVE, OR PROGRAM FOR MEASURING DEALERSHIP PERFORMANCE IS UNFAIR OR UNREASONABLE DUE TO THE**”.

(Over)

DEMOGRAPHIC CHARACTERISTICS OF THE POPULATION IN THE DEALER'S ASSIGNED MARKET AREA, INCLUDING CAR AND TRUCK PREFERENCES OF CONSUMERS, OR DUE TO THE GEOGRAPHIC CHARACTERISTICS THAT AFFECT CAR AND TRUCK SHOPPING PATTERNS IN THE DEALER'S ASSIGNED MARKETING AREA, MAY FILE A CLAIM IN A COURT OF COMPETENT JURISDICTION TO DETERMINE WHETHER THE APPLICATION OF THE PERFORMANCE STANDARD OR PROGRAM IS UNFAIR OR UNREASONABLE UNDER THIS PARAGRAPH"; and after line 20, insert:

"(III) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH HAS THE BURDEN OF PROVING THAT THE PERFORMANCE STANDARD, SALES OBJECTIVE, OR PROGRAM FOR MEASURING DEALERSHIP PERFORMANCE IS FAIR AND REASONABLE UNDER THIS PARAGRAPH."

AMENDMENT NO. 4

On page 5, in line 21, after the second "DEALERS" insert "OF THE SAME LINE MAKE"; and strike beginning with "A" in line 22 down through "(III)" in line 27.

AMENDMENT NO. 5

On page 6, in line 18, strike "DEALERS;" and substitute "DEALERS OF THE SAME LINE MAKE; AND"; and strike beginning with "THE" in line 19 down through "SOLD" in line 25 and substitute "ANY REBATE, CASH INCENTIVE, OR PROMOTION THAT IS BASED ON THE SALE OF AN INDIVIDUAL VEHICLE IS NOT INCREASED FOR MEETING A PERFORMANCE STANDARD UNLESS THE STANDARD IS REASONABLE CONSIDERING ALL EXISTING CIRCUMSTANCES".

AMENDMENT NO. 6

On page 8, strike beginning with the colon in line 23 down through "A" in line 24 and substitute "A"; and strike beginning with the semicolon in line 26 down

through "BUSINESS" in line 28 and substitute "TO A PERSON WHO MEETS THE MANUFACTURER'S REASONABLE QUALIFICATIONS FOR OWNERSHIP AND IS:

(I) A MEMBER OF THE DEALER'S IMMEDIATE FAMILY;

(II) A QUALIFIED MANAGER WITH AT LEAST 2 YEARS MANAGEMENT EXPERIENCE AT THE DEALER'S BUSINESS;

(III) AN EXISTING DEALER IN GOOD STANDING; OR

(IV) A BUSINESS ENTITY CONTROLLED BY A PERSON DESCRIBED IN ITEM (I), (II), OR (III) OF THIS PARAGRAPH.

(3) IF A MANUFACTURER EXERCISES A RIGHT OF FIRST REFUSAL IN THE EVENT OF A SALE OR TRANSFER OR PROPOSED SALE OR TRANSFER OF THE DEALER'S BUSINESS OR AN EQUITY INTEREST IN THE DEALER'S BUSINESS, THE MANUFACTURER SHALL PAY THE REASONABLE EXPENSES, INCLUDING CUSTOMARY ATTORNEY'S FEES, INCURRED BY THE PROSPECTIVE PURCHASER IN NEGOTIATING AND IMPLEMENTING THE CONTRACT FOR THE PROPOSED SALE OR TRANSFER, PROVIDED THAT THE DEALER HAS GIVEN THE MANUFACTURER AT LEAST 45 DAYS' NOTICE OF AN INTENT TO SELL OR TRANSFER".

AMENDMENT NO. 7

On page 9, strike beginning with the colon in line 3 down through "A" in line 4 and substitute "A"; strike beginning with the semicolon in line 6 down through "BUSINESS" in line 8 and substitute "TO A PERSON WHO MEETS THE DISTRIBUTOR'S REASONABLE QUALIFICATIONS FOR OWNERSHIP AND IS:

(I) A MEMBER OF THE DEALER'S IMMEDIATE FAMILY;

(Over)

(II) A QUALIFIED MANAGER WITH AT LEAST 2 YEARS MANAGEMENT EXPERIENCE AT THE DEALER'S BUSINESS;

(III) AN EXISTING DEALER IN GOOD STANDING; OR

(IV) A BUSINESS ENTITY CONTROLLED BY A PERSON DESCRIBED IN ITEM (I), (II), OR (III) OF THIS PARAGRAPH.

(3) IF A DISTRIBUTOR EXERCISES A RIGHT OF FIRST REFUSAL IN THE EVENT OF A SALE OR TRANSFER OR PROPOSED SALE OR TRANSFER OF THE DEALER'S BUSINESS OR AN EQUITY INTEREST IN THE DEALER'S BUSINESS, THE DISTRIBUTOR SHALL PAY THE REASONABLE EXPENSES, INCLUDING CUSTOMARY ATTORNEY'S FEES, INCURRED BY THE PROSPECTIVE PURCHASER IN NEGOTIATING AND IMPLEMENTING THE CONTRACT FOR THE PROPOSED SALE OR TRANSFER, PROVIDED THAT THE DEALER HAS GIVEN THE DISTRIBUTOR AT LEAST 45 DAYS' NOTICE OF AN INTENT TO SELL OR TRANSFER";

strike beginning with the colon in line 16 down through "A" in line 17 and substitute "A"; and strike beginning with "; OR" in line 19 down through "BUSINESS" in line 21 and substitute "TO A PERSON WHO MEETS THE FACTORY BRANCH'S REASONABLE QUALIFICATIONS FOR OWNERSHIP AND IS:

(I) A MEMBER OF THE DEALER'S IMMEDIATE FAMILY;

(II) A QUALIFIED MANAGER WITH AT LEAST 2 YEARS MANAGEMENT EXPERIENCE AT THE DEALER'S BUSINESS;

(III) AN EXISTING DEALER IN GOOD STANDING; OR

(IV) A BUSINESS ENTITY CONTROLLED BY A PERSON DESCRIBED IN ITEM (I), (II), OR (III) OF THIS PARAGRAPH.

(3) IF A FACTORY BRANCH EXERCISES A RIGHT OF FIRST REFUSAL IN THE EVENT OF A SALE OR TRANSFER OR PROPOSED SALE OR TRANSFER OF THE DEALER'S BUSINESS OR AN EQUITY INTEREST IN THE DEALER'S BUSINESS, THE FACTORY BRANCH SHALL PAY THE REASONABLE EXPENSES, INCLUDING CUSTOMARY ATTORNEY'S FEES, INCURRED BY THE PROSPECTIVE PURCHASER IN NEGOTIATING AND IMPLEMENTING THE CONTRACT FOR THE PROPOSED SALE OR TRANSFER, PROVIDED THAT THE DEALER HAS GIVEN THE FACTORY BRANCH AT LEAST 45 DAYS' NOTICE OF AN INTENT TO SELL OR TRANSFER".

AMENDMENT NO. 8

On page 11, in line 13, strike "2" and substitute "6"; in line 21, strike "(1)"; in line 28, strike "HAD SPECIFIC KNOWLEDGE" and substitute "KNEW OR SHOULD HAVE KNOWN"; and strike in their entirety lines 30 through 32, inclusive.

AMENDMENT NO. 9

On page 12, in line 14, before "IF" insert "(A)"; in lines 19 and 20, strike "REQUESTED OR SUGGESTED" and substitute "REQUIRED"; in line 20, after "BRANCH" insert "WITHIN THE PREVIOUS 2 YEARS"; in line 24, after "NEW" insert ", UNDAMAGED"; in line 25, strike "OF THE CURRENT OR 1-YEAR PRIOR MODEL YEAR" and substitute "PURCHASED WITHIN 18 MONTHS OF THE DATE OF THE TERMINATION, SUSPENSION, REFUSAL TO RENEW, CLOSURE, OR REFUSAL TO SUPPLY,"; in line 28, after the second "DEALER" insert "ACQUISITION"; and strike beginning with ", AS" in line 28 down through "REPURCHASE," in line 30.

On page 13, after line 16, insert:

(Over)

“(B) (1) IF A MANUFACTURER OF MOTOR HOMES TERMINATES OR CANCELS A MOTOR HOME DEALER, THE MANUFACTURER SHALL REIMBURSE THE DEALER, LESS ANY ALLOWANCES, DISCOUNTS, OR REBATES PAID TO THE DEALER BY THE MANUFACTURER, FOR AT LEAST:

(I) THE TOTAL NET INVENTORY INVOICE COSTS;

(II) ANY CHARGES BY THE MANUFACTURER FOR DISTRIBUTION DELIVERY; AND

(III) ANY INVENTORY RELATED TAXES PAID BY THE DEALER.

(2) THIS SUBSECTION ONLY APPLIES TO MOTOR HOMES IN INVENTORY THAT:

(I) ARE NEW AND UNTITLED;

(II) WERE ACQUIRED FROM THE MANUFACTURER WITHIN 18 MONTHS BEFORE THE EFFECTIVE DATE OF THE NOTICE OF TERMINATION OR CANCELLATION;

(III) HAVE NOT BEEN USED, OTHER THAN FOR DEMONSTRATION PURPOSES; AND

(IV) HAVE NOT BEEN ALTERED OR DAMAGED.”.

AMENDMENT NO. 10

On page 13, in line 24, strike “October” and substitute “June”.