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4

As Engrossed: S3/15/11 S3/17/11 S3/23/11

A Bill

SENATE BILL 765

5 By: Senator D. Wyatt
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS MOTOR VEHICLE COMMISSION
9 ACT; AND FOR OTHER PURPOSES.
10

Subtitle

11 TO AMEND THE ARKANSAS MOTOR VEHICLE
12 COMMISSION ACT.
13

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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code § 23-112-103(6), regarding the definition of
20 "coerce" under the Arkansas Motor Vehicle Commission Act, is amended to read
21 as follows:

22 (6)(A) "Coerce" means ~~the failure to act in good faith in~~
23 ~~compelling or attempting to compel by threatening, retaliating, using~~
24 ~~economic force, or by not performing or complying with:~~

25 (i) ~~any~~ Any terms or provisions of the franchise or
26 ~~sales and service~~ agreement;

27 (ii) The terms of this chapter; or

28 (iii) The rules promulgated by the Arkansas Motor
29 Vehicle Commission.

30 (B) "Coerce" does not mean recommending, exposing,
31 persuading, urging, or arguing;
32

33 SECTION 2. Arkansas Code § 23-112-103(14)(A), regarding the definition
34 of "franchise" under the Arkansas Motor Vehicle Commission Act, is amended to
35 read as follows:

36 (A) The franchisee is granted the right to sell, ~~and~~



1 service, or sell and service new motor vehicles manufactured or distributed
2 by the franchiser;

3

4 SECTION 3. Arkansas Code § 23-112-103(25)(B)(ii), regarding the
5 definition of "relevant market area" under the Arkansas Motor Vehicle
6 Commission Act, is amended to read as follows:

7 (ii) However, when a manufacturer is seeking to
8 establish an additional new motor vehicle dealer ~~and there is one (1) or more~~
9 ~~existing new motor vehicle dealers of the same line make within a ten-mile~~
10 ~~radius of the proposed dealer site~~, the relevant market area shall in all
11 instances be the area within a radius of ten (10) miles around an existing
12 dealer.

13

14 SECTION 4. Arkansas Code § 23-112-105 is amended to read as follows:
15 23-112-105. Civil damages.

16 (a) ~~Any~~ A licensee suffering pecuniary loss because of any willful
17 failure by any other licensee to comply with ~~any provision of~~ this chapter,
18 other than a new automobile or truck dealer's failure to comply with § 23-
19 112-301(d)(1)-(3) or with any rule or regulation promulgated by the Arkansas
20 Motor Vehicle Commission under authority vested in it by this chapter, may
21 recover reasonable damages and attorney's fees therefor in any court of
22 competent jurisdiction.

23 (b)(1) Except as provided under subdivision (b)(2) of this section, if
24 a motor vehicle dealer prevails in an action against a manufacturer,
25 distributor, second-stage manufacturer, importer, converter, manufacturer
26 branch or division, or distributor branch or division under any provision of
27 this chapter, the motor vehicle dealer shall also have a cause of action
28 against the manufacturer, distributor, second-stage manufacturer, importer,
29 converter, manufacturer branch or division, or distributor branch or division
30 for attorney's fees, if none have been awarded in an earlier administrative
31 hearing.

32 (2) Subdivision (b)(1) of this section does not apply to motor
33 vehicle dealers, manufacturers, or distributors of motor homes.

34

35 SECTION 5. Arkansas Code § 23-112-107(k), regarding motor vehicle data
36 event recorders and data ownership, is amended to read as follows:

1 ~~(k)~~(1) The Arkansas Motor Vehicle Commission shall administer this
2 section and may promulgate rules for the administration of this section.

3
4 SECTION 6. Arkansas Code § 23-112-107, regarding motor vehicle data
5 event recorders and data ownership, is amended to add an additional
6 subdivision to read as follows:

7 (k)(1) A new motor vehicle dealer, manufacturer, and distributor shall
8 be immune and held harmless against liability for the privacy of information
9 contained in motor vehicle databases, including without limitation recording
10 devices, global-positioning systems, navigation devices, or any in-vehicle
11 data not controlled by the dealer.

12 (2) This subsection does not affect the notice requirements
13 under subsection (b) of this section.

14
15 SECTION 7. Arkansas Code § 23-112-310(d)(1), regarding labor rate per
16 hour or parts price for warranty work, is amended to add an additional
17 subdivision to read as follows:

18 (D) A manufacturer, distributor, distributor branch or
19 division, or factory branch or division of new motorcycles, motorized cycles,
20 and all-terrain vehicles shall not pay to any new motor vehicle dealers of
21 motorcycles, motorized cycles, and all-terrain vehicles a labor rate per hour
22 or parts price for warranty work that is less than that charged by the new
23 motor vehicle dealer to its retail customers, provided that the rate is
24 reasonable compared to other same line make motor vehicle dealers in the new
25 motor vehicle dealer's relevant market area or the new motor vehicle dealer's
26 competitive market area.

27
28 SECTION 8. Arkansas Code § 23-112-311(c) and (d), regarding the
29 addition or relocation of a new motor vehicle dealer, are amended to read as
30 follows:

31 (c)(1) In determining whether good cause has been established for not
32 entering into a franchise establishing or relocating an additional new motor
33 vehicle dealer for the same line make, the commission shall take into
34 consideration the existing circumstances, including without limitation:

35 ~~(1)~~(A) Permanency of the investment of both the existing
36 and proposed new motor vehicle dealers;

1 ~~(2)~~(B) Growth or decline in population and new motor
2 vehicle registrations in the relevant market area;

3 ~~(3)~~(C) Effect on the consuming public in the relevant
4 market area;

5 ~~(4)~~(D) Whether it is injurious or beneficial to the public
6 welfare for an additional new motor vehicle dealer to be established;

7 ~~(5)~~(E) Whether the new motor vehicle dealers of the same
8 line make in that relevant market area are providing adequate competition and
9 convenient customer care for the motor vehicles of the line make in the
10 market area, which shall include the adequacy of motor vehicle sales and
11 service facilities, equipment, supply of motor vehicle parts, and qualified
12 service personnel; and

13 ~~(6)~~(F) Whether the establishment of an additional new
14 motor vehicle dealer would increase competition and, therefore, be in the
15 public interest.

16 (2) In determining whether good cause has been established for
17 not entering into a franchise establishing or relocating an additional new
18 motor vehicle dealer for the same line make, the burden of proof is on the
19 manufacturer or distributor to show it has good cause for granting the new
20 franchise, except when an existing franchisee initiated the relocation.

21 (d)~~(1)~~ The commission ~~must~~ shall conduct the hearing and render its
22 final determination within ~~one hundred twenty (120)~~ one hundred eighty (180)
23 days after a protest is filed.

24 (2) Unless waived by the parties, failure to do so shall be
25 deemed the equivalent of a determination that good cause does not exist for
26 refusing to permit the proposed additional or relocated new motor vehicle
27 dealer, unless the delay is caused by acts of the manufacturer or distributor
28 or the relocating or additional dealer.

29
30 SECTION 9. Arkansas Code § 23-112-313(e)(3)(A), regarding warranty
31 agreements, is amended to read as follows:

32 (3)(A) A claim shall not be disapproved because a clerical error
33 was made that does not render the amount of the claim incorrect, including
34 without limitation clerical errors that occur as a result of a manufacturer
35 or distributor's prior approval process, provided the dealer receives
36 preapproval pursuant to the established practices of the manufacturer or

1 distributor for these programs.

2
3 SECTION 10. Arkansas Code § 23-112-403(a)(2), regarding manufacturers,
4 distributors, second-stage manufacturers, importers, or converters, is
5 amended to add additional subdivisions to read as follows:

6 (Q)(i)(a) Unless the manufacturer's, distributor's,
7 second-stage manufacturer's, importer's, converter's, manufacturer's branch
8 or division, distributor's branch or division requirements are reasonable and
9 justifiable in light of the current and reasonably foreseeable projections of
10 economic conditions, financial expectations, and the motor vehicle dealer's
11 market and notwithstanding the terms of a franchise agreement or sales and
12 service agreement, to require, coerce, or attempt to coerce any new motor
13 vehicle dealer by program, policy, standard, or otherwise to:

14 (1) Change location of the dealership;

15 (2) Make any substantial changes,
16 alterations, or remodeling to a motor vehicle dealer's sales or service
17 facilities; or

18 (3) Replace a motor vehicle dealer's
19 sales or service facilities,

20 (b) A manufacturer, distributor, second-stage
21 manufacturer, importer, converter, manufacturer branch or division, or
22 distributor branch or division shall have the burden of proving that changes,
23 alterations, remodeling, or replacement to a motor vehicle dealer's sales or
24 service facilities are reasonable and justifiable under this subchapter.

25 (ii)(a) However, a manufacturer, distributor,
26 second-stage manufacturer, importer, convertor, manufacturer branch or
27 division, or distributor branch or division may, consistent with its
28 allocation obligations at law and to its other same line-make motor vehicle
29 dealers, provide to a motor vehicle dealer a commitment to supply additional
30 vehicles or provide a loan or grant of money as an inducement for the motor
31 vehicle dealer to expand, improve, remodel, alter, or renovate its facilities
32 if the provisions of the commitment are contained in a writing voluntarily
33 agreed to by the dealer and are made available, on substantially similar
34 terms, to any of the licensee's other same line-make dealers who voluntarily
35 agree to make a substantially similar facility expansion, improvement,
36 remodeling, alteration, or renovation.

1 (b) Subdivisions (a)(2)(Q)(i) – (ii) do not
2 require a manufacturer, distributor, second-stage manufacturer, importer,
3 convertor, manufacturer branch or division, or distributor branch or division
4 to provide financial support for, or contribution to, the purchase sale of
5 the assets of or equity in a motor vehicle dealer or a relocation of a motor
6 vehicle dealer because such support has been provided to other purchases,
7 sales, or relocations.

8 (c) A manufacturer, distributor, second-stage
9 manufacturer, importer, convertor, manufacturer branch or division, or
10 distributor branch or division shall not take or threaten to take any action
11 that is unfair or adverse to a dealer who does not enter into an agreement
12 pursuant to subdivisions (a)(2)(Q)(i) – (ii).

13 (d) This subdivision does not affect any
14 contract between a licensee and any of its dealers regarding relocation,
15 expansion, improvement, remodeling, renovation, or alteration which exists on
16 the effective date of this act.

17 (iii) Subdivisions (a)(2)(Q)(i) – (ii) of this
18 section do not apply to motor vehicle dealers, manufacturers, or distributors
19 of motor homes.

20 (R)(i) To unreasonably withhold approval for a new motor
21 vehicle dealer to purchase substantially similar goods and services related
22 to facility changes, alterations, or remodels from vendors the dealer
23 chooses.

24 (ii) Subdivision (a)(2)(R)(i) of this section does
25 not apply to motor vehicle dealers, manufacturers, or distributors of motor
26 homes.

27 (S)(i) To require as a prerequisite to receiving a model
28 or a series of vehicles a dealer to:

29 (a) Pay an extra fee or remodel, renovate, or
30 recondition the dealer's existing facilities unless justified by the
31 technological requirements for the sale or service of a vehicle;

32 (b) Purchase unreasonable advertising
33 displays, training, tools, or other materials;

34 (c) Establish exclusive facilities; or

35 (d) Establish dedicated personnel.

36 (ii) Subdivision (a)(2)(S)(i) does not apply to

1 motor vehicle dealers, manufacturers, or distributors of motor homes.

2 (T)(i)(a) To use any written instrument, agreement, or
3 waiver, to attempt to nullify or modify any provision of this chapter or
4 prevent a new motor vehicle dealer from bringing an action in a
5 particular forum otherwise available under law.

6 (b) An instrument contrary to this
7 subdivision (a)(2)(T)(i) is void.

8 (c) However, this subdivision shall not apply
9 to:

10 (1) Voluntary agreements where separate
11 and valuable consideration has been offered and accepted; or

12 (2) Settlement agreements entered into
13 as a result of a dispute.

14 (ii)(a) Except as provided in subdivision
15 (a)(2)(Q)(ii)(b) of this section, a manufacturer, distributor, or factory
16 branch shall not directly or indirectly condition any of the following on
17 the willingness of a motor vehicle dealer, proposed new motor vehicle
18 dealer, or owner of an interest in the dealership facility to enter into
19 a site control agreement or exclusive use agreement:

20 (1) Awarding a franchise to a
21 prospective new motor vehicle dealer;

22 (2) Adding a line make or franchise to
23 an existing motor vehicle dealer;

24 (3) Renewing a franchise of an
25 existing motor vehicle dealer;

26 (4) Approving the relocation of an
27 existing motor vehicle dealer's facility; or

28 (5) Approving the sale or transfer of
29 the ownership of a franchise.

30 (b) This subdivision does not apply to a
31 site control agreement or an exclusive use agreement if the site control
32 agreement or an exclusive use agreement:

33 (1) Is voluntarily entered into by the
34 motor vehicle dealer or the motor vehicle dealer's lessor;

35 (2) Clearly and conspicuously
36 discloses that the site control agreement or an exclusive use agreement

1 is voluntary; and

2 (3) Provides for separate and valuable
3 consideration to the motor vehicle dealer or motor vehicle dealer's
4 lessor.

5 (iii) Any provision contained in any agreement
6 that is inconsistent with this subchapter is voidable at the election of
7 the affected motor vehicle dealer or owner of an interest in the
8 dealership facility.

9 (iv) Subdivisions (a)(2)(T)(i) – (iii) of this
10 section do not apply to motor vehicle dealers, manufacturers, or distributors
11 of motor homes.

12 (U)(i) To fail to offer to all of its franchisees of the
13 same line-make any consumer rebates, dealer incentives, price or interest
14 rate reduction, or finance terms that the franchisor offers or advertises;

15 (ii) To offer rebates, cash incentives, or other
16 promotional items for the sale of a vehicle by its franchisees unless the
17 same rebate, cash incentive, or promotion is offered to all of its
18 franchisees of the same line-make, and any rebate, cash incentive, or
19 promotion that is based on the sale of an individual vehicle is not increased
20 for meeting a performance standard;

21 (iii) To unreasonably discriminate among its
22 franchisees in any program that provides assistance to its franchisees,
23 including internet listings, sales leads, warranty policy adjustments,
24 marketing programs, or dealer recognition programs;

25 (iv) To fail to offer rebates, cash incentives, or
26 other promotional incentive programs on a fair and equitable or
27 proportionally equivalent basis to its franchisees of the same line-make.

28 (v) To require a motor vehicle dealer to improve the
29 dealer's facilities, including signs, or to replace factory required and
30 approved facility improvements completed within the last five (5) years in
31 order to qualify for a new vehicle sales incentive program.

32 (vi) Subdivisions (a)(2)(U)(i) – (v) of this section
33 do not apply to motor vehicle dealers, manufacturers, or distributors of
34 motor homes.

35
36 SECTION 11. Arkansas Code § 23-112-403(a)(2)(A)(i), regarding

1 manufacturers, distributors, second-stage manufacturers, importers, or
2 converters, is amended to read as follows:

3 (A)(i) *To refuse to deliver, in reasonable quantities and*
4 *within a reasonable time after receipt of a dealer's order to any ~~duly~~*
5 *licensed motor vehicle* dealer having a franchise or contractual arrangement
6 for the retail sale of new motor vehicles sold or distributed by the
7 manufacturer, distributor, distributor branch or division, or factory branch
8 or division, any motor vehicles ~~which~~ that are covered by the franchise or
9 contract specifically publicly advertised by the manufacturer, distributor,
10 distributor branch or division, or factory branch or division to be available
11 for immediate delivery.

12

13 SECTION 12. Arkansas Code § 23-112-403(a)(2)(B)(i), regarding
14 manufacturers, distributors, second-stage manufacturers, importers, or
15 converters, is amended to read as follows:

16 (B)(i) To engage in any of the following:

17 (a) To coerce or attempt to coerce any motor
18 vehicle dealer to enter into any agreement with the manufacturer,
19 distributor, distributor branch or division, factory branch or division, or
20 officer, agent, or other representative thereof, ~~or~~ ~~to~~

21 (b) To do any other act prejudicial to the
22 motor vehicle dealer by threatening to cancel any franchise or any
23 contractual agreement existing between the manufacturer, distributor,
24 distributor branch or division, or factory branch or division and the motor
25 vehicle dealer.

26

27 SECTION 13. Arkansas Code § 23-112-403(a)(2)(C)(i), regarding
28 manufacturers, distributors, second-stage manufacturers, importers, or
29 converters, is amended to read as follows:

30 (C)(i)(a) To terminate or cancel the franchise or selling
31 agreement of any dealer without due cause.

32 (b) The nonrenewal of a franchise or selling
33 agreement without due cause shall constitute an unfair termination or
34 cancellation, regardless of the terms or provisions of the franchise or
35 selling agreement.

36 (c) As used in this subchapter, tests for

1 determining what constitutes due cause for a manufacturer or distributor to
2 terminate a franchise or sales and service agreement include whether the
3 motor vehicle dealer:

4 (1) Has transferred a majority ownership
5 interest in the dealership without the manufacturer's or distributor's
6 consent;

7 (2) Has made a material misrepresentation,
8 committed a fraudulent act, or both in applying for or in acting under the
9 franchise agreement;

10 (3) Has filed a voluntary petition in
11 bankruptcy or has had an involuntary petition in bankruptcy filed against him
12 or her that has not been discharged within sixty (60) days after the filing,
13 is in default under a security agreement in effect with the manufacturer or
14 distributor or is in receivership;

15 (4) Has engaged in unfair business or trade
16 practices;

17 (5) Has failed to fulfill the warranty
18 obligations of the manufacturer or distributor required to be performed by
19 the motor vehicle dealer;

20 (6) Has inadequate motor vehicle sales and
21 service facilities, equipment, vehicle parts, and unqualified service
22 personnel to provide for the needs of the consumers for the motor vehicles
23 handled by the franchisee and is rendering inadequate service to the public;

24 (7) Has failed to comply with an applicable
25 federal, state, or local licensing law;

26 (8) Has been convicted of a crime, the effect
27 of which would be detrimental to the manufacturer, distributor, or
28 dealership;

29 (9) Has failed to operate in the normal course
30 of business for ten (10) consecutive business days or has terminated his or
31 her business;

32 (10) Has relocated his or her place of
33 business without the manufacturer's or distributor's consent; or

34 (11) Has failed to comply with the terms of
35 the franchise, the reasonableness and fairness of the franchise terms, and
36 the extent and materiality of the franchisee's failure to comply.

1 (d) A manufacturer, distributor, second-stage
2 manufacturer, importer, converter, manufacturer branch or division, or
3 distributor branch or division shall have the burden of proving whether
4 there is due cause to terminate a franchise or sales and service
5 agreement.

6
7 SECTION 14. Arkansas Code § 23-112-403(a)(2)(C)(iv), regarding
8 manufacturers, distributors, second-stage manufacturers, importers, or
9 converters, is amended to read as follows:

10 (iv)(a) ~~Any~~ A motor vehicle dealer who receives
11 written notice that its franchise or selling agreement is being terminated or
12 cancelled or who receives written notice that its franchise or selling
13 agreement will not be renewed may file with the commission within the sixty-
14 day notice period a verified complaint for the commission's determination as
15 to whether the termination or cancellation or nonrenewal is unfair ~~within the~~
16 ~~purview of~~ under this chapter.

17 (b) That franchise or selling agreement shall
18 continue in effect until final determination of the issues raised in the
19 complaint as allowed under the Arkansas Administrative Procedure Act, § 25-
20 15-201 et seq., notwithstanding anything to the contrary contained in this
21 chapter or in the franchise or selling agreement.

22 (c) A manufacturer, distributor, second-stage
23 manufacturer, importer, converter, manufacturer branch or division, or
24 distributor branch or division shall have the burden of proving whether there
25 is due cause to terminate a franchise or sales and service agreement.

26
27 SECTION 15. Arkansas Code § 23-112-403(a)(2)(K), regarding
28 manufacturers, distributors, second-stage manufacturers, importers, or
29 converters, is amended to read as follows:

30 (K) Notwithstanding the terms of any franchise agreement,
31 to fail to pay to a dealer or any lienholder in accordance with their
32 respective interests after the termination of franchise:

33 (i) The dealer cost plus any charges by the
34 manufacturer, distributor, or a representative for distribution, delivery,
35 and taxes, less all allowances paid to the dealer by the manufacturer,
36 distributor, or representative for new, unsold, undamaged, and complete motor

1 vehicles of current model year and one (1) year prior model year in the
2 dealer's inventory;

3 (ii) The dealer cost of each new, unused, undamaged,
4 and unsold part or accessory if the part or accessory:

5 (a) Was purchased from the manufacturer by the
6 dealer and is in the original package;

7 (b) Is identical to a part or accessory in the
8 current parts catalogue except for the number assigned to the part or
9 accessory; or

10 (c) Was purchased in the ordinary course of
11 business by the dealer from another authorized dealer so long as the
12 authorized dealer purchased the part or accessory directly from the
13 manufacturer or distributor or from an outgoing authorized dealer as part of
14 the dealer's initial inventory;

15 (iii) The fair market value of each undamaged sign
16 owned by the dealer which bears a trademark or trade name used or claimed by
17 the manufacturer, distributor, or representative, if the sign was purchased
18 from or purchased at the request of the manufacturer, distributor, or
19 representative;

20 (iv) The fair market value of all special tools and
21 automotive service equipment owned by the dealer that were recommended in
22 writing and designated as special tools and equipment and purchased from or
23 purchased at the request of the manufacturer, distributor, or representative,
24 if the tools and equipment are in usable and good condition except for
25 reasonable wear and tear;

26 (v) The cost of transporting, handling, packing, and
27 loading of motor vehicles, parts, signs, tools, and equipment subject to
28 repurchase;

29 (vi) The balance of all claims for warranty and
30 recall service and all other money owed by the manufacturer to the dealer;

31 (vii)(a) Except as provided under subdivisions
32 (a)(2)(K)(vii)(b) and (c) of this section, the fair market value of the
33 franchise that is at least equivalent to the fair market value of the
34 franchise one (1) day before the manufacturer announces the action that
35 results in the termination or discontinuance of a line-make.

36 (b) If the termination, cancellation,

1 discontinuance, or nonrenewal is due to a manufacturer's change in
2 distributors or manufacturer, the manufacturer may avoid paying fair market
3 value to the new motor vehicle dealer if the distributor, manufacturer, new
4 distributor, or new manufacturer offers the new motor vehicle dealer a
5 franchise agreement with terms substantially similar to terms offered to
6 other same line-make new motor vehicle dealers.

7 (c) Subdivisions (a)(2)(K)(vii)(a) – (b) of
8 this section do not apply to motor vehicle dealers, manufacturers, or
9 distributors of motor homes.

10 ~~(vii)(a)(viii)(a)~~ Compensation for the actual
11 pecuniary loss caused by the franchise termination, cancellation, or
12 nonrenewal unless for due cause.

13 (b) In determining the actual pecuniary loss,
14 the value of any continued service or parts business available to the dealer
15 for the line make covered by the franchise shall be considered. If the dealer
16 and the manufacturer, importer, or distributor cannot agree on the amount of
17 compensation to be paid under this subchapter, either party may file an
18 action in a court of competent jurisdiction;

19 ~~(viii)(ix)~~ Any sums due as provided by subdivision
20 (a)(2)(K)(i) of this section within sixty (60) days after termination of a
21 franchise and any sums due as provided by subdivisions (a)(2)(K)(ii)-(vii) of
22 this section within ninety (90) days after termination of a franchise. As a
23 condition of payment, the dealer shall comply with reasonable requirements
24 with respect to the return of inventory as are set out in the terms of the
25 franchise agreement. A manufacturer, distributor, or representative who fails
26 to pay those sums within the prescribed time or at such time as the dealer
27 and lienholder, if any, proffer good title before the prescribed time for
28 payment, is liable to the dealer for:

29 (a) The greatest of dealer cost, fair market
30 value, or current price of the inventory;

31 (b) Interest on the amount due calculated at
32 the rate applicable to a judgment of a court; and

33 (c) Reasonable attorney's fees and costs; or

34 ~~(ix)(x)~~ Obligations under this subdivision (a)(2)(K)
35 do not apply if the termination is a result of the conviction of the
36 franchisee in a court of competent jurisdiction of an offense that is

1 punishable by a term of imprisonment in excess of one (1) year and the
2 offense is substantially related to the business conducted pursuant to the
3 franchise;

4
5 SECTION 16. Arkansas Code § 23-112-403(a), regarding manufacturers,
6 distributors, second-stage manufacturers, importers, or converters, is
7 amended to add additional subdivisions to read as follows:

8 (5)(A) To unreasonably reduce a motor vehicle dealer's area
9 of sales effectiveness, trade area, or similar designation without giving
10 a notice of at least thirty (30) days of the proposed reduction.

11 (B) The change shall not take effect if the dealer
12 commences an administrative action to determine whether there is good
13 cause for the change within the *thirty-day* notice period.

14 (C) The burden of proof in an action under this
15 subdivision (a)(5) shall be on the manufacturer, distributor, second-stage
16 manufacturer, importer, converter, manufacturer branch or division, or
17 distributor branch or division to prove that good cause exists to change the
18 motor vehicle dealer's area of sales effectiveness, trade area, or similar
19 designation.

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21 /s/D. Wyatt
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