

2010 -- S 2935

=====
LC02741
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES - REGULATION OF BUSINESS
PRACTICES AMONG MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, AND
DEALERS

Introduced By: Senators Sheehan, Sosnowski, Walaska, Jabour, and Picard

Date Introduced: May 26, 2010

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 31-5.1-4.2 of the General Laws in Chapter 31-5.1 entitled
2 "Regulation of Business Practices Among Motor Vehicle Manufacturers, Distributors, and
3 Dealers" is hereby amended to read as follows:

4 **31-5.1-4.2. Establishing new dealerships and relocating existing dealerships.** -- (a) In
5 the event that a manufacturer seeks to enter into a franchise establishing an additional new motor
6 vehicle dealership, adding an additional location for an existing new motor vehicle dealership, or
7 relocating an existing new motor vehicle dealership within or into a relevant market area where
8 the same line or make is then represented, except when the corporation operating the new motor
9 vehicle dealership contains one or more officers who were also officers of a dealership operating
10 at the same location as the new motor vehicle dealership immediately prior to the establishment
11 of the new motor vehicle dealership, the manufacturer shall in writing by certified mail first
12 notify the department and each new motor vehicle dealer in the same line or make in the relevant
13 market area of the intention to establish an additional dealership to add an additional location for
14 an existing new motor vehicle dealership, or to relocate an existing dealership within or into that
15 market area. Within thirty (30) days of receiving notice or within thirty (30) days after the end of
16 any appeal procedure provided by the manufacturer, any affected new motor vehicle dealership
17 may file with the department a protest to the establishing or relocating of the new motor vehicle
18 dealership or adding an additional location for an existing new motor vehicle dealership. When a

1 protest is filed, the department shall inform the manufacturer that a timely protest has been filed,
2 and that the manufacturer shall not establish or relocate the proposed new motor vehicle
3 dealership or add the proposed additional location for an existing new motor vehicle dealership
4 until the department has held a hearing, nor until the department has determined that there is good
5 cause for not permitting the new motor vehicle dealership. For the purposes of this section, the
6 reopening in a relevant market area of a new motor vehicle dealership shall be deemed the
7 establishment of an additional new motor vehicle dealership.

8 (b) In determining whether good cause has been established for entering into or
9 relocating an additional franchise for the same line or make, or adding an additional location for
10 an existing new motor vehicle dealership, the department shall take into consideration the existing
11 circumstances, including, but not limited to:

12 (1) Permanence of the investment of the existing new motor vehicle dealer(s) in the
13 community;

14 (2) Whether the new motor vehicle dealers of the same line or make in that relevant
15 market area are providing adequate consumer care for the motor vehicles of the line or make in
16 the market area which shall include the adequacy of motor vehicle sales and service facilities,
17 equipment, supply of motor vehicle parts, and qualified service personnel;

18 (3) Whether there is reasonable evidence that after the granting of the new motor vehicle
19 dealership, that the market would support all of the dealerships of that line or make in the relevant
20 market area;

21 (4) Whether it is injurious to the public welfare for an additional new motor vehicle
22 dealership to be established;

23 (5) The growth or decline in population and new motor vehicle registrations during the
24 past five (5) years in the relevant market area;

25 (6) Whether the manufacturer is motivated principally by good faith to establish an
26 additional or new motor vehicle dealer and not by non-economic considerations;

27 (7) Whether the manufacturer has denied its existing new motor vehicle dealers of the
28 same line or make the opportunity for reasonable growth, market expansion, or relocation;

29 (8) The reasonably expected or anticipated vehicle market for the relevant market area,
30 including demographic factors such as age of population, income, size class preference, product
31 popularity, retail lease transactions, or other factors affecting sales to consumers in the relevant
32 market area;

33 (9) Growth or decline in population, density of population, and new car registrations in
34 the relevant market area;

1 (10) Distance, travel time, traffic patterns, and accessibility between the existing new
2 dealership of the same new line make and the location of the proposed new or relocated
3 dealership;

4 (11) The amount of business transacted by existing new motor vehicle dealers of the line
5 or make when compared with the amount of business available to them;

6 (12) Whether the existing new motor vehicle dealers of the line or make are receiving
7 vehicles and parts in quantities promised by the manufacturer, factory branch or distributor and
8 on which promised quantities existing new motor vehicle dealers based their investment and
9 scope of operations.

10 (c) Any parties to a hearing by the department concerning the establishing or relocating
11 of a new motor vehicle dealership or adding an additional location for an existing new motor
12 vehicle dealership shall have a right to a review of the decision in a court of competent
13 jurisdiction.

14 (d) At any hearing conducted by the department under this section, the manufacturer or
15 dealer seeking to establish an additional new motor vehicle dealership, relocate an existing new
16 motor vehicle dealership, or add an additional location for an existing new motor vehicle
17 dealership shall bear the burden of proof in establishing that good cause exists for it.

18 (e) Every person, firm or corporation who prior to the retail sale of a motor vehicle,
19 converts or otherwise assembles, installs or affixes a body, cab or special equipment to a chassis
20 or who adds to, subtracts from or modifies a previously assembled or manufactured motor vehicle
21 shall be required to comply with the requirements of this section.

22 (f) Except as may be otherwise provided in the order or decision of an arbitrator in
23 proceedings under Title IV, section 747 of Public Law 111-117, 123 stat 3189, 3219 (December
24 16, 2009) (hereinafter “the Act”) any continuation, reinstatement or addition of a motor vehicle
25 dealership in this state ordered by an arbitrator in accord with the Act:

26 (1) Shall be under the same terms, conditions, and sales locality as those of the
27 terminated dealership which gave rise to the proceedings under the Act; and,

28 (2) Shall be contained in a standard sales and service agreement which shall be delivered
29 by the manufacturer to the dealer within thirty-eight (38) days of the issuance of the letter of
30 intent required by the Act or forty-five (45) days from the date of the arbitrator’s order whichever
31 is sooner; and shall be implemented by the manufacturer within thirty (30) days after execution
32 and delivery to the manufacturer; and

33 (3) Shall not be subject to the provisions of subsections (a), (b), (c), and (e) of this
34 section;

1 (g) Failure by a manufacturer to comply with the requirements of subsection (f) of this
2 section shall constitute a violation of the manufacturer's license and shall entitle the dealer to
3 payment by the non-complying manufacturer of two thousand five hundred dollars (\$2,500) for
4 each day of non-compliance or actual damages, whichever is greater.

5 (h) Any dispute between the manufacturer and the dealer arising out of the
6 manufacturer's performance of its obligations under subsections (f) and (g) of this section shall
7 not be subject to arbitration, except with the assent of both parties.

8 SECTION 2. This act shall take effect upon passage.

=====
LC02741
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES - REGULATION OF BUSINESS
PRACTICES AMONG MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, AND
DEALERS

- 1 This act would create regulations dealing with the continuation, reinstatement or addition
- 2 of motor vehicle dealerships ordered by an arbitrator under federal law.
- 3 This act would take effect upon passage.

=====
LC02741
=====