

CHAPTER 241

S.B. No. 905

An Act relating to the regulation of the sale, manufacture, and distribution of certain motor vehicles and to powers of the Texas Motor Vehicle Commission; amending the Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon's Texas Civil Statutes), by amending Subsection (a) of Section 2.03, Subsection (j) of Section 3.04, Section 4.04, Subsection (c) of Section 4.02, Sections 5.01, 5.02, and 6.01 and by adding Section 6.01A.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subsection (a), Section 2.03, Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

"(a) Each member of the Commission shall be a citizen of the United States and a resident of this State. Five members shall be dealers [~~no two of which are franchised to sell the motor vehicles manufactured or distributed by the same person or a subsidiary or affiliate of the same person~~]. Four members shall be persons from the public who are not licensed hereunder and who do not have, except as consumers, interests in any business that manufactures, distributes, or sells new motor vehicles."

SECTION 2. Subsection (j), Section 3.04, Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

"(j) No dealer member of the Commission may participate in, deliberate on, hear, or consider, or decide any contested case, as that term is used in the *Administrative Procedure and Texas Register Act* (Article 6252-13a, Vernon's Texas Civil Statutes), [~~matter involving a protest or denial under Section 4.06(e), 5.02(3), 5.02(6), 5.02(11), or 5.02(13) of this Act~~] involving motor vehicles, or the sale or proposed sale of [~~a dealership franchised or proposed to be licensed to sell~~] motor vehicles, manufactured or distributed by the same person or a subsidiary or affiliate of the same person for which the dealer member is franchised."

SECTION 3. Section 4.04, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 4.04. **DOING BUSINESS.** (a) The obtaining of a license hereunder shall constitute the doing of business in this State, and if no agent for service of process has been designated by a licensee, the licensee will be deemed to have designated the Secretary of State of Texas as his or its agent for receipt of service of process.

"(b) A manufacturer whose products are offered for sale in this State pursuant to a franchise entered into between its distributor or representative and a dealer is bound by the terms of the franchise agreement and the provisions of this Act as if it had executed the franchise agreement. A

manufacturer that changes its distributor or the method of distribution of its products in this State in a manner that results in unlawful termination or noncontinuance of a franchise may not directly or indirectly distribute its products in this State."

SECTION 4. Subsection (c), Section 4.02, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

"(c)(1) A dealer may carry on the business of his dealership at more than one location; however, a separate location for the display and sale of new motor vehicles may not be established and maintained by a dealer unless expressly authorized by the dealer's franchise and license. An application for a dealer's license or to amend a dealer's license which proposes the establishment of a separate display and sales location is subject to all of the provisions of this Act. A separate license shall be required for each separate and distinct dealership as determined by the Commission.

"(2) No licensee may participate in a new motor vehicle show or exhibition at which new motor vehicles are offered for sale unless the Commission has first had written notice at least 30 days prior to the opening day of the show or exhibition and its written approval has been granted.

"(3) The Commission shall, under its general rule-making authority granted in Section 3.02 of this Act, establish rules and guidelines for the implementation and enforcement of this subsection."

SECTION 5. Section 5.01, Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 5.01. **DEALERS.** It shall be unlawful for any dealer to:

"(1) Require a retail purchaser of a new motor vehicle as a condition of sale and delivery thereof to purchase special features, equipment, parts, or accessories not ordered or desired by the purchaser, provided such features, equipment, parts, or accessories are not already installed on the new motor vehicle when received by the dealer.

"(2) Use false, deceptive, or misleading advertising [~~; in connection with any of the business of a dealer, as defined in Section 17-12 of the Business and Commerce Code, as amended~~].

"(3) Fail to perform the obligations placed on the selling dealer in connection with the delivery and preparation of a new motor vehicle for retail sale as provided in the manufacturer's preparation and delivery agreements on file with the Commission and applicable to such vehicle.

"(4) Fail to perform the obligations placed on the dealer in connection with the manufacturer's warranty agreements on file with the Commission.

"(5) Operate as a dealer without a currently valid license from the Commission or otherwise violate this Act or rules promulgated by the Commission hereunder."

SECTION 6. Section 5.02, Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 5.02. **MANUFACTURERS; DISTRIBUTORS; REPRESENTATIVES.** It shall be unlawful for any manufacturer, distributor, or representative to:

"(1) Require or attempt to require any dealer to order, accept delivery of or pay anything of value, directly or indirectly, for any motor vehicle, appliance, part, accessory or any other commodity unless voluntarily ordered or contracted for by such dealer.

"(2) Refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order to a dealer having a franchise agreement for the retail sale of any motor vehicles sold or distributed by such manufacturer, distributor, or representative, any new motor vehicle or parts or accessories to new motor vehicles as are covered by such franchise if such vehicle, parts or accessories are publicly advertised as being available for delivery or are actually being delivered; provided, however, this provision is not violated if such failure is caused by acts of God, work stoppage or delays due to strikes or labor disputes, freight embargoes or other causes beyond the control of the manufacturer, distributor, or representative.

"(3) Notwithstanding the terms of any franchise agreement, terminate or refuse to continue any franchise with a dealer unless (A) the dealer and the Commission have received written notice sixty days before the effective date thereof setting forth the specific grounds for termination or noncontinuance and (B) if the dealer files a protest with the Commission, it is established by a preponderance of evidence at a hearing called by the Commission that there is good cause for the termination or noncontinuance. The Commission shall consider all the existing circumstances in determining good cause, including without limitation the dealer's sales in relation to the market, the dealer's investment and obligations, injury to public welfare, adequacy of service facilities, equipment, parts and personnel of the dealer and other dealers of new motor vehicles of the same line-make, whether warranties are being honored, and compliance with the franchise agreement. Good cause shall not be shown solely by a desire for further market penetration. If a franchise is terminated or not continued, another franchise in the same line-make will be established within a reasonable time unless it is shown to the

Commission that the community or trade area cannot reasonably support such a dealership. If this showing is made, no dealer license shall be thereafter issued in the same area unless a change in circumstances is shown.

"(4) Use any false, deceptive or misleading advertising [; as defined in Section 17-12 of the Business and Commerce Code, as amended].

"(5) Notwithstanding the terms of any franchise agreement, prevent any dealer from changing the capital structure of his dealership or the means by or through which he finances the operation thereof, provided that the dealer meets any reasonable capital requirements agreed to by contract of the parties.

"(6) Notwithstanding the terms of any franchise agreement, fail to give effect to or attempt to prevent any sale or transfer of a dealer, dealership or franchise or interest therein or management thereof unless it is shown to the Commission after hearing that the result of such sale or transfer will be detrimental to the public or the representation of the manufacturer or distributor.

"(7) Require or attempt to require that a dealer assign to or act as an agent for any manufacturer, distributor or representative in the securing of promissory notes and security agreements given in connection with the sale or purchase of new motor vehicles or the securing of policies of insurance on or having to do with the operation of vehicles sold.

"(8) Fail, after complaint and hearing, to perform the obligations placed on the manufacturer in connection with the delivery, preparation and warranty of a new motor vehicle as provided in the manufacturer's warranty, preparation, and delivery agreements on file with the Commission.

"(9) Fail to compensate its dealers for the work and services they are required to perform in connection with the dealer's delivery and preparation obligations according to the agreements on file with the Commission which must be found by the Commission to be reasonable, or fail to adequately and fairly compensate its dealers for labor, parts and other expenses incurred by such dealer to perform under and comply with manufacturer's warranty agreements. In no event shall any manufacturer or distributor pay its dealers an amount of money for warranty work that is less than that charged by the dealer to the retail customers of the dealer for nonwarranty work of like kind. All claims made by dealers for compensation for delivery, preparation, and warranty work shall be paid within thirty days after approval and shall be approved or disapproved within thirty days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the claim in accordance with the requirements of the manufacturer or distributor on file with the Commission. Notwithstanding the terms of a franchise agreement or provision of law in conflict with this section, the dealer's delivery, preparation, and warranty obligations as filed with the Commission shall constitute the dealer's sole responsibility for product liability as between the dealer and manufacturer, and, except for a loss caused by the dealer's failure to adhere to these obligations, a loss caused by the dealer's negligence or intentional misconduct, or a loss caused by the dealer's modification of a product without manufacturer authorization, the manufacturer shall reimburse the dealer for all loss incurred by the dealer, including legal fees, court costs, and damages, as a result of the dealer having been named a party in a product liability action.

"(10) Operate as a manufacturer, distributor, or representative without a currently valid license from the Commission or otherwise violate this Act or rules promulgated by the Commission hereunder.

"(11) Notwithstanding the terms of any franchise agreement, to prevent or refuse to honor the succession to a dealership by any legal heir or devisee under the will of a dealer or under the laws of descent and distribution of this State unless it is shown to the Commission, after notice and hearing, that the result of such succession will be detrimental to the public interest or to the representation of the manufacturer or distributor; provided, however, nothing herein shall prevent a dealer, during his lifetime, from designating any person as his successor dealer, by written instrument filed with the manufacturer or distributor.

"(12) Require that a dealer pay or assume, directly or indirectly, any part of any refund, rebate, discount, or other financial adjustment made by the manufacturer, distributor, or representative to, or in favor of, any customer of a dealer, unless voluntarily agreed to by such dealer.

"(13) Notwithstanding the terms of any franchise agreement, deny or withhold approval of a written application to relocate a franchise unless (A) the applicant has received written notice of the denial or withholding of approval within 90 days after receipt of the application containing information reasonably necessary to enable the manufacturer or distributor to adequately evaluate the application, and if (B) the applicant files a protest with the Commission and establishes by a preponderance of the evidence at a hearing called by the Commission that the grounds for, and distance of, the relocation are reasonable."

SECTION 7. Section 6.01, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 6.01. **PENALTY.** Any person who violates any provision of this Act or any rule, regulation, or order of the Commission issued pursuant to this Act is subject to a civil penalty levied by the Commission of not less than \$50.00 nor more than \$2,000.00 [~~\$1,000.00~~] for each day of violation and for each act of violation [; as the court may deem proper]. All civil penalties recovered under this Act shall be paid to the General Revenue Fund of the State of Texas."

SECTION 8. The Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon's Texas Civil Statutes), is amended by adding Section 6.01A to read as follows:

"Section 6.01A. **CEASE AND DESIST ORDERS.** If it appears to the Commission at any time that the sale or lease, proposed sale or lease, or method of sale or lease of a motor vehicle or vehicles by any person would not be in compliance with any law or would tend to work a fraud on a purchaser or lessee thereof, it may order the person selling or leasing, proposing to sell or lease, or engaging in the method of sale or lease of such motor vehicle or vehicles to appear and show cause why a cease and desist order should not be issued prohibiting such sale or lease, proposed sale or lease, or method of sale or lease. Proceedings under this section shall be governed by the provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) relating to the contested cases. If the Commission, after hearing, finds that the sale or lease, proposed sale or lease, or the method of sale or lease of the motor vehicle or motor vehicles would not be in compliance with a law or would tend to work a fraud on a purchaser or lessee thereof it may enter its written cease and desist order prohibiting or suspending such sale or lease, proposed sale or lease, or method of sale or lease."

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 30, 1985, by the following vote: Yeas 27, Nays 1; passed the House on May 15, 1985, by the following vote: Yeas 135, Nays 0, one present not voting.

Approved: June 4, 1985

Effective: Immediately