

CHAPTER 357

H.B. No. 1531

AN ACT

relating to the regulation of the manufacture, distribution, conversion, and sale of certain motor vehicles.

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

SECTION 1. Section 1.02, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.02. **POLICY AND PURPOSE.** The distribution and sale of new motor vehicles in this State vitally affects the general economy of the State and the public interest and welfare of its citizens. It is the policy of this State and the purpose of this Act to exercise

the State's police power to insure a sound system of distributing and selling new motor vehicles through licensing and regulating [the] manufacturers, distributors, *converters*, and [franchised] dealers of those vehicles, *and enforcing this Act as to other persons, in order to provide for compliance with manufacturer's warranties, and to prevent frauds, unfair practices, discriminations, impositions, and other abuses of our citizens.*

SECTION 2. Section 1.03, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.03. DEFINITIONS. In this Act, unless the context requires a different definition:

(1) "Motor vehicle" means:

(A) every fully self-propelled vehicle which has as its primary purpose the transport of a person or persons, or property, on a public highway, and having two or more wheels;

(B) every two or more wheeled fully self-propelled, titled vehicle which has as its primary purpose the transport of a person or persons or property and is not manufactured for use on public streets, roads, or highways; or

(C) an engine, transmission, or rear axle manufactured for installation in a vehicle having as its primary purpose the transport of a person or persons or property on a public highway and having a gross vehicle weight rating of more than 16,000 pounds, whether or not attached to a vehicle chassis.

(2) "New motor vehicle" means a motor vehicle which has not been the subject of a "retail sale" as defined in Subdivision (2), Section 152.001, Tax Code.

(3) "Person" means every natural person, partnership, corporation, association, trust, estate, or any other legal entity.

(4) "Dealer" means any person engaged in the business of buying, selling or exchanging new motor vehicles at an established and permanent place of business pursuant to a franchise in effect with a manufacturer or distributor.

(5) "Manufacturer" means any person who manufactures or assembles new motor vehicles either within or without this State.

(6) "Distributor" means any person who distributes and/or sells new motor vehicles to dealers and who is not a manufacturer.

(7) "Representative" means any person who is or acts as an agent, employee or representative of a manufacturer, ~~[or]~~ distributor, *or converter* who performs any duties in this State relating to promoting the distribution and/or sale of new motor vehicles or contacts dealers in this State on behalf of a manufacturer, ~~[or]~~ distributor, *or converter*.

(8) "Franchise" means one or more contracts under which (A) the franchisee is granted the right to sell new motor vehicles manufactured or distributed by the franchisor; (B) the franchisee as an independent business is a component of franchisor's distribution system; (C) the franchisee is substantially associated with franchisor's trademark, tradename and commercial symbol; (D) the franchisee's business is substantially reliant on franchisor for a continued supply of motor vehicles, parts, and accessories for the conduct of its business; or (E) any right, duty, or obligation granted or imposed by this Act is affected.

(9) "Commission" means the Texas Motor Vehicle Commission created by this Act.

(10) "Broker" means a person who, for a fee, commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle, and who is not:

(A) a dealer or ~~[a bona fide agent or]~~ employee of a dealer;

(B) a representative or ~~[a bona fide agent or]~~ employee of a representative;

(C) a distributor or ~~[bona fide agent or]~~ employee of a distributor; or

(D) at any point in the transaction the bona fide owner of the vehicle involved in the transaction.

(11) "*Motor home*" means a motor vehicle which is designed to provide temporary living quarters and which:

(A) is built onto as an integral part of, or is permanently attached to, a motor vehicle chassis; and

(B) contains at least four of the following independent life support systems if each is permanently installed and designed to be removed only for purposes of repair or replacement and meets the standards of the American National Standards Institute, Standards for Recreational Vehicles:

- (i) a cooking facility with an on-board fuel source;
- (ii) a gas or electric refrigerator;
- (iii) a toilet with exterior evacuation;
- (iv) a heating or air conditioning system with an on-board power or fuel source separate from the vehicle engine;
- (v) a potable water supply system that includes at least a sink, a faucet, and a water tank with an exterior service supply connection;
- (vi) a 110–125 volt electric power supply.

(12) “Conversion” means a motor vehicle, other than a motor home, which has been modified by a person other than the manufacturer of the chassis of the motor vehicle and which has not been the subject of a retail sale.

(13) “Motor home manufacturer” means a person other than the manufacturer of the chassis of a motor vehicle who, prior to the retail sale of the motor vehicle, performs modifications on the chassis that result in the finished product being classified as a motor home.

(14) “Chassis manufacturer” means a person who manufactures and produces the frame upon which is mounted the body of a motor vehicle.

(15) “Converter” means a person who prior to the retail sale of a motor vehicle, assembles, installs, or affixes a body, cab, or special equipment to a chassis, or who adds, subtracts from, or modifies a previously assembled or manufactured motor vehicle.

SECTION 3. Section 2.02, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon’s Texas Civil Statutes), is amended to read as follows:

Sec. 2.02. MEMBERS OF COMMISSION. The Commission *consists* [~~shall consist~~] of six [~~nine~~] persons appointed by the Governor with the advice and consent of the Senate.

SECTION 4. Section 2.03, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon’s Texas Civil Statutes), is amended to read as follows:

Sec. 2.03. QUALIFICATIONS OF MEMBERS. (a) *A person is eligible to be appointed to the Commission if:*

- (1) *he is a citizen of the United States and a resident of this State; and*
- (2) *he has no interest in a business that manufactures, distributes, converts, or sells motor vehicles.* [~~Each member of the Commission shall be a citizen of the United States and a resident of this State. Five members shall be dealers. 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.~~

~~[(b) The persons initially appointed to the Commission as dealer members shall be persons whose principal occupation has been as franchised new motor vehicle dealers in this State for at least ten years. The dealer members appointed to the Commission after the initial appointments are made shall be licensed dealers under this Act.]~~

(b) [~~(c)~~] The office of a member is automatically vacated and shall be filled as any other vacancy, if:

(1) *the member becomes a licensee* [~~person is a dealer member of the Commission and ceases to be a licensed dealer~~] under this Act;

(2) *the member* [~~person is a public member of the Commission and~~] acquires an interest in a business that manufactures, distributes, converts, or sells [~~or distributes new~~] motor vehicles;

(3) the member becomes an officer, employee, or paid consultant of a trade association in the ~~new~~ motor vehicle industry; or

(4) a person related to the member within the *first* ~~second~~ degree by consanguinity or affinity becomes an officer, employee, or paid consultant of a trade association in the ~~new~~ motor vehicle industry, *becomes a licensee under this Act, or acquires an interest in a business that manufactures, distributes, converts, or sells motor vehicles.*

SECTION 5. Subsection (a), Section 2.04, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

(a) ~~The [Except as provided by Subsections (b) and (c) of this section, the] members of the Commission shall hold office for terms of six years, with the terms of two [three] members expiring on January 31 of each odd-numbered year. [The Governor shall make the appointments in such a way that there are always four members on the Commission from the public at large.]~~ No person shall serve two consecutive full six-year terms as a member of the Commission.

SECTION 6. Subsections (b), (c), and (d), Section 2.04, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), are repealed.

SECTION 7. Section 2.07, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.07. PER DIEM; EXPENSES. Each member of the Commission shall be entitled to *\$50.00* ~~[\$25.00]~~ per day for each day actually engaged in the duties of the office, including time spent in necessary travel to and from meetings and otherwise, together with all travel and other necessary expenses incurred while performing official duties.

SECTION 8. Subsection (a), Section 2.08, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The Commission shall hold a regular annual meeting in September of each year and elect a chairman and vice-chairman to serve for the ensuing year. The Commission shall have regular meetings as the majority of the members specifies and special meetings at the request of any two members. Reasonable notice of all meetings shall be given as Commission rules prescribe. A majority of the Commission *constitutes*, ~~including at least two of the public members, shall constitute~~ a quorum to transact business.

SECTION 9. Subsection (b), Section 2.09, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

(b) An employee of the Commission is subject to dismissal who has an interest~~[, except as a consumer,]~~ or is related within the *first* ~~second~~ degree by consanguinity or affinity to a person who has an interest~~[, except as a consumer,]~~ in a business that manufactures, distributes, *converts*, or sells new motor vehicles.

SECTION 10. Subsection (a), Section 2.10, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The Commission shall send all moneys received by it from license fees, *filing fees*, and *civil penalties* paid under this Act to the State Treasurer, who shall deposit them in the General Revenue Fund in the State Treasury.

SECTION 11. Section 3.01, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.01. IN GENERAL. The Commission shall administer the provisions of this Act, establish the qualifications of manufacturers, *distributors*, *converters*, and dealers, and insure that the distribution and sale of motor vehicles is conducted as provided herein and under the Commission's rules. The Commission has the powers and duties specifically prescribed by this Act and all other powers necessary and convenient to carry out its responsibilities.

SECTION 12. Section 3.04, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.04. HEARINGS. (a) *A hearing* ~~[The Commission]~~ shall be conducted in ~~hear~~ all contested cases, as defined in the Administrative Procedure and Texas Register Act

(Article 6252-13a, Vernon's Texas Civil Statutes), arising under this Act *and may be heard by a member of the Commission, the executive director, or a hearing examiner, each of whom may be referred to in this Act as the "examiner". The examiner may* ~~[The Commission may]~~ hold hearings, administer oaths, receive *pleadings and* evidence, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to the hearing, ~~[and]~~ make findings of fact and *issue a proposal for decision* ~~[decisions in administering the Act and the rules, orders, and other actions of the Commission].~~

(b) Notice of a hearing shall describe in summary form the purposes of the hearing and its date, time, and place.

(c) Notice of a hearing on Commission rules and other matters having general application shall be mailed to all licensees not less than twenty days before the hearing date and may be given to such other persons as the Commission deems appropriate. Notice of a hearing concerning a specific geographic area and not having general application shall be sent to the licensees in that area as defined by the Commission.

(d) Notice of a hearing concerning individual persons shall be given by certified mail return receipt requested to the persons involved at their last known address not less than twenty days before the hearing date. Notice may be given to any officer, agent, employee, legal representative or attorney of the person. Notice may be waived by interested persons.

(e) A hearing shall be conducted at the time and place stated in the notice or an amended notice shall be sent. A hearing may be continued from time to time and place to place as announced openly before the hearing is recessed without further notice or otherwise by giving reasonable notice less than twenty days before.

(f) *A person* ~~[The Commission may delegate the authority to call and hold hearings to one or more of its members, the executive director, one or more employees of the Commission or to persons under contract to the Commission. The person holding the hearing shall have all the powers of the Commission in connection with the hearing.~~

~~[(g) All persons]~~ whose rights may be affected at any hearing shall have the right to appear personally and by counsel, to cross-examine adverse witnesses and to produce evidence and witnesses in their own behalf. ~~[If a hearing is not held before the whole Commission, such person shall have the right to appear before the Commission and present oral argument when the matter comes before them for decision.]~~

(g) *A proposal for decision shall be served on the party or parties and an opportunity afforded each party to file exceptions, replies, and present briefs to the Commissioners. After the briefs, replies, and exceptions have been timely filed, the examiner's report and proposal for decision will be considered by the Commission and it shall render its order.*

(h) *Any party may present oral argument before the Commission before a final order is rendered, except that in a case in which this Act provides for review by trial de novo, oral argument shall be at the discretion of the Commission. All final decisions or orders of the Commission shall be in writing and shall be signed by the chairman or vice-chairman.*

(i) ~~[(h)]~~ The owner of a motor vehicle or the owner's designated agent may make a complaint concerning defects in a motor vehicle which are covered by the manufacturer's or distributor's warranty agreement applicable to the vehicle. Such complaint must be made in writing to the applicable dealer, manufacturer, or distributor, and must specify the defects in the vehicle which are covered by the warranty. The owner may make further complaint by sending to the Commission a copy of the complaint. *An examiner* ~~[The Commission]~~ may hold a hearing on all unsatisfied complaints to determine whether there has been a violation of the Act.

(j) ~~[(i)]~~ ~~After the Commission schedules a hearing on a complaint made by a retail buyer under this section or by a licensed dealer under Section 4.06(e) of this Act, the~~ Commission may *dismiss a complaint or protest* ~~[cancel or adjourn the hearing]~~ if it determines ~~[by an order entered on the records of the Commission,]~~ that the complaint or

protest is frivolous or was made for purposes of harassment [of the dealer, the applicant, or the Commission].

~~[(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), involving motor vehicles, or the sale or proposed sale of 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 13. Section 3.05, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.05. ENFORCEMENT; CONTRACTS; INSTRUMENTS. The Commission shall conduct investigations and, if appropriate, shall cause legal proceedings to be instituted to enforce this Act and its rules, orders, and decisions, whenever the Commission has reason to believe, through receipt of a complaint or otherwise, that a violation of this Act or a Commission rule, order, or decision has occurred or is likely to occur. *In conducting an investigation under this Act, the Commission may compel the production of documents and the appearance of witnesses.* ~~[Should it appear from any investigation of a possible violation of any other law or regulation that a violation of this Act may have occurred, the matter shall be referred to the Commission to determine whether proceedings under this Act are also appropriate.]~~ The Commission may make contracts and execute instruments necessary or convenient to the exercise of its power or performance of its duties.

SECTION 14. Section 3.06, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.06. COMPLAINT STATUS. The Commission shall keep an information file about each complaint filed with the Commission. ~~[If a written complaint is filed with the Commission relating to a licensee under this Act, the executive director of the Commission, at least as frequently as quarterly, shall notify the persons involved of the status of the complaint until it has been resolved.]~~

SECTION 15. Section 4.01, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.01. LICENSE REQUIRED. No person shall engage in business as, serve in the capacity of, or act as a dealer, manufacturer, distributor, *converter*, or representative in this State without obtaining a license therefor as provided in this Act. All licenses shall expire one year from date of issue.

SECTION 16. Section 4.01A, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is repealed.

SECTION 17. Subsections (b) and (c), Section 4.02, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), are amended to read as follows:

(b) *A dealer shall renew his license annually on an application prescribed by the Commission. If a material change occurs in the information included in a dealer's application for a license or renewal of a license, the dealer shall, within a reasonable time but not later than the next annual renewal, notify the Commission of those changes. The Commission shall prescribe a form for the disclosure of the changes and shall include in the renewal application a request for disclosure of material changes.* ~~[A license may be renewed annually by filing an application on the forms prescribed which shall keep current the information supplied in the original application and by paying the fees.]~~

(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) *Except as provided in this subdivision, no [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. A licensee may not sell or offer for sale a new motor vehicle at a show or exhibition; however, dealership personnel may be present to aid in the showing or exhibiting of the new motor vehicle. This subdivision does not prohibit the sale of a motor home at a show or exhibition if the show or exhibition is approved by the Commission and if the sale does not otherwise violate a provision of law.*

(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 18. Section 4.03, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.03. MANUFACTURER, DISTRIBUTOR, *CONVERTER*, AND REPRESENTATIVE APPLICATION. (a) The application for a manufacturer's, distributor's, *converter's*, or representative's license shall be on a form prescribed by the Commission which form shall contain such information as the Commission deems necessary to fully determine the qualifications of the applicant for a license, including financial resources, business integrity and experience, facilities and personnel for serving dealers and such other information as the Commission considers to be pertinent to safeguard the public interest and welfare.

(b) The applicant for a manufacturer's license shall furnish a list of all distributors, representatives acting for applicant, and all dealers franchised to sell applicant's products in this State and their location [~~and contract term~~]. Thereafter all manufacturers shall advise the Commission within fifteen days of any change in the list of distributors, representatives, and dealers, and this information shall become part of the licensee's application.

(c) Each application for a manufacturer's license shall include an instrument setting forth the terms and conditions of all warranty agreements in force and effect on the products it sells in this State to ascertain the degree of protection afforded the retail purchasers of those products and the obligations of dealers in connection therewith as well as the basis for compensating dealers for labor, parts and other expenses incurred in connection with such manufacturer's warranty agreements including a statement of the manufacturer's compliance with Subdivision (9), Section 5.02 of this Act. In addition, all manufacturers shall specify on or with the application the delivery and preparation obligations of their dealers prior to delivery of a new motor vehicle to a retail purchaser and the schedule of compensation to be paid to dealers for the work and service performed by them in connection with such delivery.

(d) The application for a distributor license shall disclose the manufacturer for whom the distributor will act, whether the manufacturer is licensed in this State, the warranty covering the vehicles to be sold, the persons in this State who will be responsible for compliance with that warranty, and the nature and terms of the contract under which the distributor will act for a manufacturer. Also, the application must disclose the dealers with whom the distributor will do business. If the distributor is to have any responsibility for warranties, the distributor shall furnish the same information pertaining thereto as is required of a manufacturer. The Commission shall be advised of any change in this information within fifteen days from the date thereof and such new information shall become part of the licensee's application.

(e) A license may be renewed annually by filing an application on the forms prescribed which shall keep current the information supplied in the original application and by paying the fees.

SECTION 19. Section 4.05(a), Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), as amended by Section 15, Chapter 81, Acts of the 68th Legislature, Regular Session, 1983, and Section 4.05(a-1), Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), are repealed.

SECTION 20. Subsection (a), Section 4.05, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), as amended by Section 3, Chapter 651, Acts of the 68th Legislature, 1983, is amended to read as follows:

(a) The annual license fees for licenses issued hereunder shall be as follows:

- (1) For each manufacturer and distributor, *\$750.00* [~~\$500.00~~].
- (2) For each dealer who sold 200 or fewer new motor vehicles during the preceding calendar year, *\$150.00* [~~\$100.00~~].
- (3) For each dealer who sold more than 200, but not more than 500, new motor vehicles during the preceding calendar year, *\$250.00* [~~\$150.00~~].
- (4) For each dealer who sold more than 500, but not more than 1,000, new motor vehicles during the preceding calendar year, *\$350.00* [~~\$200.00~~].
- (5) For each dealer who sold more than 1,000 new motor vehicles during the preceding calendar year, *\$450.00* [~~\$250.00~~].
- (6) For each representative, *\$75.00* [~~\$50.00~~].
- (7) *For each converter, \$250.00.*

SECTION 21. Section 4.05, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended by adding Subsections (e) and (f) to read as follows:

(e) *The filing fees for a contested case or protest that involves a hearing are:*

- (1) *for a complaint filed under Section 6.07 of this Act, \$35.00; and*
- (2) *for all other complaints or protests, \$150.00.*

(f) *In a case brought under Section 6.07 of this Act in which a complainant prevails, the Commission shall order a nonprevailing party to reimburse to the complainant the full amount of the filing fee.*

SECTION 22. Subsections (c) and (e), Section 4.06, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), are amended to read as follows:

(c) The Commission may deny a dealer application to establish a dealership if the same line-make of new motor vehicle is then represented in the county in which the proposed dealership site is located, or in an area within 15 [25] miles of the proposed dealership site, by a dealer who is in compliance with his franchise agreement with the manufacturer or distributor, is adequately representing the manufacturer or distributor in the sale and service of its new motor vehicles, and good cause is shown why *the issuance of a [an additional] dealer license is not in the public interest*, provided that the Commission shall consider the desirability of a competitive marketplace in all determinations made pursuant to this subsection.

(e) No license shall be denied, revoked, or suspended except on order of the Commission after a hearing [~~and the evidence adduced is considered by the Commission at the hearing or by a hearing report~~]. The Commission may inspect the books and records of a licensee in connection with a hearing called or proposed.

SECTION 23. Section 5.01, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 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 *at the time of sale* [~~when received by the dealer~~].
- (2) Use false, deceptive, or misleading advertising.
- (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 24. Section 5.02, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 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 the 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.

(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 *written* requirements of the manufacturer or distributor *in effect at the time the claim arose* [~~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.

(14) *Notwithstanding the terms of any franchise agreement, fail to pay to the dealer upon termination of a franchise:*

(A) the dealer cost plus any charges by the manufacturer, distributor, or representative for distribution, delivery, and taxes, less all allowances paid to the dealer by the manufacturer, distributor, or representative for new, unsold, undamaged, and complete motor vehicles of current model year or one year prior model year in the dealer's inventory;

(B) the dealer cost of each new, unused, undamaged, and unsold part or accessory if the part or accessory is in the current parts catalogue and is still in the original, resalable merchandising package and in unbroken lots, except that in the case of sheet metal, a comparable substitute for the original package may be used, and if the part or accessory was purchased by the dealer either directly from the manufacturer or distributor or from an outgoing authorized dealer as a part of the dealer's initial inventory;

(C) the fair market value of each undamaged sign owned by the dealer which bears a trademark or tradename used or claimed by the manufacturer, distributor, or representative if the sign was purchased from or purchased at the request of the manufacturer, distributor, or representative;

(D) the fair market value of all special tools and automotive service equipment owned by the dealer which were recommended in writing and designated as special tools and equipment and purchased from or purchased at the request of the manufacturer, distributor, or representative, if the tools and equipment are in usable and good condition except for reasonable wear and tear;

(E) the cost of transporting, handling, packing, and loading of motor vehicles, parts, signs, tools, and special equipment subject to repurchase;

(F) any sums due as provided by this subdivision within six months after termination of a franchise if the manufacturer, distributor, or representative receives good and marketable title and if the seller has complied with Chapter 6, Business & Commerce Code. A manufacturer, distributor, or representative who fails to pay those sums within six months after termination is liable to the dealer for:

- (1) the greatest of dealer cost, fair market value, or current price of the inventory;
- (2) interest on the amount due under Subdivision (1) of this subsection calculated from six months after the termination at the rate applicable to a judgment of a court; and
- (3) reasonable attorney's fees and costs.

SECTION 25. Section 5.04, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.04. SALE OF NEW MOTOR VEHICLES. (a) No person may engage in the business of buying, selling, or exchanging new motor vehicles unless he:

- (1) holds a valid license issued by the Commission for the make or makes of new motor vehicles being bought, sold, or exchanged; or [~~unless such person~~]
- (2) is acting as a bona fide employee or agent of the licensee; ~~or unless such person is a second stage or allied equipment manufacturer modifying or converting new motor vehicles and offering them for sale with the original manufacturer's warranty unimpaired].~~

(b) In this section, the term "engage in the business of buying, selling, or exchanging new motor vehicles" means:

- (1) displaying for sale new motor vehicles on a lot or showroom; or
- (2) advertising for sale new motor vehicles; or
- (3) regularly or actively soliciting buyers for new motor vehicles.

(c) In this section, the "make" of a conversion is that of the chassis manufacturer and the "make" of a motor home is that of the motor home manufacturer.

SECTION 26. Section 6.06, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding the terms of any other provision of law, a person licensed by the Commission does not commit an offense by employing a person to tow a disabled vehicle to or from the premises for which he is licensed. This exemption applies whether or not the person so employed to tow a vehicle holds a valid certificate issued by an agency of the State by which he is empowered to engage in the business of towing vehicles for hire and whether or not the person so employed to tow a vehicle

commits an offense by towing the vehicle. Any law in conflict with this subsection is repealed to the extent of that conflict.

SECTION 27. Subsection (d), Section 6.07, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

(d) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties if (1) the same nonconformity has been subject to repair four or more times by the manufacturer or distributor, its agent, or its authorized dealer, within the express warranty term or during the period of one year following the date of original delivery to an owner, whichever is the earlier date, but such nonconformity continues to exist; or (2) the vehicle is out of service for repair for a cumulative total of 30 or more days during such term or during such period, whichever is the earlier date *and a nonconformity still exists that substantially impairs use and market value.* The term of an express warranty, *the [such] one-year period, and the [such] 30-day period shall be extended by any period of time during which repair services are not available to the owner because of a war, invasion, strike or fire, flood, or other natural disaster. In no event shall the presumption herein provided apply against a manufacturer or distributor unless the manufacturer or distributor has received prior direct notification in writing from or on behalf of the owner and had an opportunity to cure the alleged defect.*

SECTION 28. On the effective date of this Act the term of each dealer member of the Texas Motor Vehicle Commission expires. The governor shall appoint one member of the Texas Motor Vehicle Commission to a term that expires January 31, 1989 and two members to a term that expires January 31, 1993. Each nondealer member of the Commission appointed to a term that expires after the effective date of this Act shall serve the term to which he was appointed.

SECTION 29. The increase in existing annual license fees and the new fees provided in Section 20 of this Act take effect September 1, 1987. All other provisions of this Act take effect from and after its passage.

SECTION 30. 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 according to its terms, and it is so enacted.

Passed by the House on May 6, 1987, by the following vote: Yeas 139, Nays 0, 1 present, not voting. Passed by the Senate on May 20, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 11, 1987.

Effective June 11, 1987.