~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 12, 2013

**S. 382**

Introduced by Senators Grooms, Alexander, L. Martin, Campbell, Davis, McGill, Nicholson, O’Dell, Reese, Shealy, Johnson, Verdin, Williams, Cleary, Allen, Rankin, Setzler, Lourie, Scott, Ford, Turner, Bennett, Corbin, Bright, Hutto, Jackson, Sheheen, Pinckney, Cromer, Hembree, Matthews and McElveen

S. Printed 3/12/13--S.

Read the first time February 13, 2013.

**THE COMMITTEE ON TRANSPORTATION**

To whom was referred a Bill (S. 382) to amend Section 56-15-10, relating to definitions for regulating manufacturers, distributors, and dealers, to define the terms “due cause” and “material breach”, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Section 56‑15‑10(r) of the 1976 Code is amended to read:

“(r) ~~[Deleted]~~ ‘Due cause’ means a material breach by a dealer of a lawful provision of a franchise or selling agreement that is not cured within a reasonable period of time after being given prior written notice of the specific material breach.

(s) ‘Material breach’ means a contract violation that is substantial and significant.”

SECTION 2. A. Section 56‑15‑40(2) of the 1976 Code is amended to read:

“(2) It shall be deemed a violation of paragraph (a) of Section 56‑15‑30 for a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division, or an officer, agent or other representative ~~thereof~~, to require, coerce, or attempt to coerce, any motor vehicle dealer:

(a) ~~To~~ to order or accept delivery of any motor vehicle or vehicles, appliances, equipment, parts or accessories ~~therefor~~, or any other commodity or commodities which such motor vehicle dealer has not voluntarily ordered~~.~~;

(b) ~~To~~ to order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of said motor vehicles as publicly advertised by the manufacturer thereof~~.~~;

(c) ~~To~~ to order for any person any parts, accessories, equipment, machinery, tools, appliances or any commodity whatsoever;

(d) to offer to sell or to sell any extended service contract, extended maintenance plan, financial product, or insurance product offered, sold, or sponsored by the manufacturer, or distributor, or wholesaler. Nothing in this subsection shall prohibit a manufacturer or distributor or financial arm from providing functionally available incentive programs to a motor vehicle dealer who voluntarily offers to sell or sells any extended service contract, extended maintenance plan, financial product, or insurance product offered, sold, or sponsored by the manufacturer or distributor or financial arm;

(e) to sell, assign, or transfer any retail installment sales contract or lease obtained by the motor vehicle dealer in connection with the sale or lease of a new motor vehicle manufactured by the manufacturer to a specified finance company, class of finance companies, leasing company, class of leasing companies, or to any other specified person.”

B. Section 56‑15‑40 of the 1976 Code is amended by adding an appropriately numbered new subsection to read:

“( )(a) For purposes of this subsection, a ‘financial services company’ means any finance source that provides automotive-related loans, or purchases retail installment contracts or lease contracts for motor vehicles and is, directly or indirectly, owned, operated or controlled, in whole or in part, by a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division.

(b) A manufacturer or distributor may not use any financial services company or leasing company owned or controlled by the manufacturer or distributor to accomplish what would otherwise be illegal conduct on the part of the manufacturer or distributor pursuant to subitems (2)(d) or (e).”

SECTION 3. Chapter 15, Title 56 of the 1976 Code is amended by adding:

“Section 56‑15‑47. A manufacturer may not prevent a motor vehicle dealer from designating a successor to the dealership in the event of death or incapacity of the motor vehicle dealer. The designation may be made by the motor vehicle dealer by will or other written instrument or, in the event of his death or incapacity, by the qualified executor or personal representative of the motor vehicle dealer by will or other written instrument. No individual may succeed to a franchise until the franchisor has been given written notice as to the identity, financial ability, and qualifications of the successor in question. The manufacturer or distributor is not required to accept a succession which does not meet the manufacturer’s or distributor’s written, reasonable, and uniformly applied minimal standard qualifications. The burden of proof shall be on the manufacturer or distributor to show that the succession does not meet the manufacturuer’s or distributor’s written, reasonable, and uniformly applied minimal standard qualifications.”

SECTION 4. Section 56‑15‑60 of the 1976 Code is amended to read:

“Section 56‑15‑60. (A)(1) Every manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division must fulfill properly a warranty agreement and compensate adequately and fairly each of its motor vehicle dealers for labor and parts. All warranty claims, service claims, or incentive claims made by motor vehicle dealers pursuant to this section and Section 56‑15‑50 for labor and parts must be paid within thirty days following their approval. All claims must be either approved or disapproved within thirty days after their receipt. Any claim not specifically disapproved in writing within thirty days of receipt shall be construed as approved and payment must follow within thirty days. The motor vehicle dealer who submits a disapproved claim must be notified in writing of its disapproval within that period, and the notice must state the specific grounds upon which the disapproval is based.

(2) A claim disapproval must be based on a material defect. A manufacturer shall not disapprove claims:

(a) for which the motor vehicle dealer has received preauthorization from the manufacturer or its representative; or

(b) based on the motor vehicle dealer’s incidental failure to comply with a specific claim processing requirement that results in a clerical or administrative error.

(3) In the event of neglect, oversight, or mistake by the motor vehicle dealer, the dealer may submit an amended claim for labor and parts up to sixty days from the date on which the manufacturer provided written notice to the motor vehicle dealer of the material defect or deviation. The motor vehicle dealer must substantiate the claim in accordance with the manufacturer’s reasonable written procedures.

(4) Any special handling of claims required by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, but not uniformly required of all dealers of that make, may be enforced only after thirty days’ notice in writing of good and sufficient reason.”

SECTION 5. Chapter 15, Title 56 of the 1976 Code is amended by adding:

“Section 56‑15‑95. (A) A manufacturer may not terminate or cancel a franchise or selling agreement of a motor vehicle dealer without due cause.

(B) The nonrenewal of a franchise or selling agreement, without due cause, shall constitute an unfair termination or cancellation regardless of the terms of the franchise or selling agreement.

(C) In determining whether due cause exists, the court shall take into consideration:

(1) the motor vehicle dealer’s sales in relation to the business available to the motor vehicle dealer;

(2) the motor vehicle dealer’s investment and obligations;

(3) whether the motor vehicle dealer was provided adequate inventory;

(4) injury to the public welfare;

(5) the adequacy of the motor vehicle dealer’s sales and service facilities, equipment, and parts;

(6) the qualifications of the management, sales, and service personnel to provide the consumer with reasonably good service and care of new motor vehicles;

(7) the motor vehicle dealer’s failure to comply with the requirements of the franchise agreement;

(8) the opportunity to cure the alleged breach; and

(9) the harm caused to the manufacturer or distributor.”

SECTION 6. Chapter 15, Title 56 of the 1976 Code is amended by adding:

“Section 56‑15‑96. (A) A performance standard, sales effectiveness standard, sales objective, or program for measuring dealership performance that may have a material effect on a motor vehicle dealer, including, but not limited to, his right to payment under any incentive or reimbursement program, shall be fair, reasonable, equitable, based on accurate information, and uniformly applied to other similarly situated motor vehicle dealers.

(B) If a motor vehicle dealer protests a new performance standard, sales effectiveness standard, sales objective, or program for measuring dealership performance, the burden of proof shall be on the manufacturer to show the action is reasonable and justifiable in light of the market conditions.”

SECTION 7. Chapter 15, Title 56 of the 1976 Code is amended by adding:

“Section 56‑15‑98. (A) A manufacturer or distributor, officer, agent, or any representative of a manufacturer or distributor may not unreasonably alter a new motor vehicle dealer’s area of responsibility.

(B) To alter a new motor vehicle dealer’s area of responsibility, a manufacturer or distributor, officer, agent, or any representative of a manufacturer or distributor must provide advance notice to the motor vehicle dealer including an explanation of the basis for the alteration at least sixty days before the effective date of the alteration.

(C)(1) At any time prior to the effective date of an alteration of a new motor vehicle dealer’s area of responsibility, and after the completion of any internal appeal process pursuant to the manufacturer’s or distributor’s policy manual, the motor vehicle dealer may petition the court to enjoin or prohibit the alteration.

(2) The court shall enjoin or prohibit the alteration of a motor vehicle dealer’s area of responsibility unless the franchisor shows, by a preponderance of the evidence, that the alteration is reasonable and justifiable in light of market conditions.

(3) If a motor vehicle dealer petitions the court, no alteration to a motor vehicle dealer’s area of responsibility shall become effective until a final determination by the court.

(D) If a new motor vehicle dealer’s area of responsibility is altered, the manufacturer shall allow twenty-four months for the motor vehicle dealer to become sales effective prior to taking any action claiming a breach or nonperformance of the motor vehicle dealer’s sales performance responsibilities.”

SECTION 8. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

LAWRENCE K. GROOMS for Committee.

**A** **BILL**

TO AMEND SECTION 56-15-10, RELATING TO DEFINITIONS FOR REGULATING MANUFACTURERS, DISTRIBUTORS, AND DEALERS, TO DEFINE THE TERMS “DUE CAUSE” AND “MATERIAL BREACH”; TO AMEND SECTION 56-15-40, RELATING TO SPECIFIC ACTS DEEMED UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES, TO PROVIDE THAT A MANUFACTURER, DISTRIBUTOR, WHOLESALER, DISTRIBUTOR BRANCH OR DIVISION, FACTORY BRANCH OR DIVISION, WHOLESALE BRANCH OR DIVISION, OR FINANCIAL ARM, OFFICER, AGENT OR OTHER REPRESENTATIVE THEREOF, MAY NOT REQUIRE OR COERCE A MOTOR VEHICLE DEALER TO OFFER TO SELL OR SELL ANY EXTENDED SERVICE CONTRACT, EXTENDED MAINTENANCE PLAN, FINANCIAL PRODUCT, OR INSURANCE PRODUCT OFFERED, SOLD, OR SPONSORED BY THE MANUFACTURER OR TO SELL, ASSIGN, OR TRANSFER ANY RETAIL INSTALLMENT SALES CONTRACT OR LEASE OBTAINED BY THE MOTOR VEHICLE DEALER IN CONNECTION WITH THE SALE OR LEASE OF A NEW MOTOR VEHICLE MANUFACTURED BY THE MANUFACTURER TO A SPECIFIED FINANCE COMPANY, CLASS OF FINANCE COMPANIES, LEASING COMPANY, CLASS OF LEASING COMPANIES, OR TO ANY OTHER SPECIFIED PERSON; TO AMEND CHAPTER 15, TITLE 56, BY ADDING 56-15-47, TO PROVIDE THAT A MANUFACTURER MAY NOT PREVENT A MOTOR VEHICLE DEALER FROM DESIGNATING A SUCCESSOR TO THE DEALERSHIP IN THE EVENT OF DEATH OR INCAPACITY OF THE MOTOR VEHICLE DEALER; TO AMEND SECTION 56-15-60, RELATING TO MOTOR VEHICLE DEALER’S CLAIMS FOR COMPENSATION, TO PROVIDE THAT ALL WARRANTY CLAIMS, SERVICE CLAIMS, OR INCENTIVE CLAIMS NOT SPECIFICALLY DISAPPROVED IN WRITING WITHIN THIRTY DAYS OF RECEIPT SHALL BE CONSTRUED AS APPROVED AND PAYMENT MUST FOLLOW WITHIN THIRTY DAYS, AND A MANUFACTURER SHALL NOT UNREASONABLY DISAPPROVE A CLAIM THAT RESULTS IN A CLERICAL OR ADMINISTRATIVE ERROR AND THAT CLAIM DISAPPROVAL MUST BE BASED ON A MATERIAL DEFECT; TO AMEND CHAPTER 15, TITLE 56 BY ADDING SECTION 56-15-95, TO PROVIDE THAT A MANUFACTURER MAY NOT TERMINATE OR CANCEL A FRANCHISE OR SELLING AGREEMENT OF A MOTOR VEHICLE DEALER WITHOUT DUE CAUSE, AND TO DETERMINE WHETHER DUE CAUSE EXISTS, THE COURT SHALL TAKE INTO CONSIDERATION CERTAIN FACTORS PROVIDED IN THE SECTION; BY ADDING 56-15-96, TO PROVIDE THAT A PERFORMANCE STANDARD, SALES EFFECTIVENESS STANDARD, SALES OBJECTIVE, OR PROGRAM FOR MEASURING DEALERSHIP PERFORMANCE THAT MAY HAVE A MATERIAL EFFECT ON A MOTOR VEHICLE DEALER SHALL BE FAIR, REASONABLE, EQUITABLE, BASED ON ACCURATE INFORMATION, AND UNIFORMLY APPLIED TO OTHER SIMILARLY SITUATED MOTOR VEHICLE DEALERS; AND BY ADDING 56-15-98, TO PROVIDE A MANUFACTURER OR DISTRIBUTOR, OFFICER, AGENT, OR ANY REPRESENTATIVE OF A MANUFACTURER OR DISTRIBUTOR MAY NOT UNREASONABLY ALTER A NEW MOTOR VEHICLE DEALER’S AREA OF RESPONSIBILITY, AND TO PROVIDE PROCEDURE TO ALTER A NEW MOTOR VEHICLE DEALER’S AREA OF RESPONSIBILITY.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 56‑15‑10(r) of the 1976 Code is amended to read:

“(r) ~~[Deleted]~~ ‘Due cause’ means a material breach by a dealer, due to matters wholly within his control, of a lawful provision of a franchise or selling agreement that is not cured within a reasonable period of time after being given prior written notice of the specific material breach.

(s) ‘Material breach’ means a contract violation that is substantial and significant.”

SECTION 2. Section 56‑15‑40(2) of the 1976 Code is amended to read:

“(2) It shall be deemed a violation of paragraph (a) of Section 56‑15‑30 for a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division, or financial arm or officer, agent or other representative thereof, to require, coerce, or attempt to coerce, any motor vehicle dealer:

(a) ~~To~~ to order or accept delivery of any motor vehicle or vehicles, appliances, equipment, parts or accessories ~~therefor~~, or any other commodity or commodities which such motor vehicle dealer has not voluntarily ordered~~.~~;

(b) ~~To~~ to order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of said motor vehicles as publicly advertised by the manufacturer thereof~~.~~;

(c) ~~To~~ to order for any person any parts, accessories, equipment, machinery, tools, appliances or any commodity whatsoever;

(d) to offer to sell or to sell any extended service contract, extended maintenance plan, financial product, or insurance product offered, sold, or sponsored by the manufacturer or its financial arm. Nothing in this subsection shall prohibit a manufacturer or distributor or financial arm from uniformly providing incentive programs to a motor vehicle dealer who voluntarily offers to sell or sells exclusively any extended service contract, extended maintenance plan, financial product, or insurance product offered, sold, or sponsored by the manufacturer or distributor or financial arm;

(e) to sell, assign, or transfer any retail installment sales contract or lease obtained by the motor vehicle dealer in connection with the sale or lease of a new motor vehicle manufactured by the manufacturer to a specified finance company, class of finance companies, leasing company, class of leasing companies, or to any other specified person.”

SECTION 3. Chapter 15, Title 56 of the 1976 Code is amended by adding:

“Section 56‑15‑47. A manufacturer may not prevent a motor vehicle dealer from designating a successor to the dealership in the event of death or incapacity of the motor vehicle dealer. The designation may be made by the motor vehicle dealer by will or other written instrument or, in the event of his death or incapacity, by the qualified executor or personal representative of the motor vehicle dealer and such designation may be made by will, or any other written instrument. No individual may succeed to a franchise until the franchisor has been given written notice as to the identity, financial ability, and qualifications of the successor in question.”

SECTION 4. Section 56‑15‑60 of the 1976 Code is amended to read:

“Section 56‑15‑60. (A)(1) Every manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division must fulfill properly a warranty agreement and compensate adequately and fairly each of its motor vehicle dealers for labor and parts. All warranty claims, service claims, or incentive claims made by motor vehicle dealers pursuant to this section and Section 56‑15‑50 for labor and parts must be paid within thirty days following their approval. All claims must be either approved or disapproved within thirty days after their receipt. Any claim not specifically disapproved in writing within thirty days of receipt shall be construed as approved and payment must follow within thirty days. The motor vehicle dealer who submits a disapproved claim must be notified in writing of its disapproval within that period, and the notice must state the specific grounds upon which the disapproval is based.

(2) A claim disapproval must be based on a material defect. A manufacturer shall not disapprove claims:

(a) for which the motor vehicle dealer has received preauthorization from the manufacturer or its representative; or

(b) based on the motor vehicle dealer’s incidental failure to comply with a specific claim processing requirement that results in a clerical or administrative error.

(3) In the event of neglect, oversight, or mistake by the motor vehicle dealer, the dealer may submit an amended claim or submit a claim not originally filed within the time required by the manufacturer for labor and parts up to one hundred twenty days from the date on which the manufacturer provided written notice to the motor vehicle dealer of the material defect or deviation. The motor vehicle dealer may substantiate the claim either in accordance with the manufacturer’s reasonable written procedures or by any other reasonable means.

(4) Any special handling of claims required by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, but not uniformly required of all dealers of that make, may be enforced only after thirty days’ notice in writing of good and sufficient reason.”

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(B) The nonrenewal of a franchise or selling agreement, without due cause, shall constitute an unfair termination or cancellation regardless of the terms of the franchise or selling agreement.

(C) In determining whether due cause exists, the court shall take into consideration:

(1) the motor vehicle dealer’s sales in relation to the business available to the motor vehicle dealer;

(2) the motor vehicle dealer’s investment and obligations;

(3) was the motor vehicle dealer provided adequate inventory;

(4) injury to the public welfare;

(5) the adequacy of the motor vehicle dealer’s sales and service facilities, equipment, and parts;

(6) the qualifications of the management, sales, and service personnel to provide the consumer with reasonably good service and care of new motor vehicles;

(7) the motor vehicle dealer’s failure to comply with the requirements of the franchise agreement;

(8) the opportunity to cure the alleged breach; and

(9) the harm caused to the manufacturer or distributor.”

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(B) If a motor vehicle dealer protests a new performance standard, sales effectiveness standard, sales objective, or program for measuring dealership performance, the burden of proof shall be on the manufacturer to show the action is necessary, reasonable, and justifiable in light of the market conditions.”

SECTION 7. Chapter 15, Title 56 of the 1976 Code is amended by adding:

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(B) To alter a new motor vehicle dealer’s area of responsibility, a manufacturer or distributor, officer, agent, or any representative of a manufacturer or distributor must provide advance notice to the motor vehicle dealer including an explanation of the basis for the alteration at least sixty days before the effective date of the alteration.

(C)(1) At any time prior to the effective date of an alteration of a new motor vehicle dealer’s area of responsibility, and after the completion of any internal appeal process pursuant to the manufacturer’s or distributor’s policy manual, the motor vehicle dealer may petition the court to enjoin or prohibit the alteration.

(2) Any alteration to a motor vehicle dealer’s area of responsibility is presumed to subject a dealer to irreparable harm without an adequate remedy at law.

(3) The court shall enjoin or prohibit the alteration of a motor vehicle dealer’s area of responsibility unless the franchisor shows, by a preponderance of the evidence, that the alteration is necessary, reasonable, and justifiable in light of market conditions.

(4) If a motor vehicle dealer petitions the court, no alteration to a motor vehicle dealer’s area shall become effective until a final determination by the court.

(D) If a new motor vehicle dealer’s area of responsibility is altered, the manufacturer shall allow thirty‑six months for the motor vehicle dealer to become sales effective prior to taking any action claiming a breach or nonperformance of the motor vehicle dealer’s sales performance responsibilities.”

SECTION 8. This act takes effect upon approval by the Governor.

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