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HOUSE BILL 364

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

W. Ken Martinez

AN ACT

**RELATING TO MOTOR VEHICLES; CHANGING CERTAIN PROVISIONS
DESCRIBING UNLAWFUL ACTS OF MANUFACTURERS, DISTRIBUTORS OR
THEIR REPRESENTATIVES.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 57-16-5 NMSA 1978 (being Laws 1973,
Chapter 6, Section 5, as amended) is amended to read:**

**"57-16-5. UNLAWFUL ACTS--MANUFACTURERS--DISTRIBUTORS--
REPRESENTATIVES.--It is unlawful for any manufacturer,
distributor or representative to:**

**A. coerce or attempt to coerce a dealer to order
or accept delivery of [any] a motor vehicle, appliances,
equipment, parts or accessories therefor or any other
commodity that the motor vehicle dealer has not voluntarily
ordered;**

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1 B. coerce or attempt to coerce a dealer to order
2 or accept delivery of [~~any~~] a motor vehicle with special
3 features, appliances, accessories or equipment not included in
4 the list price of the motor vehicles as publicly advertised by
5 the manufacturer;

6 C. coerce or attempt to coerce a dealer to order
7 for any person any parts, accessories, equipment, machinery,
8 tools, appliances or any commodity whatsoever;

9 D. refuse to deliver, in reasonable quantities and
10 within a reasonable time after receipt of dealer's order, to
11 [~~any~~] a motor vehicle dealer having a franchise or contractual
12 arrangement for the retail sale of [~~any~~] motor vehicles sold
13 or distributed by the manufacturer, distributor or
14 representative, [~~any-such~~] those motor vehicles, parts or
15 accessories [~~as-are~~] covered by the franchise or contract
16 specifically publicly advertised by the manufacturer,
17 distributor or representative to be available for immediate
18 delivery; provided, however, the failure to deliver [~~any~~] a
19 motor vehicle, parts or accessories shall not be considered a
20 violation of Chapter 57, Article 16 NMSA 1978 if [~~such~~] the
21 failure is due to an act of God, work stoppage or delay due to
22 a strike or labor difficulty, shortage of materials, freight
23 embargo or other cause over which the manufacturer,
24 distributor or representative or [~~any~~] an agent thereof has no
25 control;

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1 E. coerce or attempt to coerce [~~any~~] a motor
2 vehicle dealer to enter into [~~any~~] an agreement with the
3 manufacturer, distributor or representative or to do any other
4 act prejudicial to the dealer by threatening to cancel [~~any~~] a
5 franchise or [~~any~~] a contractual agreement existing between
6 the manufacturer, distributor or representative and the
7 dealer; provided, however, that notice in good faith to [~~any~~]
8 a motor vehicle dealer of the dealer's violation of [~~any~~] the
9 terms or provisions of the franchise or contractual agreement
10 [~~shall~~] does not constitute a violation of Chapter 57, Article
11 16 NMSA 1978;

12 F. terminate or cancel the franchise or selling
13 agreement of [~~any~~] a dealer without due cause. Due cause
14 [~~shall require~~] means a material breach by a dealer, due to
15 matters within the dealer's control, of a lawful provision of
16 a franchise or selling agreement. As used in this subsection,
17 "material breach" means a contract violation that is
18 substantial and significant. In determining whether due cause
19 exists under this subsection, the court shall take into
20 consideration only the dealer's sales in relation to the
21 business available to the dealer; the dealer's investment and
22 obligations; injury to the public welfare; the adequacy of the
23 dealer's sales and service facilities, equipment and parts;
24 the qualifications of the management, sales and service
25 personnel to provide the consumer with reasonably good service

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1 and care of new motor vehicles; the dealer's failure to comply
2 with the requirements of the franchise; and the harm to the
3 manufacturer or distributor. The nonrenewal of a franchise or
4 selling agreement, without due cause, shall constitute an
5 unfair termination or cancellation regardless of the terms or
6 provisions of the franchise or selling agreement. The
7 manufacturer, distributor or representative shall notify a
8 motor vehicle dealer in writing by registered mail of the
9 termination or cancellation of the franchise or selling
10 agreement of the dealer at least sixty days before the
11 effective date thereof, stating the specific grounds for
12 termination or cancellation; and the manufacturer, distributor
13 or representative shall notify a motor vehicle dealer in
14 writing by registered mail at least sixty days before the
15 contractual term of his franchise or selling agreement expires
16 that ~~[the same]~~ it will not be renewed, stating the specific
17 grounds for nonrenewal in those cases where there is no
18 intention to renew, and in no event shall the contractual term
19 of any franchise or selling agreement expire without the
20 written consent of the motor vehicle dealer involved prior to
21 the expiration of at least sixty days following the written
22 notice. During the sixty-day period, either party may in
23 appropriate circumstances petition a district court to modify
24 the sixty-day stay or to extend it pending a final
25 determination of proceedings on the merits. The court ~~[shall~~

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1 ~~have authority to~~ may grant preliminary and final injunctive
2 relief;

3 G. use false, deceptive or misleading advertising
4 in connection with his business;

5 H. offer to sell or to sell [~~any~~] a motor vehicle
6 to [~~any~~] a motor vehicle dealer in this or any other state of
7 the United States at a lower actual price than the actual
8 price offered to any other motor vehicle dealer in this state
9 for the same model vehicle similarly equipped or to utilize
10 any device, including [~~but not limited to~~] sales promotion
11 plans or programs that result in [~~such~~] a lesser actual price;
12 provided, however, the provisions of this subsection [~~shall~~]
13 do not apply to sales to a motor vehicle dealer for resale to
14 [~~any~~] a unit of the United States government, the state or
15 [~~any of~~] its political subdivisions; and provided, further,
16 the provisions of this subsection [~~shall~~] do not apply to
17 sales to a motor vehicle dealer of [~~any~~] a motor vehicle
18 ultimately sold, donated or used by the dealer in a driver
19 education program; and provided, further, that the provisions
20 of this subsection [~~shall~~] do not apply [~~so long as~~] if a
21 manufacturer, distributor or representative offers to sell or
22 sells new motor vehicles to all motor vehicle dealers at an
23 equal price. [~~For the purposes of~~] As used in this
24 [~~subsection~~] section, "actual price" means the price to be
25 paid by the dealer less any incentive paid by the

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1 manufacturer, distributor or representative, whether paid to
2 the dealer or the ultimate purchaser of the vehicle. This
3 provision ~~[shall]~~ does not apply to sales by the manufacturer,
4 distributor or representatives to the United States government
5 or ~~[any agency thereof]~~ its agencies. The provisions of this
6 subsection dealing with vehicle prices in ~~[any other]~~ another
7 state and defining actual price ~~[shall]~~ do not apply to ~~[any]~~
8 a manufacturer or distributor if all of the manufacturer's or
9 distributor's dealers within fifty miles of a neighboring
10 state are given all cash or credit incentives available in the
11 neighboring state, whether the incentives are offered by the
12 manufacturer or distributor or a finance subsidiary of either,
13 affecting the price or financing terms of a vehicle ~~[which~~
14 ~~incentives are available in the neighboring state];~~

15 I. willfully discriminate, either directly or
16 indirectly, in price between different purchasers of a
17 commodity of like grade or quality where the effect of the
18 discrimination may be to lessen substantially competition or
19 tend to create a monopoly or to injure or destroy the business
20 of a competitor;

21 J. offer to sell or to sell parts or accessories
22 to ~~[any]~~ a motor vehicle dealer for use in his own business
23 for the purpose of repairing or replacing the same or a
24 comparable part or accessory at a lower actual price than the
25 actual price charged to any other motor vehicle dealer for

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1 similar parts or accessories for use in his own business;
2 provided, however, in those cases where motor vehicle dealers
3 have a franchise to operate and serve as wholesalers of parts
4 and accessories to retail outlets or other dealers, whether or
5 not the dealer is regularly designated as a wholesaler,
6 nothing [~~herein contained shall be construed to prevent~~] in
7 this section prevents a manufacturer, distributor or
8 representative from selling to the motor vehicle dealer who
9 operates and services as a wholesaler of parts and accessories
10 such parts and accessories as may be ordered by the motor
11 vehicle dealer for resale to retail outlets at a lower actual
12 price than the actual price charged a motor vehicle dealer who
13 does not operate or serve as a wholesaler of parts and
14 accessories;

15 K. prevent or attempt to prevent by contract or
16 otherwise [~~any~~] a motor vehicle dealer from changing the
17 capital structure of his dealership or the means by or through
18 which he finances the operation of his dealership, [~~provided~~]
19 if the dealer at all times meets any reasonable capital
20 standards agreed to between the [~~dealership~~] dealer and the
21 manufacturer, distributor or representative, and [~~provided~~
22 ~~such~~] if the change by the dealer does not result in a change
23 in the executive management control of the dealership;

24 L. prevent or attempt to prevent by contract or
25 otherwise [~~any~~] a motor vehicle dealer or [~~any~~] an officer,

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1 partner or stockholder of ~~[any]~~ a motor vehicle dealer from
2 selling or transferring ~~[any]~~ a part of the interest of any of
3 them to any other person or party; provided, however, that no
4 dealer, officer, partner or stockholder shall have the right
5 to sell, transfer or assign the franchise or power of
6 management or control thereunder without the consent of the
7 manufacturer, distributor or representative except that the
8 manufacturer, distributor or representative shall not withhold
9 consent to the sale, transfer or assignment of the franchise
10 to a qualified buyer capable of being licensed in New Mexico
11 and who meets the manufacturer's or distributor's uniformly
12 applied requirement for appointment as a dealer. Uniform
13 application shall not prevent the application of a separate
14 standard of consent for sale, transfer or assignment to
15 minority or women dealer candidates, ~~[nor]~~ and shall not
16 require the application of an identical standard to all
17 persons in all situations. The requirement of uniform
18 application shall be met if the manufacturer applies the same
19 set of standards, which takes into account business
20 performance and experience, financial qualifications, facility
21 requirements and other relevant characteristics; provided
22 that, if two dealers, persons or situations are identical,
23 given the characteristics considered in the standards, the two
24 dealers, persons or situations shall be treated identically,
25 except as provided in this subsection. Upon request, a

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1 manufacturer or distributor shall provide its dealer with a
2 copy of the standards that are normally relied upon by the
3 manufacturer or distributor to evaluate a proposed sale,
4 transfer or assignment. A manufacturer, distributor or
5 representative shall give or withhold consent to the proposed
6 sale or transfer within thirty calendar days of receiving
7 notice of the proposed sale or transfer, except that if the
8 manufacturer, distributor or representative requests
9 additional information within twenty calendar days from
10 receiving notice, the thirty-day period shall not begin to run
11 until the date the requester has received the information
12 requested. The manufacturer, distributor or representative
13 shall be deemed to have granted consent and shall be estopped
14 from denying the consent, if the consent has not been
15 expressly withheld during the applicable thirty-day period;

16 M obtain money, goods, services, anything of
17 value or any other benefit from any other person with whom the
18 motor vehicle dealer does business on account of or in
19 relation to the transactions between the dealer and the other
20 person, unless [such] the benefit is promptly accounted for
21 and transmitted to the motor vehicle dealer;

22 N. require a motor vehicle dealer to assent to a
23 release, assignment, novation, waiver or estoppel that would
24 relieve any person from liability imposed by Chapter 57,
25 Article 16 NMSA 1978;

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1 0. require any motor vehicle dealer to provide
2 installment financing with a specified financial institution;

3 P. establish an additional franchise, including
4 any franchise for a warranty or service facility outside of
5 the relevant market area of the dealer establishing the
6 facility, but excluding the relocation of existing franchises,
7 for the same line-make in a relevant market area where the
8 same line-make is presently being served by an existing motor
9 vehicle dealer if such addition would be inequitable to the
10 existing dealer; provided, however, that the sales and service
11 needs of the public shall be given due consideration in
12 determining the equities of the existing dealer. The sole
13 fact that the manufacturer, distributor or representative
14 desires further penetration of the market [~~shall~~] is not [~~be~~]
15 grounds for establishing an additional franchise; provided,
16 further, that the manufacturer, distributor or representative
17 shall give a ninety-day written notice by registered mail to
18 all same line-make dealers in a relevant market area of its
19 intention to establish an additional franchise;

20 Q. offer to sell, lease or to sell or lease any
21 new motor vehicle to [~~any~~] a person, except a distributor, at
22 a lower actual price therefor than the actual price offered
23 and charged to a motor vehicle dealer for the same model
24 vehicle similarly equipped or to utilize any device that
25 results in [~~such lesser~~] a lower actual price;

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1 R. sell, lease or provide motorcycles, parts or
2 accessories to any person not a dealer or distributor for the
3 line-make sold, leased or provided. The provisions of this
4 subsection [~~shall~~] does not apply to sales, leases or
5 provisions of motor vehicles, parts or accessories by a
6 manufacturer, distributor or representative to the United
7 States government or [~~any agency thereof~~] its agencies or the
8 state or [~~any of~~] its political subdivisions;

9 S. offer any finance program, either directly or
10 through any affiliate, based on the physical location of the
11 selling dealer or the residence of the buyer. The provisions
12 of this subsection [~~shall~~] do not apply to [~~any~~] a
13 manufacturer or distributor that has no dealer within fifty
14 miles of a state line or if all of the manufacturer's or
15 distributor's dealers within that fifty miles are given all
16 cash or credit incentives available in the neighboring state,
17 whether the incentives are offered by the manufacturer or the
18 distributor or a finance subsidiary of either, affecting the
19 price or financing terms of a vehicle [~~which incentives are~~
20 ~~available in the neighboring state~~];

21 T. force a dealer to sell or relocate a franchise
22 with another manufacturer located at the same physical
23 location or consider the existence of another line-make at a
24 dealership for product allocation, successorship, location
25 approval and capitalization; provided that a manufacturer or

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1 distributor may require:

2 (1) that the [~~dealership~~] dealer meet the
3 manufacturer's capitalization requirements;

4 (2) that the [~~dealership~~] dealer meet the
5 manufacturer's facilities requirements; and

6 (3) that the dealer not have committed
7 fraudulent acts;

8 U. enforce [~~any~~] a right of first refusal or
9 option to purchase the dealership by a manufacturer or
10 distributor or to require [~~any~~] a dealer to grant [~~such~~] a
11 right or option to a manufacturer or distributor;

12 V. be licensed as a dealer or perform warranty or
13 other service or own [~~any~~] an interest, directly or
14 indirectly, in a person licensed as a dealer or performing
15 warranty or other service; provided that a manufacturer or
16 distributor may own a person licensed as a dealer for a
17 reasonable time in order to dispose of [~~any~~] an interest
18 acquired as a secured party or as part of a dealer development
19 program;

20 W. fail to recognize and approve the transfer of a
21 dealership to [~~any~~] a person named as a successor, donee,
22 beneficiary or devisee in [~~any~~] a valid testamentary or trust
23 instrument; provided that a manufacturer or distributor may
24 impose standards or criteria used in [~~any~~] a transfer;

25 X. impose capitalization requirements not

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1 necessary to assure that the [~~dealership~~] dealer can meet its
2 financial obligations; [~~or~~]

3 Y. compel a dealer through a finance subsidiary of
4 the manufacturer or distributor to agree to unreasonable
5 operating requirements or directly or indirectly to terminate
6 a dealer, except as allowed by Subsection F of this section
7 [~~57-16-5 NMSA 1978~~], through the actions of a finance
8 subsidiary of the manufacturer or distributor. This
9 subsection shall not limit the right of a financing entity to
10 engage in business practices in accordance with the usage of
11 the trade in which it is engaged; or

12 Z. set a maximum retail price for a motor
13 vehicle. "

14 Section 2. EFFECTIVE DATE. -- The effective date of the
15 provisions of this act is July 1, 2001.

16 - 13 -