

HB 284 – AS INTRODUCED

2015 SESSION

15-0565
05/03

HOUSE BILL **284**

AN ACT relative to motor vehicle franchises.

SPONSORS: Rep. Hunt, Ches 11; Sen. Reagan, Dist 17

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill revises portions of RSA 357-C:3 governing a manufacturer's use of performance standards and other incentive programs. The bill also shortens the time period in which dealers must comply with manufacturer-mandated changes and repeals a document access requirement.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT relative to motor vehicle franchises.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Prohibited Conduct. Amend RSA 357-C:3, III(u) and (v) to read as follows:

2 (u)(1) Allocate vehicles, to evaluate the performance of a motor vehicle franchise, or to
3 offer to a dealer any discount, incentive, bonus, program, allowance or credit (collectively
4 “incentives”), using sales effective measurements that the manufacturer knows or reasonably should
5 know includes exported vehicles, after being provided with notice and the opportunity to conduct an
6 investigation as provided in subparagraph (u)(3). “Sales effective measurement” means a system
7 that measures how effective a franchisee is at selling vehicles by comparing vehicle sales by that
8 franchisee in the territory or geographic region assigned to the franchisee to vehicles sold in the
9 same territory by other franchisees, or other similar methods of measurement. For the purposes of
10 this section, “exported vehicles” are new vehicles that [~~:(i) are titled in New Hampshire but not
11 registered in New Hampshire or any other state; (ii) are titled and registered in New Hampshire but
12 not issued a valid New Hampshire state inspection sticker; or (iii)] are exported out of the country
13 within 6 months of purchase.~~

14 (2) If a manufacturer uses sales effective measurements to allocate vehicles, evaluate
15 a franchisee, or determine incentives, the manufacturer, upon the written request of one of its
16 franchisees ***submitted to the manufacturer within the first 30 days of the calendar year***,
17 shall, [~~within 30 days,~~] provide the vehicle identification numbers that the manufacturer [~~possessed
18 and used in the measurements during the time period requested by the dealer~~] ***possesses and
19 intends to use in the year-end measurements of the dealer for the prior year.***

20 (3) If a manufacturer uses sales effective measurements to allocate vehicles, evaluate
21 a franchisee, or determine incentives, a dealer may, ***within 30 days of receipt of the
22 manufacturer’s list of vehicle identification numbers, submit a written*** request that the
23 manufacturer or distributor investigate a claim that exported vehicles are included in the
24 measurements. To initiate the investigation, the dealer shall provide reasonable documentation that
25 8 or more exported vehicles ***of the manufacturer’s brands*** were used in the measurements.
26 Acceptable documentation shall include, but not be limited to, ***publicly available*** data from the
27 division of motor vehicles and vehicle history reports from third party vendors. Within 30 days of the
28 dealer’s request, the manufacturer shall investigate the claim. [~~and~~] ***The manufacturer shall
29 adjust those measurements [proportionately] as necessary to exclude any [exported] vehicles that
30 the manufacturer determines have been exported through its investigation and adjust the
31 [allocation,] evaluation[and incentives] along with any shortages in allocation or incentive***

1 *payments that the manufacturer determines have resulted during the relevant time period.*

2 As part of the investigation, the manufacturer shall, *upon written request*, provide the dealer with
3 any and all information, data, evaluations, methodology or other items, that the manufacturer or
4 distributor [~~considered, reviewed, or~~ relied on~~]~~ for the measurement. The manufacturer shall have
5 the burden to prove that it has acted in accordance with the requirements of this subparagraph.

6 (v) Require adherence to a performance standard or standards which are not applied
7 uniformly to other similarly situated dealers. In addition to any other requirements of law, the
8 following shall apply:

9 (1) A performance standard, sales objective, or program for measuring dealer
10 performance that may have a material effect on a dealer, including the dealer's right to payment
11 under any incentive or reimbursement program, and the application of the standard, sales objective
12 or program by a manufacturer, distributor or factory branch, shall be fair, reasonable, equitable and
13 based on accurate information.

14 ~~(2) [Prior to beginning any incentive or reimbursement program, the manufacturer~~
15 ~~shall provide in writing to each dealer of the same line make that chooses to participate in the~~
16 ~~program the dealer's performance requirement or sales goal or objective, which shall include a~~
17 ~~detailed explanation of the methodology, criteria, and calculations used. The manufacturer shall~~
18 ~~provide each dealer with the performance requirement or sales goal or objective of all dealers~~
19 ~~participating in the program whose relevant market area includes territory within this state.]~~ A
20 *manufacturer shall provide that any of the manufacturer's franchised new motor vehicle*
21 *dealers in this state may, upon written request, obtain the method or formula used by the*
22 *manufacturer in establishing the sales volumes for receiving the rebates or incentives and*
23 *the specific calculations for determining the required sales volumes of the inquiring dealer*
24 *and any of the manufacturer's other franchised new motor vehicle dealers located within*
25 *75 miles of the inquiring dealer.*

26 (3) A manufacturer shall allocate an adequate supply of vehicles, appropriate to the
27 market, to its dealers by series, product line, and model to assist the dealer in achieving any
28 performance standards established by the manufacturer and distributor.

29 (4) A dealer that claims that the application of a performance standard, sales
30 objective, or program for measuring dealership performance does not meet the standards listed in
31 subparagraph (1) may request a hearing before the motor vehicle industry board pursuant to
32 RSA 357-C:12.

33 (5) The manufacturer or distributor has the burden of proving by a preponderance of
34 the evidence that the performance standard, sales objective, or program for measuring dealership
35 performance complies with this subparagraph.

36 2 Prohibited Conduct. Amend RSA 357-C:3, V(d) and (e) to read as follows:

37 (d) Except as necessary to comply with health or safety laws or to comply with

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1 technology requirements necessary to sell or service a vehicle, it is unreasonable and not justifiable
2 for a manufacturer or distributor to require, coerce, or attempt to coerce any new motor vehicle
3 dealer by program, policy, facility guide, standard or otherwise to change the location of the
4 dealership or construct, replace, renovate or make any substantial changes, alterations, or
5 remodeling to a motor vehicle dealer's sales or service facilities before the [~~15th~~] **tenth** anniversary of
6 the date of issuance of the certificate of occupancy or the manufacturer's approval, whichever is later,
7 from:

8 (1) The date construction of the dealership at that location was completed if the
9 construction was in substantial compliance with standards or plans provided by a manufacturer,
10 distributor, or representative or through a subsidiary or agent of the manufacturer, distributor, or
11 representative; or

12 (2) The date a prior change, alteration, or remodel of the dealership at that location
13 was completed if the construction was in substantial compliance with standards or plans provided by
14 a manufacturer, distributor, or representative or through a subsidiary or agent of the manufacturer,
15 distributor, or representative.

16 (e) Notwithstanding the [~~15-year~~] **10-year** limitation on manufacturer-mandated
17 changes in subparagraph (d), the limitation shall not be effective if the manufacturer or distributor
18 offers substantial reimbursement for the requested changes, alterations, or remodeling of a dealer's
19 sales or service facilities. Substantial reimbursement is equal to or greater than 65 percent of the
20 cost, which shall not be greater than the cost of reasonably available similar goods and services in
21 close proximity to the dealer's market.

22 3 Repeal. RSA 357-C:3-a, relative to access to documentation, is repealed.

23 4 Effective Date. This act shall take effect upon its passage.