

SS SCS HCS HB 2198 -- MOTOR VEHICLE FRANCHISE PRACTICES ACT

This bill changes the laws regarding the Motor Vehicle Franchise Practices Act. In its main provisions, the bill:

(1) Specifies that the public policy of the state is to provide for fair and impartial regulation of individuals engaged in the manufacturing, distribution, importation, or selling of motor vehicles and to protect the public interest in the purchase and trade of motor vehicles;

(2) Requires all franchise licenses and license renewals after August 28, 2010, to be bound by the provisions of the act and prohibits any franchise agreement made, entered, modified, or renewed after that date from avoiding or violating the provisions of the act;

(3) Requires the provisions of the act to apply to each franchise that a franchisor, manufacturer, importer, or distributor has with a franchisee and all agreements between a franchisee and a common entity or any person controlled by a franchisor;

(4) Increases the distance requirements of a relevant market area when locating or relocating a dealership. A franchisor must give written notice to a franchisee of the opening of any new dealership or the reopening of a previously existing franchise in the relevant market area selling vehicles of the same line-make. A franchisee may bring an action before the Administrative Hearing Commission within 30 days of the notice to determine if there is good cause to allow the competition. The bill revises the circumstances that the commission will take into consideration when determining good cause;

(5) Requires a reopened or replaced franchise to be offered to the former owner if a dealership reopens within two miles of the closed established place of business;

(6) Requires a franchisor to be licensed and to annually renew his or her license with the Department of Revenue;

(7) Regulates the offering of a franchise by a successor manufacturer and specifies certain criteria that must be met before a new franchise may be offered or sold if a manufacturer previously canceled or otherwise ended a franchise agreement;

(8) Allows for the filing of a complaint instead of an application for a hearing before the commission regarding a violation of the act. When a proceeding is pending before the commission, a demand for mediation must be filed which will stay

further action by the commission. If mediation is unsuccessful, the commission must issue its order terminating the stay;

(9) Specifies that the actions listed in Section 407.825, RSMo, whether committed directly or indirectly through an agent, employee, affiliate, common entity, representative, or franchisor-controlled entity will be considered an unlawful practice;

(10) Revises existing unlawful practices and establishes additional unlawful practice violations including:

(a) Engaging in certain specified restraint of trade actions such as conditioning the offer of a franchise on a site control agreement or agreement for exclusive use;

(b) Terminating a franchise agreement without specified notice regarding unsatisfactory sales or service performance;

(c) Conditioning the retention of a franchise agreement on certain specified control requirements over the franchisee's business;

(d) Failing to perform or cause to be performed any written warranties;

(e) Interfering with or withholding contracted services;

(f) Requiring installment financing with a particular financial institution;

(g) Requiring changes in a franchisee's location without good cause;

(h) Allowing an unauthorized person to perform warranty service with certain exceptions;

(i) Discriminating in the models of the same line-make offered to a franchisee;

(j) Failing to make available the offering of bonuses or rebates;

(k) Conditioning a franchise agreement on facility improvements unless reasonably required by the technology of a motor vehicle;

(l) Entering into a site control agreement unless voluntarily accepted by the franchisee;

(m) Failing to offer rebates, dealer incentives, interest rate

reductions, finance terms for the same line-make, and various cash incentives and promotional items;

(n) Discriminating unreasonably among franchisees in any program providing assistance including Internet listings, sales leads, warranty policy adjustments, marketing programs, and dealer recognition programs;

(o) Failing to include in any franchise with a franchisee specific language regarding the conformance of the provisions of the act when a provision is in conflict with the laws or regulations of any state or other jurisdiction;

(p) Interfering with the delivery of motor vehicle parts;

(q) Using data concerning a franchisee to discriminate against it in various specified ways;

(r) Refusing to sell or deliver motor vehicles;

(s) Requiring the use of customer information obtained from the franchisee with certain exceptions and requiring a franchisee to make a customer purchase additional products from the franchisor;

(t) Establishing unfair performance standards for a franchisee;

(u) Implementing any plan for delivery of parts that is inequitable; and

(v) Violating any other provision of the act that adversely impacts a franchisee;

(11) Establishes the deadline and other rules for submitting a claim after a franchisee completes the preparation, delivery, or warranty service authorized under Section 407.828;

(12) Requires a franchisor to indemnify and hold harmless a franchisee for damage to a vehicle occurring prior to delivery to the franchisee that was not disclosed in writing to the franchisee prior to the delivery of the vehicle;

(13) Requires a franchisor to give 90 days' notice of any modification that substantially and adversely affects the franchisee's rights, obligations, investments, or return on investments unless the modification is required by law or court order; and

(14) Specifies that a person has the right to appeal a judgment of the Administrative Hearing Commission in court and allows actual damages, court costs, and punitive damages to be recovered

for a violation of the provisions of the act. Mediation is non-binding, and Missouri law will govern all disputes brought pursuant to the act.