

House Bill 393 (AS PASSED HOUSE AND SENATE)

By: Representatives Martin of the 49th, Maxwell of the 17th, Stover of the 71st, Dudgeon of the 25th, Brockway of the 102nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 5 of Article 22 of Chapter 1 of Title 10 of the Official Code of Georgia
2 Annotated, relating to motor vehicle fair practices, so as to provide for definitions; to provide
3 for an exception to restrictions on the ownership, operation, or control of dealerships by
4 manufacturers and franchisors; to provide for related matters; to repeal conflicting laws; and
5 for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Part 5 of Article 22 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated,
9 relating to motor vehicle fair practices, is amended in Code Section 10-1-622, relating to
10 definitions, by revising paragraph (11) as follows:

11 "(11) 'New motor vehicle' means a motor vehicle ~~which has been sold to a dealer and on~~
12 which the original motor vehicle title has not been issued."

13 **SECTION 2.**

14 Said part is further amended in Code Section 10-1-664.1, relating to restrictions on the
15 ownership, operation, or control of dealerships by manufacturers and franchisors, by revising
16 subsections (a) and (b) as follows:

17 "(a) It shall be unlawful for any manufacturer or franchisor or any parent, affiliate, wholly
18 or partially owned subsidiary, officer, or representative of a manufacturer or franchisor to
19 own, operate, or control or to participate in the ownership, operation, or control of any new
20 motor vehicle dealer in this state within a 15 mile radius of an existing dealer of such
21 manufacturer or franchisor; to own, operate, or control, directly or indirectly, more than a
22 45 percent interest in a dealer or dealership in this state; to establish in this state an
23 additional dealer or dealership in which such person or entity has any interest; or to own,
24 operate, or control, directly or indirectly, any interest in a dealer or dealership in this state
25 unless such person or entity has acquired such interest from a dealer or dealership which

26 has been in operation for at least five years prior to such acquisition; provided, however,
27 that this subsection shall not be construed to prohibit:

28 (1) The ownership, operation, or control by a manufacturer or franchisor of a new motor
29 vehicle dealer for a temporary period, not to exceed one year, during the transition from
30 one owner or operator to another;

31 (2) The ownership, operation, or control of a new motor vehicle dealer by a manufacturer
32 or franchisor during a period in which such new motor vehicle dealer is being sold under
33 a bona fide contract, shareholder agreement, or purchase option to the operator of the
34 dealership;

35 (3) The ownership, operation, or control of a new motor vehicle dealer by a manufacturer
36 or franchisor at the same location at which such manufacturer or franchisor has been
37 engaged in the retail sale of new motor vehicles as the owner, operator, or controller of
38 such dealership for a continuous two-year period of time immediately prior to April 1,
39 1999, where there is no prospective new motor vehicle dealer available to own or operate
40 the dealership in a manner consistent with the public interest;

41 (4) The ownership, operation, or control by a manufacturer which manufactures only
42 motorcycles or motor homes of a retail sales operation engaged in the retail sale of
43 motorcycles or motor homes;

44 (5) The ownership, operation, or control by a manufacturer which is selling motor
45 vehicles directly to the public at an established place of business on January 1, 1999, and
46 which has never sold its line make of new motor vehicles in ~~Georgia~~ this state through
47 a franchised new motor vehicle dealer unless and until such manufacturer is wholly or
48 partially acquired by another manufacturer or franchisor;

49 (6) The ownership, operation, or control by a manufacturer which manufactures trucks
50 with a gross vehicle weight rating of 12,500 pounds or more of a new motor vehicle
51 dealer which only sells trucks with a gross vehicle weight rating of 12,500 pounds or
52 more at the same location at which such manufacturer has been engaged in the retail sale
53 of such trucks as the owner, operator, or controller of such dealership for a continuous
54 two-year period of time immediately prior to April 1, 1999, or at one additional location
55 which is not located within the relevant market area of an existing dealer of the same line
56 make of trucks; provided, however, this exemption shall apply to a manufacturer
57 described in this paragraph only until such manufacturer is wholly or partially acquired
58 by another manufacturer or distributor; ~~or~~

59 (7) A manufacturer from selling new motor vehicles to customers if such vehicles are
60 manufactured or assembled in accordance with custom design specifications of the
61 customer and such sales are limited to no more than 150 vehicles per year; or

62 (8) The ownership, operation, or control by a manufacturer of not more than five
 63 locations licensed as new motor vehicle dealerships for the sale of new motor vehicles
 64 and any number of locations that engage exclusively in the repair of such manufacturer's
 65 line make of motor vehicles, provided that such manufacturer was selling or otherwise
 66 distributing its motor vehicles at an established place of business in this state as of
 67 January 1, 2015, and:

68 (A) The manufacturer manufactures or assembles zero emissions motor vehicles
 69 exclusively and has never sold its line make of motor vehicles in this state through a
 70 franchised new motor vehicle dealer; and

71 (B) The manufacturer has not acquired a controlling interest in a franchisor or a
 72 subsidiary or other entity controlled by such franchisor, or sold or transferred a
 73 controlling interest in such manufacturer to a franchisor or subsidiary or other entity
 74 controlled by such franchisor.

75 (b) It shall be unlawful for a manufacturer or franchisor or any parent, affiliate, wholly or
 76 partially owned subsidiary, officer, or representative of a manufacturer or franchisor to
 77 compete unfairly with a new motor vehicle dealer of the same line make, operating under
 78 a franchise, in the State of Georgia, and, except as otherwise provided in this subsection,
 79 the mere ownership, operation, or control of a new motor vehicle dealer by a manufacturer
 80 or franchisor under the conditions set forth in paragraphs (1) through ~~(7)~~(8) of subsection
 81 (a) of this Code section shall not constitute a violation of this subsection. For purposes of
 82 this Code section, a manufacturer or franchisor or any parent, affiliate, wholly or partially
 83 owned subsidiary, officer, or representative of a manufacturer or franchisor shall be
 84 conclusively presumed to be competing unfairly if it gives any preferential treatment to a
 85 dealer or dealership of which any interest is directly or indirectly owned, operated, or
 86 controlled by such manufacturer or franchisor or any partner, affiliate, wholly or partially
 87 owned subsidiary, officer, or representative of such manufacturer or franchisor, expressly
 88 including, but not limited to, preferential treatment regarding the direct or indirect cost of
 89 vehicles or parts, the availability or allocation of vehicles or parts, the availability or
 90 allocation of special or program vehicles, the provision of service and service support, the
 91 availability of or participation in special programs, the administration of warranty policy,
 92 the availability and use of after warranty adjustments, advertising, floor planning, financing
 93 or financing programs, or factory rebates."

94 **SECTION 3.**

95 All laws and parts of laws in conflict with this Act are repealed.