



The Legislature  
of the  
State of New Mexico

49th Legislature, 2nd Session

LAWS 2010

CHAPTER 40

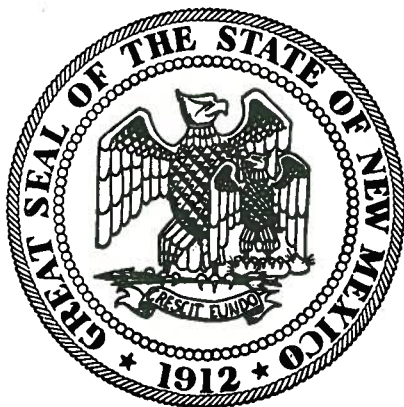
HOUSE BILL 93, as amended

with emergency clause

**EMERGENCY CLAUSE**

Introduced by

REPRESENTATIVE AL PARK AND REPRESENTATIVE DEBBIE A. RODELLA AND  
REPRESENTATIVE BENJAMIN H. RODEFER



REPRESENTATIVE ELIAS BARELA  
REPRESENTATIVE JOSÉ CAMPOS  
REPRESENTATIVE BRIAN F. EGOLF  
REPRESENTATIVE KEITH J. GARDNER  
REPRESENTATIVE BILL B. O'NEILL  
REPRESENTATIVE RICHARD D. VIGIL  
REPRESENTATIVE WILLIAM "BILL" R. REHM  
REPRESENTATIVE ANTONIO "MOE" MAESTAS  
REPRESENTATIVE W. KEN MARTINEZ  
REPRESENTATIVE WILLIAM J. GRAY  
REPRESENTATIVE JEFF STEINBORN

# CHAPTER 40

## AN ACT

RELATING TO MOTOR VEHICLE DEALER FRANCHISING; MAKING CERTAIN UNFAIR ACTS AND PRACTICES UNLAWFUL FOR MOTOR VEHICLE MANUFACTURERS; DECLARING AN EMERGENCY.

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

Section 1. Section 57-16-3 NMSA 1978 (being Laws 1973, Chapter 6, Section 3, as amended) is amended to read:

"57-16-3. DEFINITIONS.--As used in Chapter 57, Article 16 NMSA 1978:

A. "motor vehicle" means every self-propelled vehicle, having two or more wheels, by which a person or property may be transported on a public highway and includes recreational vehicles;

B. "motor vehicle dealer" or "dealer" means any person who sells or solicits or advertises the sale of new or used motor vehicles. "Motor vehicle dealer" or "dealer" shall not include:

(1) receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court;

(2) public officers while performing their duties as such officers;

(3) persons making casual sales of their own vehicles duly registered and licensed to them by the state; or

1 (4) finance companies, banks and other  
2 lending institutions covering sales of repossessed vehicles;

3 C. "person" means every natural person,  
4 partnership, corporation, association, trust, estate or any  
5 other legal entity;

6 D. "prospective purchaser" means a person who has  
7 a bona fide written agreement to purchase a franchise;

8 E. "manufacturer" means any person who  
9 manufactures or assembles new motor vehicles either within or  
10 outside of this state and may include a predecessor  
11 manufacturer or a successor manufacturer;

12 F. "distributor" means any person who distributes  
13 or sells new or used motor vehicles to dealers and who is not  
14 a manufacturer;

15 G. "representative" means any person who is or  
16 acts as an agent, employee or representative of a manufacturer  
17 or distributor and who performs any duties in this state  
18 relating to promoting the distribution or sale of new or used  
19 motor vehicles or contacts dealers in this state on behalf of  
20 a manufacturer or distributor;

21 H. "franchise" means an oral or written  
22 arrangement for a definite or indefinite period in which a  
23 manufacturer, distributor or representative grants to a motor  
24 vehicle dealer a license to use a trade name, service mark or  
25 related characteristic and in which there is a community of

1 interest in the marketing of motor vehicles or services  
2 related to marketing, service or repair of motor vehicles at  
3 wholesale, retail, leasing or otherwise;

4 I. "fraud" includes, in addition to its normal  
5 legal connotation, the following:

6 (1) a misrepresentation in any manner,  
7 whether intentionally false or due to gross negligence, of a  
8 material fact;

9 (2) a promise or representation not made  
10 honestly and in good faith; and

11 (3) an intentional failure to disclose a  
12 material fact;

13 J. "sale" includes:

14 (1) the issuance, transfer, agreement for  
15 transfer, exchange, pledge, hypothecation or mortgage in any  
16 form, whether by transfer in trust or otherwise, of any motor  
17 vehicle or interest therein or of any franchise related  
18 thereto; and

19 (2) any option, subscription or other  
20 contract or solicitation looking to a sale or offer or attempt  
21 to sell in any form, whether spoken or written. A gift or  
22 delivery of any motor vehicle or franchise with respect  
23 thereto with, or as, a bonus on account of the sale of  
24 anything shall be deemed a sale of such motor vehicle or  
25 franchise;

1           K. "motorcycle" means any motor vehicle used on or  
2 off a public highway that has an unladen weight of less than  
3 one thousand five hundred pounds;

4           L. "recreational vehicle" means any motor vehicle  
5 with a camping body that either has its own motive power or is  
6 drawn by another vehicle;

7           M. "designated family member" means a spouse,  
8 child, grandchild, parent, brother or sister of a deceased or  
9 incapacitated dealer who is entitled to inherit the dealer's  
10 ownership interest in the dealership under the terms of a will  
11 or the laws of intestate succession in this state. In the  
12 case of an incapacitated dealer, the term means the person  
13 appointed by a court as the legal representative of the  
14 dealer's property. The term also includes the appointed and  
15 qualified personal representative and the testamentary trustee  
16 of a deceased dealer. However, the term shall be limited to  
17 mean only that individual designated by a dealer in a written  
18 document filed with the manufacturer, distributor or  
19 representative in the event that such a document has been  
20 filed;

21           N. "current price" means an amount equal to the  
22 price listed in the manufacturer's or distributor's printed  
23 price list in effect when the franchise is terminated, less  
24 applicable trade and cash discounts;

25           O. "dealer cost" means an amount equal to the sum

1 of the original invoice price that the dealer paid for  
2 inventory and the cost of the delivery of the inventory from  
3 the manufacturer or distributor to the dealer, less applicable  
4 discounts;

5 P. "inventory" means new or unused motorcycles,  
6 motor vehicles, motorcycle attachments and motorcycle and  
7 motor vehicle repair parts that are provided by a manufacturer  
8 or distributor to a dealer under a franchise agreement and  
9 that are purchased within thirty-six months of the termination  
10 of the franchise or are listed in the manufacturer's or  
11 distributor's current sales manual or price list at the time  
12 that the franchise is terminated;

13 Q. "relevant market area" means an area of a size  
14 specified in this subsection around an existing motor vehicle  
15 dealer's place of business. The size of the area shall be the  
16 greater of the area of responsibility specified in the  
17 dealer's franchise or a circle with a center at the dealer's  
18 place of business and a radius of:

19 (1) seven miles, if the population of the  
20 county in which the dealership is located is two hundred fifty  
21 thousand or more;

22 (2) fifteen miles, if the population of the  
23 county in which the dealership is located is less than two  
24 hundred fifty thousand but is thirty-five thousand or more; or

25 (3) twenty miles in all other cases.

1           If the existing and proposed dealerships are in  
2 different counties, the lesser of the applicable mileage  
3 limitations shall be used. For purposes of this subsection,  
4 the population of any area shall be determined in accordance  
5 with the most recent decennial census or the most recent  
6 population update from the national planning data corporation  
7 or other similar recognized source, whichever is later;

8           R. "successor manufacturer" means a motor vehicle  
9 manufacturer that, on or after January 1, 2010, acquires,  
10 succeeds to or assumes any part of the business of a  
11 predecessor manufacturer as the result of:

12                       (1) a change in ownership, operation or  
13 control of the predecessor manufacturer;

14                       (2) the termination, suspension or cessation  
15 of all or a part of the business operation of the predecessor  
16 manufacturer;

17                       (3) the discontinuance of the sale of a  
18 product line; or

19                       (4) a change in the distribution system by  
20 the predecessor manufacturer, whether through a change in  
21 distributor or the predecessor manufacturer's decision to  
22 cease conducting business through a distributor;

23           S. "predecessor manufacturer" means a manufacturer  
24 that is acquired, succeeded by or assumed by a successor  
25 manufacturer; and

1 T. "former franchisee":

2 (1) means a dealer that has entered into a  
3 franchise agreement with a manufacturer and that has:

4 (a) entered into a termination  
5 agreement or deferred termination agreement with the  
6 manufacturer related to the franchise; or

7 (b) has had the franchise canceled,  
8 terminated or otherwise ended; and

9 (2) includes the designated successor of the  
10 former franchisee in the event the former franchisee is  
11 deceased or disabled."

12 Section 2. Section 57-16-8 NMSA 1978 (being Laws 1973,  
13 Chapter 6, Section 8) is amended to read:

14 "57-16-8. UNREASONABLE RESTRICTIONS--SITE CONTROL  
15 AGREEMENTS--EXCLUSIVE USE AGREEMENTS.--

16 A. It is unlawful to, directly or indirectly,  
17 impose unreasonable restrictions on the motor vehicle dealer  
18 or franchise relative to transfer, sale, right to renew,  
19 termination discipline, noncompetitive covenants, site-control  
20 whether by sublease, collateral pledge of lease or otherwise,  
21 right of first refusal to purchase, option to purchase,  
22 compliance with subjective standards and assertion of legal or  
23 equitable rights.

24 B. Unless a separate agreement lasting no more  
25 than fifteen years has been voluntarily entered into for



1 separate consideration, it is unlawful to, directly or  
2 indirectly, require a site control agreement or exclusive use  
3 agreement as a condition of:

4 (1) awarding a franchise to a prospective  
5 motor vehicle dealer;

6 (2) adding a line make or franchise to an  
7 existing dealer;

8 (3) renewing the franchise of an existing  
9 dealer;

10 (4) approving the relocation of an existing  
11 dealer's facility; or

12 (5) approving the sale or transfer of  
13 ownership of a franchise.

14 C. As used in this section, "site control  
15 agreement" or "exclusive use agreement" means any agreement  
16 that has the effect of:

17 (1) requiring a dealer to establish or  
18 maintain exclusive dealership facilities;

19 (2) restricting the ability of a dealer or a  
20 dealer's lessor to transfer, sell, lease or change the use of  
21 the dealership premises; or

22 (3) preventing or attempting to prevent a  
23 dealer from acquiring, adding or maintaining a sales or  
24 service operation for another line make of motor vehicles at  
25 the same or expanded facility at which the dealer currently

1 operates a dealership, provided that the dealer complies with  
2 any reasonable facilities requirements of the manufacturer,  
3 successor manufacturer or distributor."

4 Section 3. Section 57-16-9 NMSA 1978 (being Laws 1973,  
5 Chapter 6, Section 9, as amended) is amended to read:

6 "57-16-9. FRANCHISE RENEWAL--TERMINATION--ANTICIPATORY  
7 TERMINATION.--

8 A. Anything to the contrary notwithstanding, it is  
9 unlawful for the manufacturer, distributor or representative  
10 without due cause to fail to renew a franchise on terms then  
11 equally available to all its motor vehicle dealers or their  
12 prospective purchasers, to terminate a franchise or to  
13 restrict the transfer of a franchise unless the dealer  
14 receives fair and reasonable compensation for the value of the  
15 business. A prospective purchaser may enforce the provisions  
16 of this section whether or not the person is a dealer.

17 B. A public announcement by a manufacturer or  
18 distributor of an intention to cease manufacturing or  
19 distribution of a motor vehicle brand within three years of  
20 the announcement or upon expiration of a dealers' current  
21 franchise or selling agreement may at the option of an  
22 affected dealer be deemed an anticipatory involuntary  
23 termination of the dealer's franchise."

24 Section 4. Section 57-16-9.2 NMSA 1978 (being Laws  
25 1991, Chapter 49, Section 2, as amended) is amended to read:

1 "57-16-9.2. MOTOR VEHICLE DEALERS--TERMINATION OF  
2 FRANCHISE--RETURN OF INVENTORY.--

3 A. If on termination of a franchise the dealer  
4 delivers to the manufacturer or distributor the inventory,  
5 vehicle brand-specific tools, signage and other specialized  
6 systems, equipment and real estate required by the  
7 manufacturer that was purchased from the manufacturer or  
8 distributor and that is held by the dealer on the date of  
9 termination, the manufacturer or distributor shall pay to the  
10 dealer:

11 (1) the dealer cost of the new, unsold and  
12 undamaged motorcycles and motor vehicles from the current and  
13 immediately preceding two model years and purchased from the  
14 manufacturer or distributor within fourteen months prior to  
15 receipt of a notice of termination;

16 (2) an amount equal to ninety-five percent  
17 of the current price of new, unused and undamaged motorcycle  
18 attachments and motor vehicle repair parts;

19 (3) an amount equal to an additional five  
20 percent of the current price of new, unused and undamaged  
21 motorcycle attachments and motor vehicle repair parts, unless  
22 the manufacturer or distributor performs the handling, packing  
23 and loading of the parts, in which case no additional amount  
24 is required under this paragraph;

25 (4) the fair market value, determined by

1 "57-16-9.2. MOTOR VEHICLE DEALERS--TERMINATION OF  
2 FRANCHISE--RETURN OF INVENTORY.--

3 A. If on termination of a franchise the dealer  
4 delivers to the manufacturer or distributor the inventory,  
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6 systems, equipment and real estate required by the  
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8 distributor and that is held by the dealer on the date of  
9 termination, the manufacturer or distributor shall pay to the  
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12 undamaged motorcycles and motor vehicles from the current and  
13 immediately preceding two model years and purchased from the  
14 manufacturer or distributor within fourteen months prior to  
15 receipt of a notice of termination;

16 (2) an amount equal to ninety-five percent  
17 of the current price of new, unused and undamaged motorcycle  
18 attachments and motor vehicle repair parts;

19 (3) an amount equal to an additional five percent of the  
20 current price of new, unused and undamaged motorcycle  
21 attachments and motor vehicle repair parts, unless the  
22 manufacturer or distributor performs the handling, packing and  
23 loading of the parts, in which case no additional amount is  
24 required under this paragraph;

25 (4) the fair market value, determined by

1 appraisal as if installed for continuous use in an operating  
2 dealership, of all vehicle brand-specific special tools,  
3 signage and other specialized systems and equipment required  
4 by the manufacturer or distributor for dealership operations.  
5 The fair market value will be determined by a qualified  
6 independent appraiser agreed upon by the manufacturer or  
7 distributor and the dealer unless the fair market value is  
8 mutually agreed upon by the parties; and

9 (5) the economic loss to the dealer  
10 resulting from idled or underused dealer facility real estate  
11 due to a manufacturer's involuntary termination, determined by  
12 any reasonable means, including appraisal, unless the dealer  
13 is in violation of the franchise agreement. Economic loss is  
14 presumed to be at least equal to the value of two years of  
15 dealer facility fair market rental value, as if the facility  
16 were an operating dealership; real estate property tax; and  
17 property insurance.

18 B. The manufacturer or distributor may subtract  
19 from the sum due under Subsection A of this section the amount  
20 of debts owed by the dealer to the manufacturer or  
21 distributor. The manufacturer or distributor and the dealer  
22 are each responsible for one-half of the cost of delivering  
23 the inventory to the manufacturer or distributor.

24 C. The manufacturer or distributor shall pay the  
25 amount due under this section before the sixty-first day after

1 the day that the manufacturer or distributor receives  
2 inventory from the dealer.

3 D. On payment of the amount due under this  
4 section, title to the inventory is transferred to the  
5 manufacturer or distributor.

6 E. The provisions of this section shall not apply  
7 to recreational travel trailer or motor home manufacturers or  
8 dealers."

9 Section 5. EMERGENCY.--It is necessary for the public  
10 peace, health and safety that this act take effect  
11 immediately. \_\_\_\_\_

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*Ben Lujan*

BEN LUJAN, SPEAKER  
HOUSE OF REPRESENTATIVES

*Stephen R. Arias*

STEPHEN R. ARIAS, CHIEF CLERK  
HOUSE OF REPRESENTATIVES

*Diane D. Denish*

DIANE D. DENISH, PRESIDENT  
SENATE

*Lenore M. Naranjo*

LENORE M. NARANJO, CHIEF CLERK  
SENATE

Approved by me this 8<sup>th</sup> day of March, 2010

*Bill Richardson*

BILL RICHARDSON, GOVERNOR  
STATE OF NEW MEXICO

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