



The Legislature  
of the  
State of New Mexico

49th Legislature, Second Session

LAWS 2010

CHAPTER 38

SENATE BILL 58, as amended,  
with emergency clause, with certificate of correction

Introduced by

SENATOR JOHN M. SAPIEN



**EMERGENCY CLAUSE**

State of New Mexico  
Senate

FORTY-NINTH LEGISLATURE  
SECOND SESSION, 2010

February 18, 2010

CERTIFICATE OF CORRECTION

I certify that the following error was found in

SENATE BILL 58, as amended,  
with emergency clause

and has been corrected in enrolling and engrossing:

1. On page 10, line 1 of the introduced bill, the word "dealers'" was changed to "dealer's" to correct a punctuation error.

Respectfully submitted,

  
Lenore M. Naranjo, Chief Clerk

# CHAPTER 38

## 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;

1 or

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

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

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

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

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

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

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

1 related characteristic and in which there is a community of  
2 interest in the marketing of motor vehicles or services  
3 related to marketing, service or repair of motor vehicles at  
4 wholesale, retail, leasing or otherwise;

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

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

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

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

14 J. "sale" includes:

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

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

1 franchise;

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

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

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

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

1           O. "dealer cost" means an amount equal to the sum  
2 of the original invoice price that the dealer paid for  
3 inventory and the cost of the delivery of the inventory from  
4 the manufacturer or distributor to the dealer, less  
5 applicable discounts;

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

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

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

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

1 or

2 (3) twenty miles in all other cases.

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

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

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

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

19 (3) the discontinuance of the sale of a  
20 product line; or

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

25 S. "predecessor manufacturer" means a manufacturer SB 58  
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1 that is acquired, succeeded by or assumed by a successor  
2 manufacturer; and

3 T. "former franchisee":

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

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

9 (b) has had the franchise canceled,  
10 terminated or otherwise ended; and

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

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

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

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

1           B. Unless a separate agreement lasting no more  
2 than fifteen years has been voluntarily entered into for  
3 separate consideration, it is unlawful to, directly or  
4 indirectly, require a site control agreement or exclusive use  
5 agreement as a condition of:

6                   (1) awarding a franchise to a prospective  
7 motor vehicle dealer;

8                   (2) adding a line make or franchise to an  
9 existing dealer;

10                  (3) renewing the franchise of an existing  
11 dealer;

12                  (4) approving the relocation of an existing  
13 dealer's facility; or

14                  (5) approving the sale or transfer of  
15 ownership of a franchise.

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

19                   (1) requiring a dealer to establish or  
20 maintain exclusive dealership facilities;

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

24                   (3) preventing or attempting to prevent a  
25 dealer from acquiring, adding or maintaining a sales or

1 service operation for another line make of motor vehicles at  
2 the same or expanded facility at which the dealer currently  
3 operates a dealership, provided that the dealer complies with  
4 any reasonable facilities requirements of the manufacturer,  
5 successor manufacturer or distributor."

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

8 "57-16-9. FRANCHISE RENEWAL--TERMINATION--ANTICIPATORY  
9 TERMINATION.--

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

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

1 termination of the dealer's franchise."

2 Section 4. Section 57-16-9.2 NMSA 1978 (being Laws  
3 1991, Chapter 49, Section 2, as amended) is amended to read:

4 "57-16-9.2. MOTOR VEHICLE DEALERS--TERMINATION OF  
5 FRANCHISE--RETURN OF INVENTORY.--

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

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

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

22 (3) an amount equal to an additional five  
23 percent of the current price of new, unused and undamaged  
24 motorcycle attachments and motor vehicle repair parts, unless  
25 the manufacturer or distributor performs the handling,

1 packing and loading of the parts, in which case no additional  
2 amount is required under this paragraph;

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

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

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

1 the inventory to the manufacturer or distributor.

2 C. The manufacturer or distributor shall pay the  
3 amount due under this section before the sixty-first day  
4 after the day that the manufacturer or distributor receives  
5 inventory from the dealer.

6 D. On payment of the amount due under this  
7 section, title to the inventory is transferred to the  
8 manufacturer or distributor.

9 E. The provisions of this section shall not apply  
10 to recreational travel trailer or motor home manufacturers or  
11 dealers."

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

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Diane D. Denish

Diane D. Denish, President  
Senate

Lenore M. Naranjo  
Lenore M. Naranjo, Chief Clerk  
Senate

Ben Lujan  
Ben Lujan, Speaker  
House of Representatives

Stephen R. Arias  
Stephen R. Arias, Chief Clerk  
House of Representatives

Approved by me this 8th day of March, 2010

Bill Richardson  
Governor Bill Richardson  
State of New Mexico

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