

**Leveling the Playing Field for Auto Dealers:  
Missouri Motor Vehicle Franchise Practices Act**

by Gene J. Brockland<sup>1</sup>

**I. Introduction**

Automobile dealers and the manufacturers whose cars they sell do not always see eye to eye. Dealership agreements, typically drafted by the manufacturer, tend to favor the manufacturer. The Missouri Motor Vehicle Franchise Practices Act<sup>2</sup>, however, helps to level the playing field for dealers. This article discusses the Act's substantive and procedural protections for Missouri auto dealers.<sup>3</sup>

**II. Substantive Provisions**

The Act sets forth a laundry list of prohibited activities that might arise in the course of the typical dealer-manufacturer business relationship. It contains eighteen separate subsections delineating prohibited activities.<sup>4</sup> The Act's prohibitions operate despite any language to the contrary in the dealership agreement.<sup>5</sup> In fact, courts have held that the intent of the legislature was to alter the relative bargaining positions of dealers and manufacturers by the subordinating of express contractual language to notions of reasonableness.<sup>6</sup> The Act's most important prohibitions will be discussed in this article.

**A. General**

The Act starts off with a general prohibition against any conduct that is capricious, in bad faith or unconscionable and which causes damage to the dealer or the public.<sup>7</sup> None of those terms are defined in the Act itself. In the context of the Act,

though, the courts have defined “capricious” conduct as conduct that is impulsive or unpredictable. “Bad faith” conduct has been defined as conduct that is lacking in honesty. “Unconscionable” conduct has been defined as conduct that is shockingly unfair or unjust.<sup>8</sup> Clearly, this general prohibition can be broadly construed to cover many different types of behavior.

## **B. Termination**

Under the Act, a manufacturer cannot terminate, cancel or refuse to continue any dealership without good cause, unless the dealer substantially defaults in the performance of its reasonable and lawful obligations.<sup>9</sup> In determining whether good cause exists, the court or administrative hearing commission must consider:

- The dealer’s sales in relation to sales in the market
- The dealer’s investment and obligations
- Injury to the public welfare
- Adequacy of the dealer’s facilities, equipment, parts and personnel
- Whether the dealer is honoring warranties
- Compliance with the dealership agreement by both parties
- Manufacturer’s desire for greater market penetration
- Harm to the manufacturer<sup>10</sup>

Thus, whether or not termination will be allowed is a fact-intensive determination, requiring detailed evidence of the dealer’s activities, especially as they relate to the market as a whole.

After a valid termination, the manufacturer must pay reasonable compensation to the terminated dealer.<sup>11</sup> Such compensation must include:

- Repurchase of new vehicles at the dealer's net acquisition cost
- Repurchase of new, unused, undamaged and unsold parts at the dealer's cost
- Depreciated value of trademarked signs
- Fair market value of special tools and equipment<sup>12</sup>

### **C. Management**

Certain of the Act's provisions relate to the dealer's management structure. The manufacturer cannot prevent the dealer from changing its executive management.<sup>13</sup> The manufacturer cannot prevent the dealer from changing its capital structure, provided that reasonable capital standards are adhered to and provided that the manufacturer receives a purchase money security interest in the new motor vehicles, parts and accessories purchased from it.<sup>14</sup> The manufacturer cannot prevent a sale or transfer of a dealership, unless the transferee does not meet the manufacturer's standards.<sup>15</sup> Such standards, however, cannot be arbitrary. They must be reasonable, must in fact be normally relied upon by the manufacturer and must relate to the qualification, capitalization, integrity or character of the proposed transferee.<sup>16</sup> Under certain circumstances, the manufacturer is allowed a right of first refusal before a transfer can take place.<sup>17</sup>

Similarly, the manufacturer cannot prevent or refuse to honor the succession of the dealership to a legal heir or devisee under a will or trust, or pursuant to the laws of intestate succession.<sup>18</sup> In the case of a dealership passing to a designated family member, however, the manufacturer has the right to review such family member's personal and financial data to see if the person meets the reasonable criteria generally applied by the

manufacturer in qualifying dealers.<sup>19</sup> Taken together, all of these provisions give the dealer reasonable options for succession planning.

#### **D. Inventory**

The Act contains a number of prohibitions relating to the type and amount of vehicles that a dealer can or must obtain from the manufacturer. A manufacturer cannot coerce the dealer to accept delivery of any new motor vehicle or vehicles, equipment, parts or accessories that the dealer has not ordered.<sup>20</sup> That prohibition, however, does not preclude the manufacturer from requiring a dealer to maintain an inventory of parts, tools and equipment needed to perform required service. On the flip side, the manufacturer cannot unreasonably refuse to deliver, in reasonable quantities and within a reasonable time, such motor vehicles as the dealer orders.<sup>21</sup> A manufacturer can defend such a claim, however, if the failure to deliver was due to an act of God, work stoppage, strike or labor difficulty, shortage of products or materials, freight delay, embargo or other cause out of the manufacturer's control.<sup>22</sup>

The Act also prohibits a manufacturer from offering a dealer some, but not all, of a particular line-make.<sup>23</sup> Thus, whatever models are generally offered by a manufacturer must be offered to all dealers. The manufacturer may, however, impose reasonable requirements on the dealer before selling it certain vehicles, such as requiring the purchase of reasonable amounts of advertising material, the training of service technicians, or the purchase of specialty tools needed to service the vehicles. If those specialty tools cost in the aggregate more than \$7500, however, the dealer can request a good faith estimate of the number of vehicles of that particular model that the dealer will

be allocated during that model year.<sup>24</sup> In that way, the dealer can make a reasonable business judgment before purchasing the required items.

### **III. Procedural Provisions**

The procedural provisions of the Act are every bit as important as the substantive provisions. Like the substantive provisions, they provide dealers with considerable leverage. A dealer aggrieved by a violation of the Act can bring a suit in any court of competent jurisdiction.<sup>25</sup> Perhaps more importantly, though, the dealer can seek relief before the Missouri Administrative Hearing Commission (AHC). Bringing an action in the AHC has particular procedural benefits. Essentially, the mere filing of a Complaint with the AHC serves to enjoin the manufacturer from engaging in the allegedly unlawful acts.

The application for a hearing must comply with the requirements of a request for agency action set forth in chapter 536, RSMo.<sup>26</sup> A copy of the application must be served on the party against whom relief is sought by certified mail, return receipt requested.<sup>27</sup> Discovery is available to the same extent allowed in civil cases.<sup>28</sup> After the Complaint is filed, the AHC will set a time for a hearing on the matter and will issue an order to the parties regarding same.<sup>29</sup> Most importantly, the order shall also state that the party against whom relief is sought shall not proceed with the initiation of its activity or activities until the AHC issues its final decision or order.<sup>30</sup> Thus, with a properly drawn Complaint, the initial AHC order will operate like a temporary restraining order and an injunction, based merely on the allegations, and without need for proof as to the likelihood of success on the merits.

The AHC is made up of three Commissioners appointed by the Governor. It has jurisdiction in over 100 statutorily specified matters including, among other things, state tax, professional licensing, Medicaid provider issues, Ethics Commission matters, and Highways and Transportation Commission actions relating to railroads and motor carriers. Most of its reported cases are not Motor Vehicle Act cases. In fact, there are currently only two reported AHC decisions under the Act.<sup>31</sup> The AHC's docket is a full one. As a result, the time from filing the Complaint until the time of hearing will often be at least six months. Thus, the stay order rendered upon filing the Complaint can be crucial, especially in a situation where negotiations might be fruitful. Obtaining a stay order can help the dealer level the playing field in those negotiations.

Of course, bringing an AHC action means foregoing a jury trial. Thus, in an action where damages may be more important than injunctive relief, an AHC action may be less attractive. All manufacturers selling to dealers doing business in Missouri are subject to jurisdiction of Missouri courts.<sup>32</sup> Thus, a state or federal court action can be brought, regardless of possible language to the contrary in the dealership agreement. In such an action, the Court may award damages and, where appropriate, injunctive relief.<sup>33</sup> Punitive damages cannot be recovered under the Act, however, absent proof of an independent tort.<sup>34</sup>

#### **IV. Conclusion**

The Missouri Motor Vehicle Franchise Practices Act truly levels the playing field. It is a valuable tool for auto dealers in their business dealings with manufacturers.

## Footnotes

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<sup>2</sup> Section 407.810 - 407.835, RSMo 2003. The Act speaks in terms of franchisors and franchisees. For the purposes of this article, the franchisor is referred to as the manufacturer, and the franchisee is referred to as the dealer.

<sup>3</sup> Other relevant statutes, such as the federal Automobile Dealers' Day in Court Act, 15 U.S.C. Section 1221, *et seq.* are beyond the scope of this article.

<sup>4</sup> Section 407.825, RSMo 2003.

<sup>5</sup> Section 407.825, RSMo 2003; *John Meier Motor Company v. Navistar International Transportation Company*, Mo. AHC, No. 01-0573FV.

<sup>6</sup> *G.A. Imports, Inc. v. Subaru Mid-America, Inc.*, 799 F.2d 1200, 1208 (8<sup>th</sup> Cir. 1986).

<sup>7</sup> Section 407.825(1), RSMo 2003.

<sup>8</sup> *Thoroughbred Ford, Inc. v. Ford Motor Co.*, 908 S.W. 2d 719 (Mo.App. E.D. 1995).

<sup>9</sup> Section 407.825(5), RSMo 2003.

<sup>10</sup> *Id.*

<sup>11</sup> Section 407.825(13), RSMo 2003.

<sup>12</sup> *Id.*

<sup>13</sup> Section 407.825(8), RSMo 2003.

<sup>14</sup> Section 407.825(6), RSMo 2003.

<sup>15</sup> Section 407.825(7), RSMo 2003.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Section 407.825(14), RSMo. 2003.

<sup>19</sup> Section 407.825(14)(b), RSMo 2003.

<sup>20</sup> Section 407.825(2), RSMo. 2003.

<sup>21</sup> Section 407.825(3), RSMo 2003.

<sup>22</sup> *Id.*

<sup>23</sup> Section 407.825(18), RSMo 2003.

<sup>24</sup> *Id.*

<sup>25</sup> Section 407.835, RSMo 2003.

<sup>26</sup> Section 407.822.1, RSMo 2003.

<sup>27</sup> *Id.*

<sup>28</sup> Section 407.822.2, RSMo 2003.

<sup>29</sup> Section 407.822.1, RSMo 2003.

<sup>30</sup> *Id.*

<sup>31</sup> *John Meier Motor Company v. Navistar International Transportation Company*, Mo.

AHC, No. 01-0573FV; *Taliaferro Imports, Inc. v. Saab Cars/USA, Inc.*, Mo. AHC, No.

02-1922FV.

<sup>32</sup> Section 407.820, RSMo 2003.

<sup>33</sup> Section 407.835, RSMo 2003.

<sup>34</sup> *Tom Pappas Toyota, Inc. v. Toyota Motor Distributors, Inc.*, 729 F.Supp. 71 (E.D. Mo.

1990).