

Senate Bill 598

By: Senators Robertson of the 29th, Jackson of the 41st, Hufstetler of the 52nd and Harbin of the 16th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 10-1-664.1 of the Official Code of Georgia Annotated, relating to
2 restrictions on the ownership, operation, or control of dealerships by manufacturers and
3 franchisors and competing unfairly with new dealers, so as to amend a prohibition on the
4 ownership, operation, and control of motor vehicle dealerships by certain manufacturers,
5 franchisors, and any parent, affiliate, or wholly or partially owned subsidiary thereof; to
6 provide for legislative purpose; to provide for related matters; to repeal conflicting laws; and
7 for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 The General Assembly recognizes the vital role new motor vehicle dealerships play in this
11 state's economy. It is important to balance the need to protect the investment new motor
12 vehicle dealers have made in their businesses and their local economies while following the
13 principles of a free and open marketplace. The state has previously found this balance by
14 permitting the direct sale of new motor vehicles in limited instances. Since 2015, a
15 manufacturer of zero emissions new motor vehicles has sold its vehicles directly to the public
16 in Georgia. In the years that have followed, due to the nature of the direct-to-public sales,

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17 the consumer was provided greater purchase options and vehicle choices while new motor
18 vehicle dealers across this state continued to succeed. Opening and expanding limited direct
19 sales of zero emission new motor vehicles to the public to additional manufacturers of such
20 vehicles that have never operated within this state through a franchised dealer will spur
21 economic development, provide consumers with greater access to vehicles, and will benefit
22 the industry as a whole.

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SECTION 2.

24 Code Section 10-1-664.1 of the Official Code of Georgia Annotated, relating to restrictions
25 on the ownership, operation, or control of dealerships by manufacturers and franchisors and
26 competing unfairly with new dealers, is amended by revising subsections (a) and (b) as
27 follows:

28 "(a) It shall be unlawful for any manufacturer or franchisor or any parent, affiliate, wholly
29 or partially owned subsidiary, officer, or representative of a manufacturer or franchisor to
30 own, operate, or control or to participate in the ownership, operation, or control of any new
31 motor vehicle dealer in this state within a 15 mile radius of an existing dealer of such
32 manufacturer or franchisor; to own, operate, or control, directly or indirectly, more than a
33 45 percent interest in a dealer or dealership in this state; to establish in this state an
34 additional dealer or dealership in which such person or entity has any interest; or to own,
35 operate, or control, directly or indirectly, any interest in a dealer or dealership in this state
36 unless such person or entity has acquired such interest from a dealer or dealership which
37 has been in operation for at least five years prior to such acquisition; provided, however,
38 that this subsection shall not be construed to prohibit:

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

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

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

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

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

(6) The ownership, operation, or control by a manufacturer which manufactures trucks with a gross vehicle weight rating of 12,500 pounds or more of a new motor vehicle dealer which only sells trucks with a gross vehicle weight rating of 12,500 pounds or more at the same location at which such manufacturer has been engaged in the retail sale of such trucks as the owner, operator, or controller of such dealership for a continuous two-year period of time immediately prior to April 1, 1999, or at one additional location which is not located within the relevant market area of an existing dealer of the same line make of trucks; provided, however, that this exemption shall apply to a manufacturer

described in this paragraph only until such manufacturer is wholly or partially acquired by another manufacturer or distributor;

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

(8) The ownership, operation, or control by a manufacturer or any parent, affiliate, or wholly or partially owned subsidiary thereof of not more than five locations licensed as new motor vehicle dealerships for the sale of new motor vehicles and any ~~number of locations~~ facilities that engage exclusively in the repair of ~~such manufacturer's line make of motor vehicles~~ line make motor vehicles of such manufacturer or its parent, affiliate, or wholly or partially owned subsidiary, provided that such manufacturer ~~was selling or otherwise distributing its motor vehicles at an established place of business in this state as of January 1, 2015, and~~ or its parent, affiliate, or wholly or partially owned subsidiary:

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

(B) Has ~~The manufacturer has~~ not acquired a controlling interest in a franchisor or a subsidiary or other entity controlled by such franchisor, or sold or transferred a controlling interest in such manufacturer or its parent, affiliate, or wholly or partially owned subsidiary to a franchisor or subsidiary or other entity controlled by such franchisor;

(C) Maintains repair facilities in this state in order to satisfy the manufacturer's or its parent, affiliate, or wholly or partially owned subsidiary's obligation to consumers under Article 28 of Chapter 1 of Title 10, the 'Georgia Lemon Law';

(D) Is domiciled in the United States; and

(E) Maintains a physical location in the United States for the direction, control, and coordination of its activities.

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

SECTION 3.

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