

2013 -- H 5520 SUBSTITUTE A

=====
LC01331/SUB A
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

—————
A N A C T

RELATING TO COMMERCIAL LAW -- GENERAL REGULATORY PROVISIONS -- THE
RHODE ISLAND FAIR DEALERSHIP ACT

Introduced By: Representative Brian P. Kennedy

Date Introduced: February 14, 2013

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 6 of the General Laws entitled "COMMERCIAL LAW - GENERAL
2 REGULATORY PROVISIONS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 54

4 GENERAL REGULATORY PROVISIONS

5 THE RHODE ISLAND DEALERSHIP PRESERVATION

6 AND PROTECTION ACT

7 **6-54-1. Short title.** -- This chapter shall be known as the "Rhode Island Dealership
8 Preservation and Protection Act."

9 **6-54-2. Definitions.** – As used in this chapter:

10 (1) "Community of interest" means a continuing financial interest between the grantor
11 and the grantee in either the operation of the dealership business or the marketing of such goods
12 or services;

13 (2) "Dealer" means a person who is a grantee of a dealership situated in this state, and
14 any successor in interest;

15 (3) "Dealership" means any of the following:

16 (i) A contract or agreement, either expressed or implied, whether oral or written, between
17 two (2) or more persons, by which a person is granted the right to sell or distribute goods or
18 services, or use a trade name, trademark, service mark, logotype, advertising or other commercial

1 symbol, in which there is a community of interest in the business of offering, selling or
2 distributing goods or services at wholesale, retail, by lease, agreement or otherwise.

3 (4) "Good cause" means, for the purposes of this act, good cause for terminating,
4 diminishing, canceling or nonrenewal shall mean:

5 (i) The failure by the dealer to substantially comply with the reasonable requirements
6 imposed by the grantor; or

7 (ii) Any of the reasons listed in subdivisions 6-54-4(a)(1) through (a)(6).

8 (5) "Grantor" means a person who grants a dealership, and any successor in interest;

9 (6) "Person" means a natural person, partnership, joint venture, corporation or other
10 entity.

11 **6-54-3. Purposes; rules of construction; variation by contract.** -- (a) This chapter shall
12 be liberally construed and applied to promote its underlying remedial purposes and policies.

13 (b) The underlying purposes and policies of this chapter are:

14 (1) To promote the compelling interest of the public in fair business relations between
15 dealers and grantors, and in the continuation of dealerships on a fair basis;

16 (2) To protect dealers against unfair treatment by grantors;

17 (3) To provide dealers with rights and remedies in addition to those existing by contract
18 or common law;

19 (4) To govern dealerships, including any renewals or amendments, to the full extent
20 consistent with the constitutions of this state and the United States.

21 (c) The effect of this chapter may not be varied by contract or agreement. Any contract or
22 agreement purporting to do so is void and unenforceable to that extent only.

23 **6-54-4. Notice of termination or change in dealership.** -- (a) Notwithstanding the
24 terms, provisions, or conditions of any agreement to the contrary, a grantor shall provide a dealer
25 sixty (60) days prior written notice of termination, cancellation, or nonrenewal. The notice shall
26 state all reasons for termination, cancellation or nonrenewal and shall provide that the dealer has
27 thirty (30) days in which to cure any claimed deficiency; provided, that a dealer has a right to
28 cure three (3) times in any twelve (12) month period during the period of the dealership
29 agreement. The sixty (60) day notice provisions of this section shall not apply and the
30 termination, cancellation or nonrenewal may be made effective immediately upon written notice,
31 if the reason for termination, cancellation or nonrenewal is in the event the dealer:

32 (1) Voluntarily abandons the dealership relationship;

33 (2) Is convicted of a felony offense related to the business conducted pursuant to the
34 dealership;

1 (3) Engages in any substantial act which tends to materially impair the goodwill of the
2 grantor's trade name, trademark, service mark, logotype or other commercial symbol;

3 (4) Makes a material misrepresentation of fact to the grantor relating to the dealership;

4 (5) Attempts to transfer the dealership (or a portion thereof) without authorization of the
5 grantor; or

6 (6) Is insolvent, files or suffers to be filed against it any voluntary or involuntary
7 bankruptcy petition, or makes an assignment for the benefit of creditors or similar disposition of
8 assets of the dealer business.

9 (b) If the reason for termination, cancellation, or nonrenewal is nonpayment of sums due
10 under the dealership, the dealers shall be entitled to written notice of such default, and shall have
11 ten (10) days in which to cure such default from the date of such notice. A dealer has the right to
12 cure three (3) times in any twelve (12) month period during the period of the dealership
13 agreement.

14 (c) If the reason for termination, cancellation or nonrenewal is for violation of any law,
15 regulation or standard relating to public health or safety, the dealer shall be entitled to immediate
16 written notice and shall have twenty-four (24) hours to cure such violation.

17 (d) No grantor may terminate, cancel or fail to renew a dealership, directly or indirectly,
18 or otherwise take any action to diminish the dealership or its value, other than for good cause.

19 **6-54-5. Repurchase of inventories.** -- If a dealership is terminated by the grantor, the
20 grantor, at the option of the dealer, shall repurchase all inventories sold by the grantor to the
21 dealer for resale under the dealership agreement at the fair market value. This section applies only
22 to merchandise with a name, trademark, label or other mark on it which identifies the grantor.

23 **6-54-6. Application to arbitration agreements.** -- This chapter shall not apply to
24 provisions for the binding arbitration of disputes contained in a dealership agreement, if the
25 criteria for determining whether good cause existed for a termination, cancellation, or
26 nonrenewal, and the relief provided is no less than that provided for in this chapter.

27 **6-54-7. Action for damages and injunctive relief.** -- If any grantor violates this chapter,
28 a dealer may bring an action against such grantor in any court of competent jurisdiction for
29 damages sustained by the dealer as a consequence of the grantor's violation, together with the
30 actual costs of the action, including reasonable actual attorneys' fees, and the dealer also may be
31 granted injunctive relief against unlawful termination, cancellation, or nonrenewal. For purposes
32 of this chapter, damages shall include, without limitation, reasonable compensation for the fair
33 market value of the dealer's business with relation to the dealership.

34 **6-54-8. Temporary injunctions.** -- In any action brought by a dealer against a grantor

1 [under this chapter, any violation of this chapter by the grantor is deemed an irreparable injury to](#)
2 [the dealer in determining if temporary injunctions should issue.](#)

3 **6-54-9. Nonapplicability. --** [This chapter shall not apply to malt beverage dealerships,](#)
4 [motor vehicle dealerships, insurance agency relationships, any relationship relating to the sale or](#)
5 [administration of insurance or any similar contract with an entity organized under chapters 19 or](#)
6 [20 of title 27, fuel distribution dealerships, door-to-door sales, dealerships, and franchises,](#)
7 [franchisors, franchisees, dealers and dealerships that are subject to and comply with, or are](#)
8 [exempt from, the provisions of chapter 28 of title 19, known as the "Rhode Island Franchise](#)
9 [Investment Act."](#)

10 SECTION 2 This act shall take effect upon passage.

=====
LC01331/SUB A
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO COMMERCIAL LAW -- GENERAL REGULATORY PROVISIONS -- THE
RHODE ISLAND FAIR DEALERSHIP ACT

1 This act would preserve and protect dealerships against the unfair treatment by grantors,
2 and further would provide dealerships with rights and remedies in addition to those existing by
3 contract, common law, or the general and public laws of this state. This act would not be
4 applicable to specifically exempt business entities.

5 This act would take effect upon passage.

=====
LC01331/SUB A
=====