CHAPTER 322A

MOTOR VEHICLE FRANCHISERS

Referred to in §307.27, 523H.1, 537A.10

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322A.1 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Additional motor vehicle dealership"* includes a facility providing manufacturer-authorized or distributor-authorized service or warranty work for motor vehicles, except motor homes, of a line-make in a community in which the same line-make is represented.

2. *"Community"* means the franchisee's area of responsibility as stipulated in the franchise.

3. *"Consumer care"* means to perform, for the public, necessary maintenance and repairs to motor vehicles.

4. *"Department"* means the state department of transportation.

5. *a. "Franchise"* means a contract between two or more persons when all of the following conditions are included:

(1) A commercial relationship of definite duration or continuing indefinite duration is involved.

(2) The franchisee is granted the right to offer and sell motor vehicles manufactured or distributed by the franchiser.

(3) The franchisee, as an independent business, constitutes a component of the franchiser's distribution system.

(4) The operation of the franchisee's business is substantially associated with the franchiser's trademark, service mark, trade name, advertising, or other commercial symbol designating the franchiser.

(5) The operation of the franchisee's business is substantially reliant on the franchiser for the continued supply of motor vehicles, parts, and accessories.

b. *"Franchise"* includes a separate written agreement between the franchisee and the franchiser which materially affects the franchise, whether entered into prior to the date of the franchise, contemporaneously with the franchise, or subsequent to the date of the franchise.

6. *"Franchisee"* means a person who receives motor vehicles from the franchiser under a franchise and who offers and sells such motor vehicles to the general public.

7. *"Franchiser"* means a person who manufactures or distributes motor vehicles and who may enter into a franchise as hereinafter defined.

8. *"Motor vehicle"* means *"motor vehicles"* as defined in chapter 321 which are subject to registration pursuant to the provisions thereof.

9. *"Person"* means a sole proprietor, partnership, corporation, or any other form of business organization.

10. *"Substantially detrimental"* means that, by a preponderance of the evidence, the

market share of the franchiser's motor vehicles in the community will be significantly reduced in comparison to the franchiser's historical market share in the community.

11. *"Termination or noncontinuance"* includes a reduction of the geographic area of a community.

[C71, 73, 75, 77, 79, 81, §322A.1; 81 Acts, ch 22, §22]

86 Acts, ch 1245, §1940; 91 Acts, ch 27, §3; 99 Acts, ch 69, §2; 2001 Acts, ch 32, §35, 40; 2010 Acts, ch 1081, §1; 2013 Acts, ch 30, §70

Referred to in §322.5

322A.2 Discontinuing franchise.

1. Unless otherwise provided in subsection 2, notwithstanding the terms, provisions, or conditions of any agreement or franchise, a franchiser shall not terminate or refuse to continue any franchise unless the franchiser has first established, in a hearing held under the provisions of this chapter, that both of the following apply:

a. The franchiser has good cause for termination or noncontinuance.

b. Upon termination or noncontinuance, another franchise in the same line-make will become effective in the same community, without diminution of the motor vehicle service formerly provided, or that the community cannot be reasonably expected to support such a dealership.

2. A franchiser may terminate a franchise for a particular line-make if the franchiser discontinues that line-make and a franchiser may terminate a franchise if the franchisee's license as a motor vehicle dealer is revoked pursuant to the provisions of chapter 322.

[C71, 73, 75, 77, 79, 81, §322A.2]

2010 Acts, ch 1069, §110

Referred to in §322A.22

322A.3 New franchise.

In the event that a franchiser is permitted to terminate or not continue a franchise, and is further permitted not to enter into a franchise for the line-make in the community, no franchise shall thereafter be entered into for the sale of motor vehicles of that line-make in the community, unless the franchiser has first established, in a hearing held under the provisions of this chapter, that there has been a change of circumstances so that the community at that time can be reasonably expected to support the dealership.

[C71, 73, 75, 77, 79, 81, §322A.3]

322A.3A Alteration of franchise.

1. A franchiser shall not unreasonably alter a franchisee's community.

2. A franchiser shall notify a franchisee of a proposed alteration to the franchisee's community at least sixty days prior to the effective date of the proposed alteration. Within thirty days of a request by the affected franchisee, unless otherwise provided in the notice, the franchiser shall provide the franchisee with an explanation of the basis for the proposed alteration.

3. Prior to the effective date of a proposed alteration of a franchisee's community and after the receipt of the explanation of the basis for the proposed alteration, a franchisee may object to the proposed alteration of the franchisee's community. Upon a franchisee's objection, a franchiser shall provide an internal appeal process for the franchisee. However, the franchiser is not required to provide an internal appeal process if the franchiser has already provided the franchisee with an opportunity to object to the alteration of the franchisee's community and to provide information in objection to the alteration for the franchiser's consideration prior to the franchiser's issuance of notice of the proposed alteration.

4. *a.* Within fifteen days of the completion of the franchiser's internal appeal process, a franchisee may challenge the reasonableness of the proposed alteration of the franchisee's community by filing an application with the department requesting a hearing to be held pursuant to section 322A.7.

b. After a hearing held as described in this subsection, the department of inspections and appeals may affirm, deny, or modify the proposed alteration of a franchisee's community, may enter any other orders necessary to ensure that an alteration of the franchisee's community is

reasonable in light of all the relevant circumstances, and may assess the costs of the hearing among the parties to the hearing as appropriate.

5. No change to the franchisee's community shall take effect during the pendency of the internal appeals process specified in subsection 3 or the hearing specified in subsection 4.

6. A franchiser shall not take any adverse action against a franchisee as a result of an alteration of the franchisee's community for at least twelve months after the effective date of the alteration.

2013 Acts, ch 63, §1

322A.4 Additional franchise.

No franchiser shall enter into any franchise for the purpose of establishing an additional motor vehicle dealership in any community in which the same line-make is then represented, unless the franchiser has first established in a hearing held under the provisions of this chapter that there is good cause for such additional motor vehicle dealership under such franchise, and that it is in the public interest.

[C71, 73, 75, 77, 79, 81, §322A.4]

322A.5 Warranties and recalls.

1. Every franchiser and franchisee shall fulfill the terms of any express or implied warranty concerning the sale of a motor vehicle to the public of the line-make which is the subject of a contract or franchise agreement between the parties. If it is determined by the district court that either the franchiser or franchisee, or both, have violated an express or implied warranty, the court shall add to any award or relief granted an additional award for reasonable attorney fees and other necessary expenses for maintaining the litigation.

2. *a.* A franchiser shall specify in writing to each of the franchiser's franchisees operating in this state the franchisee's obligations for preparation, delivery, and warranty services related to the franchiser's products. The franchiser shall compensate the franchisee for the warranty services the franchiser requires the franchisee to provide, including warranty and recall obligations related to repairing and servicing motor vehicles of the franchiser and all parts and components authorized by the manufacturer to be installed in or manufactured for installation in such motor vehicles.

b. The franchiser shall provide to the franchisee a schedule of compensation that specifies reasonable compensation the franchiser will pay to the franchisee for such warranty services, including for parts, labor, and diagnostics.

(1) In determining the schedule of compensation for parts, the franchiser may multiply the price paid by the franchisee for parts, including all shipping costs and other charges, by the sum of one and the franchisee's average percentage markup. The franchisee's average percentage markup is calculated by subtracting one from the result of dividing the total amounts charged by the franchisee for parts used in warranty-like repairs by the total cost to the franchisee for the parts in the retail service orders submitted pursuant to subparagraph (3).

(2) In determining the schedule of compensation for labor-related warranty services, the franchiser may calculate the franchisee's retail labor rate by dividing the total amount of retail sales attributable to labor for warranty-like services by the number of hours of labor spent to generate the retail sales in the retail service orders submitted pursuant to subparagraph (3).

(3) (a) The franchisee may establish its average percentage markup for parts or its labor rate by submitting to the franchiser copies of one hundred sequential retail service orders paid by the franchisee's customers, or all of the franchisee's retail service orders paid by the franchisee's customers in a ninety-day period, whichever is less, for services provided within the previous one-hundred-eighty-day period. The franchiser shall not consider retail service orders or portions of retail service orders attributable to routine maintenance such as tire service or oil service.

(b) Within thirty days of receiving the franchisee's submission, the franchiser may choose to audit the submitted orders. The franchiser shall then approve or deny the establishment of the franchisee's average percentage markup or labor rate. If the franchiser approves the establishment of the franchisee's average percentage markup or labor rate, the markup or

rate calculated under this subparagraph shall go into effect forty-five days after the date of the franchiser's approval. If the franchiser denies the establishment of the franchisee's average percentage markup or labor rate, the franchisee may file a complaint with the department and a hearing shall be held before the department of inspections and appeals. The franchiser shall have the burden of proof to establish that the franchiser's denial was reasonable. If the department of inspections and appeals finds the denial was not reasonable, the denial shall be deemed a violation of this chapter and the department of inspections and appeals shall determine the franchisee's average percentage markup or labor rate for purposes of calculating a reasonable schedule of compensation. In making such a determination, the department of inspections and appeals shall not consider retail service orders or portions of retail service orders attributable to routine maintenance such as tire service or oil service.

(c) A franchiser shall not require a franchisee to establish an average percentage markup or labor rate by a methodology, or by requiring the submission of information, that is unduly burdensome or time-consuming to the franchisee, including but not limited to requiring part-by-part or transaction-by-transaction calculations.

(d) A franchisee shall not request a change in the franchisee's average percentage markup or labor rate more than once in any one-year period.

(4) The compensation to the franchisee for warranty parts and labor shall not be less than the rates charged by the franchisee for like parts and services to retail customers, provided the rates are reasonable.

3. A franchiser shall not do any of the following:

a. Fail to perform any warranty obligation.

b. Fail to compensate any of the franchiser's franchisees operating in this state for repairs relating to a recall.

4. *a.* A claim made by a franchisee for warranty services pursuant to this section shall be paid within thirty days after the claim's approval. A franchiser shall either approve or deny a claim within thirty days after the franchiser receives a claim if the claim is submitted on a proper form generally used by the franchiser and the claim contains the information required by the franchiser. If a franchiser does not deny a claim in writing within thirty days after the receipt of the claim, the claim shall be deemed to be approved by the franchiser and payment shall be made to the franchisee within thirty days.

b. A franchiser may deny a franchisee's claim for compensation for warranty or recall services if the franchisee's claim is based on a repair not related to warranty or recall services, the repair was not properly performed, the franchisee lacks the reasonably required documentation for the claim, the franchisee fails to comply with the terms and conditions of the franchiser's warranty or recall compensation program, or the franchiser has a bona fide belief based on factual evidence that the franchisee's claim was submitted containing an intentionally false or fraudulent statement or misrepresentation. A franchiser may reject, but shall not deny, a claim based solely on a franchisee's unintentional failure to comply with a specific claim processing requirement, such as a clerical error, that does not otherwise affect the legitimacy of the claim. If a claim is rejected for such a failure, the franchisee may resubmit a corrected claim in a timely manner to the franchiser.

c. The requirement to approve a claim within thirty days or to pay an approved claim within thirty days as provided in this subsection shall not be construed to preclude denials, reductions, or chargebacks not otherwise prohibited under section 322.3, subsection 13.

5. The obligations set forth in this section shall apply to any franchiser as defined in this chapter and any franchiser of new motor vehicle transmissions, engines, or rear axles that separately warrants such components to customers.

[C71, 73, 75, 77, 79, 81, §322A.5]

2018 Acts, ch 1095, §4

Section amended

322A.6 Application filed with the department.

1. If a franchiser seeks to terminate or not continue a franchise, or seeks to enter into a franchise establishing an additional motor vehicle dealership of the same line-make, the franchiser shall file an application with the department for permission to terminate

or not continue the franchise, or for permission to enter into a franchise for additional representation of the same line-make in that community.

2. An applicant seeking permission to enter into a franchise for additional representation of the same line-make in a community shall deposit with the department at the time the application is filed, an amount of money to be determined by the department of inspections and appeals to pay the costs of the hearing.

[C71, 73, 75, 77, 79, 81, §322A.6; 81 Acts, ch 22, §22]
86 Acts, ch 1244, §42; 89 Acts, ch 273, §5

322A.7 Department of inspections and appeals to hold hearing.

1. Upon receiving an application, the department shall notify the department of inspections and appeals which shall enter an order fixing a time, which shall be within ninety days of the date of the order, and place of hearing, and shall send by certified or registered mail, with return receipt requested, a copy of the order to the franchisee whose franchise the franchiser seeks to terminate or not continue, or to the franchiser who is seeking to alter a franchisee's community, as applicable. If the application requests permission to establish an additional motor vehicle dealership, a copy of the order shall be sent to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. If the application challenges the reasonableness of a proposed alteration to a franchisee's community, a copy of the order shall be sent to all franchisees located in Iowa surrounding the affected community which are then engaged in the business of offering to sell or selling the same line-make. Copies of orders shall be addressed to the franchisee at the place where the business is conducted. The department of inspections and appeals may also give notice of the franchiser's application to any other parties deemed interested persons, the notice to be in the form and substance and given in the manner the department of inspections and appeals deems appropriate.

2. Any person who can show an interest in the application may become a party to the hearing, whether or not that person receives notice. However, a party not receiving notice shall be limited to participation at the hearing on the question of the public interest in the termination or continuation of the franchise or in the establishment of an additional motor vehicle dealership.

[C71, 73, 75, 77, 79, 81, §322A.7; 81 Acts, ch 22, §22]
86 Acts, ch 1245, §1941; 2013 Acts, ch 63, §2
Referred to in §322A.3A

322A.8 Continuation.

If the department of inspections and appeals finds it desirable it may upon request continue the date of hearing for a period of ninety days, and may upon application, but not ex parte, continue the date of hearing for an additional period of ninety days.

[C71, 73, 75, 77, 79, 81, §322A.8; 81 Acts, ch 22, §22]

322A.9 Burden of proof.

1. Upon hearing, the franchiser shall have the burden of proof to establish that under the provisions of this chapter the franchiser should be granted permission to terminate or not continue the franchise, or to enter into a franchise establishing an additional motor vehicle dealership, or to alter a franchisee's community.

2. Nothing contained in this chapter shall be construed to require or authorize any investigation by the department of any matter before the department under this chapter. Upon hearing, the department of inspections and appeals shall hear the evidence introduced by the parties and shall make its decision solely upon the record so made.

[C71, 73, 75, 77, 79, 81, §322A.9; 81 Acts, ch 22, §22]
2013 Acts, ch 63, §3

322A.10 Rules of evidence.

1. The rules of civil procedure relating to discovery and inspection shall apply to hearings

held under the provisions of this chapter, and the department of inspections and appeals may issue orders to give effect to such rules.

2. In the event issues are raised which would involve violations of any state or federal antitrust or price-fixing law, all discovery and inspection proceedings which would be available under such issues in a state or federal court action shall be available to the parties to the hearing, and the department of inspections and appeals may issue orders to give effect to such proceedings.

3. Evidence which would be admissible under the issues in a state or federal court action is admissible in a hearing held by the department of inspections and appeals. The department of inspections and appeals shall apportion all costs between the parties.

[C71, 73, 75, 77, 79, 81, §322A.10; 81 Acts, ch 22, §22]
2017 Acts, ch 54, §76

322A.11 Condition barring change in franchise.

Notwithstanding the terms, provisions, or conditions of any agreement or franchise, the following shall not be considered facts supporting a finding of good cause for the termination or noncontinuation of a franchise, or for entering into a franchise for the establishment of an additional dealership in a community for the same line-make:

1. The sole fact that franchiser desires further penetration of the market.

2. The change of ownership of the franchisee's dealership or the change of executive management of the franchisee's dealership, unless the franchiser, having the burden of proof, proves that such change of ownership or executive management will be substantially detrimental to the distribution of the franchiser's motor vehicles in the community and that good cause for the termination or noncontinuation of the franchise or for the establishment of an additional dealership otherwise exists.

3. The fact that the franchisee refused to purchase or accept delivery of any motor vehicle or vehicles, parts, accessories or any other commodity or service not ordered by the franchisee.

4. The fact that the dealership moved to another facility and location within the dealership's community which are equal to or superior to the dealership's former location and facility or the fact that the dealership added an additional line-make to the dealership if the dealership's facility is adequate to accommodate the additional line-make.

5. The fact that the dealership does not meet an index or standard established by the franchiser, unless the franchiser proves that the failure of the dealership to meet the index or standard will be substantially detrimental to the distribution of the franchiser's motor vehicles in the community and that good cause for the termination or noncontinuation of the franchise or for the establishment of an additional dealership otherwise exists.

[C71, 73, 75, 77, 79, 81, §322A.11]
98 Acts, ch 1075, §27; 2000 Acts, ch 1232, §26; 2001 Acts, ch 32, §36, 37, 40
Referred to in §322A.12, 322A.15, 322A.22

322A.12 Sale or transfer of ownership.

1. Notwithstanding the terms, provisions, or conditions of an agreement or franchise, subject to the provisions of section 322A.11, subsection 2, in the event of the sale or transfer of ownership of a franchisee's dealership by sale or transfer of the business or by stock transfer or in the event of a change in the executive management of a franchisee's dealership, the franchiser shall give effect to the change in the franchise unless the transfer of the franchisee's license under chapter 322 is denied or the new owner is unable to obtain a license under that chapter.

2. Notwithstanding the terms, provisions, or conditions of an agreement or franchise, the sale or transfer, or the proposed sale or transfer, of a franchisee's dealership, or the change or proposed change in the executive management of a franchisee's dealership shall not make applicable any right of first refusal of the franchiser.

[C71, 73, 75, 77, 79, 81, §322A.12]
2002 Acts, ch 1063, §39

322A.13 Compulsory attendance at hearings.

The department of inspections and appeals may issue subpoenas, administer oaths, compel the attendance of witnesses and production of books, papers, documents, and all other evidence. The department of inspections and appeals may apply to the district court of the county wherein the hearing is being held for a court order enforcing this section.

[C71, 73, 75, 77, 79, 81, §322A.13; 81 Acts, ch 22, §22]

322A.14 License to dealer denied.

In the event that a franchiser enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional motor vehicle dealership in a community where the same line-make is then represented, without first complying with the provisions of this chapter, no license under chapter 322 shall be issued to that franchisee or proposed franchisee to engage in the business of selling motor vehicles manufactured or distributed by that franchiser.

[C71, 73, 75, 77, 79, 81, §322A.14]

322A.15 Guidelines.

1. In determining whether good cause has been established for terminating or not continuing a franchise, the department of inspections and appeals shall take into consideration the existing circumstances, including, but not limited to:

a. Amount of business transacted by the franchisee.

b. Investment necessarily made and obligations incurred by the franchisee in the performance of the franchisee's part of the franchise.

c. Permanency of the investment.

d. Whether it is injurious to the public welfare for the business of the franchisee to be disrupted.

e. Whether the franchisee has adequate motor vehicle service facilities, equipment, parts and qualified service personnel to reasonably provide consumer care for the motor vehicles sold at retail by the franchisee and any other motor vehicles of the same line-make.

f. Whether the franchisee refuses to honor warranties of the franchiser to be performed by the franchisee, provided that the franchiser reimburses the franchisee for such warranty work performed by the franchisee.

g. Except as provided in section 322A.11, failure by the franchisee to substantially comply with those requirements of the franchise which are determined by the department of inspections and appeals to be reasonable and material.

h. Except as provided in section 322A.11, bad faith by the franchisee in complying with those terms of the franchise which are determined by the department of inspections and appeals to be reasonable and material.

2. Good cause does not include a realignment, relocation, or reduction of dealerships.

[C71, 73, 75, 77, 79, 81, §322A.15; 81 Acts, ch 22, §22]
97 Acts, ch 108, §40; 2010 Acts, ch 1061, §180

322A.16 Additional guidelines.

In determining whether good cause has been established for entering into an additional franchise for the same line-make, the department of inspections and appeals shall take into consideration the existing circumstances, including, but not limited to:

1. Amount of business transacted by other franchisees of the same line-make in that community.

2. Investment necessarily made and obligations incurred by other franchisees of the same line-make, in that community, in the performance of their part of their franchises.

3. Permanency of the investment.

4. Effect on the retail motor vehicle business as a whole in that community.

5. Whether it is injurious to the public welfare for an additional franchise to be established.

6. Whether the franchisees of the same line-make in that community are providing adequate consumer care for the motor vehicles of the line-make which shall include the

adequacy of motor vehicle service facilities, equipment, supply of parts and qualified service personnel.

[C71, 73, 75, 77, 79, 81, §322A.16; 81 Acts, ch 22, §22]

322A.17 Review.

1. A decision of the department of inspections and appeals is subject to review by the state department of transportation, whose decision is final agency action for the purpose of judicial review.

2. Judicial review of actions of the state department of transportation may be sought in the manner provided for in section 322.10.

[C71, 73, 75, 77, 79, 81, §322A.17; 81 Acts, ch 22, §22]
89 Acts, ch 273, §6

322A.18 Duty of good faith.

A franchise imposes on the parties a duty of good faith in performance and enforcement of the franchise agreement. *"Good faith"* means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

2010 Acts, ch 1081, §2

322A.19 Jurisdiction.

1. A condition, stipulation, or provision in a franchise restricting jurisdiction to a forum outside this state is void.

2. A condition, stipulation, or provision in a franchise providing that the franchisee consents to the jurisdiction of a forum outside this state is void.

3. A civil action or proceeding arising out of a franchise may be commenced wherever jurisdiction over the parties or subject matter exists, even if the franchise limits actions or proceedings to a designated jurisdiction.

2010 Acts, ch 1081, §3

322A.20 Choice of law.

1. A condition, stipulation, or provision in a franchise requiring the application of the law of another state in lieu of this chapter is void.

2. A condition, stipulation, or provision in a franchise that the franchise is to be governed by or construed in accordance with the law of another state is void.

2010 Acts, ch 1081, §4

322A.21 Waivers void.

A condition, stipulation, or provision in a franchise requiring a franchisee to waive compliance with or relieving a person of a duty or liability imposed by or a right provided by this chapter or order under this chapter is void. This section shall not affect the settlement of disputes, claims, controversies or civil lawsuits arising or brought pursuant to this chapter by written release or other written document where separate and adequate consideration is offered and accepted.

2010 Acts, ch 1081, §5

322A.22 Other line-makes.

A condition, stipulation, or provision in a franchise prohibiting or restricting the franchisee from continuing another line-make at the dealership or adding an additional line-make to the dealership is void. This section does not limit a franchiser from establishing good cause for the termination of a franchise pursuant to sections 322A.2 and 322A.11 on the grounds that the franchisee's dealership facility is not adequate to accommodate an additional line-make that has been added to the franchisee's dealership.

2010 Acts, ch 1081, §6

322A.23 Customer lists.

A condition, stipulation, or provision in a franchise which requires the franchisee to provide its customer lists or service files to the franchiser is void. This section shall not apply to notification by the franchisee to the franchiser of the delivery of a new motor vehicle to a customer, including information necessary to complete the sale of the vehicle, or to the submission to the franchiser of a claim for warranty parts, recalls, repairs, or services supplied or performed by the franchisee.

2010 Acts, ch 1081, §7

322A.24 Construction.

This chapter shall be liberally construed to effectuate its purposes.

2010 Acts, ch 1081, §8