

House Study Bill 614 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
TRANSPORTATION BILL BY
CHAIRPERSON QUIRK)

A BILL FOR

- 1 An Act relating to the regulation of motor vehicle franchises.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 322A.1, subsection 5, paragraph d, Code
2 2009, is amended to read as follows:

3 *d.* The operation of the franchisee's business is
4 substantially associated with the franchiser's trademark,
5 service mark, trade name, advertising, or other commercial
6 symbol designating the franchiser.

7 Sec. 2. Section 322A.1, subsection 5, Code 2009, is amended
8 to read as follows:

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

11 ~~*a.*~~ (1) A commercial relationship of definite duration or
12 continuing indefinite duration is involved.

13 ~~*b.*~~ (2) The franchisee is granted the right to offer
14 and sell motor vehicles manufactured or distributed by the
15 franchiser.

16 ~~*c.*~~ (3) The franchisee, as an independent business,
17 constitutes a component of franchiser's distribution system.

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

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

25 *b.* "*Franchise*" includes a separate agreement between the
26 franchisee and the franchiser which relates to the franchise,
27 whether entered into prior to the date of the franchise,
28 contemporaneously with the franchise, or subsequent to the date
29 of the franchise.

30 Sec. 3. NEW SECTION. 322A.18 Duty of good faith.

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

35 Sec. 4. NEW SECTION. 322A.19 Jurisdiction.

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

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

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

10 Sec. 5. NEW SECTION. **322A.20 Choice of law.**

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

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

17 Sec. 6. NEW SECTION. **322A.21 Waivers void.**

18 A condition, stipulation, or provision in a franchise
19 requiring a franchisee to waive compliance with or relieving a
20 person of a duty or liability imposed by or a right provided by
21 this chapter or order under this chapter is void. This section
22 shall not affect the settlement of disputes, claims, or civil
23 lawsuits arising or brought pursuant to this chapter.

24 Sec. 7. NEW SECTION. **322A.22 Other line-makes.**

25 A condition, stipulation, or provision in a franchise
26 prohibiting or restricting the franchisee from continuing
27 another line-make at the dealership or adding an additional
28 line-make to the dealership is void.

29 Sec. 8. NEW SECTION. **322A.23 Customer lists.**

30 A condition, stipulation, or provision in a franchise which
31 requires the franchisee to provide its customer lists or
32 service files to the franchiser is void. This section shall
33 not apply to notification by the franchisee to the franchiser
34 of the delivery of a new motor vehicle to a customer or to the
35 submission to the franchiser of a claim for warranty parts,

1 repairs, or services supplied or performed by the franchisee.

2 Sec. 9. NEW SECTION. 322A.24 Construction.

3 This chapter shall be liberally construed to effectuate its
4 purposes.

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EXPLANATION

6 This bill modifies existing provisions and adds several
7 new provisions to Code chapter 322A, which regulates motor
8 vehicle franchises. The new provisions are similar to current
9 provisions in Code chapter 523H and Code section 537A.10 which
10 govern general franchises operating or granted within the
11 state and which are expressly not applicable to motor vehicle
12 franchises under Code chapter 322A.

13 The bill expands the definition of a franchise beyond a
14 contract meeting certain conditions specified in the chapter to
15 include a separate agreement relating to the franchise, entered
16 into prior to, contemporaneously with, or subsequent to the
17 contract date.

18 The bill imposes on the parties to the franchise a duty of
19 good faith in performance and enforcement of the franchise.
20 The bill addresses franchise jurisdiction, providing that a
21 condition, stipulation, or provision in a franchise restricting
22 jurisdiction to a forum outside this state, or providing that
23 the franchisee consents to the jurisdiction of a forum outside
24 this state, is void. The bill provides that a civil action
25 or proceeding arising out of a franchise may be commenced
26 wherever jurisdiction over the parties or subject matter
27 exists, even if the franchise limits actions or proceedings to
28 a designated jurisdiction. Further, the bill states that a
29 condition, stipulation, or provision in a franchise requiring
30 the application of the law of another state in lieu of Code
31 chapter 322A, or a condition, stipulation, or provision in a
32 franchise that the franchise is to be governed by or construed
33 in accordance with the law of another state, is void.

34 The bill additionally provides that a condition,
35 stipulation, or provision in a franchise requiring a franchisee

1 to waive compliance with or relieving a person of a duty or
2 liability imposed by or a right provided by Code chapter
3 322A is void, but that this shall not affect the settlement
4 of disputes, claims, or civil lawsuits arising or brought
5 pursuant to the Code chapter. Also void would be a provision,
6 stipulation, or provision in a franchise prohibiting or
7 restricting the franchisee from continuing another line-make at
8 a dealership or adding an additional line-make to a dealership,
9 and requiring a franchisee to provide its customer lists or
10 service files to a franchiser. The bill states that this
11 is not applicable to notification by the franchisee to the
12 franchiser of the delivery of a new motor vehicle to a customer
13 or to the submission to the franchiser of a claim for warranty
14 parts, repairs, or services supplied or performed by the
15 franchisee.

16 The bill states that Code chapter 322A is to be liberally
17 construed to effectuate its purposes.