

Act Number: 09-050

Bill Number: 6648

Senate Pages: 1938-1945, ~~1833-1878~~ 8 ~~16~~

House Pages: 2473-2474, 2599-2600 4 ~~8~~

Committee: Transportation: 1721-1728, 2012-2019 16

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**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
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SENATE

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Consent Calendar Number 1 passes.

Senator Looney.

SENATOR LOONEY:

Thank you. Thank you, Mr. President. Mr. President, I would move for suspension for immediate transmittal to the House of Representatives of item on calendar page 42, Calendar 519, Senate Bill 1092, An Act Concerning the Client's Security Fund, that was included in the immediately preceding vote on the Consent Calendar.

THE CHAIR:

Motion is to suspend down to the House Calendar 519.

Without objection, so ordered, sir.

SENATOR LOONEY:

Yes, thank you, Mr. President. Mr. President, as the second order of the day, I would ask the Clerk to call the item on calendar page 22, Calendar 595, Substitute for House Bill 6648.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Turning to calendar page 22, a matter marked second order of the day, Calendar Number 595, File

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Number 399 and 806, Substitute for House Bill 6648, An Act Making Revisions to Chapter 739 of the General Statutes With Respect to Automobile Manufacturers, Distributors, Franchises, and Dealerships, favorable report of the Committee on Transportation and General Law.

THE CHAIR:

Senator DeFronzo.

SENATOR DEFRONZO:

Thank you, Mr. President. Mr. President I move acceptance of the Joint Committee's favorable report and passage of the bill in concurrence with the House.

THE CHAIR:

Acting on approval of the bill, sir, would you like to remark further?

SENATOR DEFRONZO:

I would, Mr. President.

THE CHAIR:

Please proceed.

SENATOR DEFRONZO:

Mr. President, this is an important bill to the auto industry in Connecticut, and sometimes I think we forget how important the auto industry is here in our state. There are 13,000 individuals employed in

dealerships across our communities, approximately \$350 million each year is generated in sales tax from the sales of vehicles and, as we all know, the auto industry at the national level has been battered by the economy. Chrysler has indicated it will be filing bankruptcy, General Motors will be reorganizing next week in all likelihood, and throughout -- throughout the auto industry major changes are occurring.

Our auto dealers, here in the state of Connecticut, have been operating under an antiquated franchise statute for many, many years and it has left them in a -- in a very disadvantageous position. Earlier this year, the dealers and the auto manufacturers got together and worked out what is embodied in this legislation before us today. It is a rewrite of many major provisions of the franchise law. It redefines what a franchise actually is under our statute to address many of the newer types of agreements that were merged over the years, which previously hadn't been addressed at all in the franchise law, it clarifies billing for warranty service and recall services. But most importantly, it sets up new definitions and new procedures for the termination of franchises.

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In Connecticut over the last year we have lost approximately 60 franchise dealerships, almost 2,000 employees have lost their jobs as these franchises have folded up. This bill will provide initial -- additional protection to the franchise owners in our state, by clarifying buy-back provisions, provisions dealing with rental agreements, disputes over closing, market value, as I indicated, buy-back agreement over vehicles, and a host of other issues related to the financial dealings between the manufacturers and our -- and our dealerships here in Connecticut.

So this is an important bill, we'd like to get it through today. Every day we delay probably results in another dealership going out of business under a far less advantageous circumstances than it would be under this bill. So, Mr. President, I urge the circle to approve this measure. Thank you.

THE CHAIR:

Thank you, Senator DeFronzo.

Will you remark? Will you remark further on House Bill 6648?

Senator Boucher.

SENATOR BOUCHER:

Thank you, Mr. President. I also rise to support

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this bill and I must commend our good Senator and Chair of the Transportation Committee, it was not an easy journey to bring both the manufacturers together with the dealerships and this was done very effectively with everyone being on board. So I urge everyone to support it today. Thank you.

THE CHAIR:

Thank you, ma'am.

Will you remark? Will you remark further on House Bill 6648?

Senator Caligiuri.

SENATOR CALIGIURI:

Thank you, Mr. President. I rise in support of this bill and I would commend the leadership of the Transportation Committee and everyone involved, both sides frankly, the dealers and the manufacturers in putting this very important legislation in place. I think this legislation represents the best of our process when you have both sides and all interested parties working together to find common ground to do something that's ultimately in the best interests of Connecticut workers and employees and employers and I believe this legislation does this. And I'm glad that we're going to be passing it today, and it's my

sincere hope that at the federal level nothing happens that ultimately preempts the sort of protections that we're trying to put in place and frankly strengthen as we (inaudible) pass this good legislation.

So I commend everyone involved and I hope that the federal government would see that we are in the best position to protect the people in Connecticut as we move forward. I thank you, Mr. President.

THE CHAIR:

Thank you, sir.

Will you remark further?

Senator McLachlan.

SENATOR MCLACHLAN:

Thank you, Mr. President. I, too, rise in favor of this bill. I want to commend all those who worked hard on this to protect the small business owners here in Connecticut, our retail automobile dealers who are struggling mightily and I'm glad that we are putting in place protections here. I want to associate with the comments of Senator Caligiuri that I am hopeful that the federal government does not step in the way of this good legislation. Thank you, Mr. President.

THE CHAIR:

Thank you, sir.

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Will you remark further on House Bill 6648?

Senator DeFronzo.

SENATOR DEFRONZO:

Mr. President, it is our intention to ask that this bill be sent to the Governor immediately. So I believe we would need a roll call vote on that measure then. Thank you, Mr. President.

THE CHAIR:

Thank you, sir.

Will you remark further on House Bill 6648?

If not, Mr. Clerk, please call for a roll call vote. The machine will be open.

THE CLERK:

Immediate roll call has been ordered in the Senate, will all Senators please return to the chamber. Immediate roll call has been ordered in the Senate, will all Senators please return to the chamber.

THE CHAIR:

Senator Roraback, could you let Senator Prague vote? Thank you.

Thank you, ma'am, anything I can do to help.

Have all Senators voted? If you all voted, please check your vote. I will close the machine and

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the Clerk will call the tally.

THE CLERK:

The motion is on passage of House Bill 6648:

Total Number Voting	36
Necessary for Adoption	19
Those Voting Yea	36
Those Voting Nay	0
Those Absent/Not Voting	0

THE CHAIR:

The bill passes.

Senator Looney.

SENATOR LOONEY:

Yes, thank you. Thank you, Mr. President. Mr. President, I would move for suspension for immediate transmittal to the Governor of Calendar 595, House Bill 6648.

THE CHAIR:

Motion on the floor for suspension to the Governor.

Without objection, so ordered, sir.

SENATOR LOONEY:

Yes, thank you, Mr. President. Mr. President, for purposes of a couple of marking changes.

THE CHAIR:

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Will the Clerk please call Calendar Number 282.

CLERK:

On Page 36, Calendar Number 282, Substitute for House Bill Number 6648 AN ACT MAKING REVISIONS TO CHAPTER 739 OF THE GENERAL STATUTES WITH RESPECT TO AUTOMOBILE MANUFACTURERS, DISTRIBUTORS, FRANCHISES AND DEALERSHIPS. Favorable Report of the Committee on General Law.

DEPUTY SPEAKER MCCLUSKEY:

The distinguished Chair of the Transportation Committee, Representative Guerrero, you have the floor, Sir.

REP. GUERRERA: (29th)

Thank you, Mr. Speaker. Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

DEPUTY SPEAKER MCCLUSKEY:

The question before the Chamber is acceptance of the Joint Committee's Favorable Report and passage of the bill. Will you remark?

REP. GUERRERA: (29th)

Thank you, Mr. Speaker. What this bill does is, it revises the portions of the law governing motor

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vehicles manufacturers, distributors, dealers and the franchise agreements between them.

And I'd just like to thank the Ranking Member, Representative Scribner, for all his help to bring this bill to conclusion.

Therefore, I move that this matter be placed on the Consent Calendar to be acted upon later today, Mr. Speaker.

DEPUTY SPEAKER MCCLUSKEY:

Is there any objection to moving this item to the Consent Calendar? Is there any objection?

If not, this item is moved to the Consent Calendar for voting later today.

Are there any announcements or points of personal privilege. Representative Giannaros, you have the floor, Sir.

REP. GIANNAROS: (21st)

Thank you, Mr. Speaker and good afternoon. A point of personal privilege, please.

DEPUTY SPEAKER MCCLUSKEY:

Please proceed, Sir.

REP. GIANNAROS: (21st)

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 Calendar, Number 282, 499, 500, 501, 502, 503, 504,
 505, 507 and 508.

Thank you, Mr. Speaker. That concludes the
 Consent Calendar.

SPEAKER DONOVAN:

The question before us is on passage of the bills
 on today's Consent Calendar. Will you remark? Will
 you remark?

If not, staff and guests please come to the Well
 of the House. Members take their seats. The machine
 will be opened.

CLERK:

The House of Representatives us voting by Roll
 Call. Members to the Chamber.

The House is voting today's Consent Calendar by
 Roll Call. Members to the Chamber.

CLERK:

Have all the Members voted? Have all the Members
 voted? Have all the Members voted. Please check the
 roll call to make sure your vote has been properly
 cast.

If all the Members have voted, the machine will
 be locked, and the Clerk will please take a tally.

Will the Clerk please announce the tally.

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HJ 80
HJ 82
HJ 84
HJ 85
HJ 86
HJ 95
HJ 96

CLERK:

On today's Consent Calendar.

Total Number Voting	140
Necessary for Passage	71
Those voting Yea	140
Those voting Nay	0
Those absent and not voting	14

SPEAKER DONOVAN:

The Consent Calendar passes.

Are there any announcements or introductions?

Any announcements or introductions? Representative
Ritter.

REP. RITTER: (38th)

Thank you, Mr. Speaker. Mr. Speaker, tomorrow morning, the Committee on Public Safety and Security and the Committee on Public Health together, will be holding an informational forum regarding the state's response to concerns about the flu outbreak in Connecticut and around the country.

It will be at 10:00 o'clock tomorrow in Room C of the Legislative Office Building, and we will have information from both the Department of Public Health, the Department of Public Safety and the Department of Emergency Management and Homeland Security.

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GLORIA MILLS: Thank you very much.

REP. GUERRERA: Thank you for your testimony,
Gloria.

GLORIA MILLS: Thank you.

REP. GUERRERA: Next we have the Car Association,
Jeff Aiaso and Richard Fox -- Sox. Is it Fox
or Sox?

RICHARD SOX: Sox

REP. GUERRERA: -- Fox? --

RICHARD SOX: Like Sox, like the baseball team.

REP. GUERRERA: Oh, okay. It is Sox. Okay. There
you go.

JEFF AIOSA: Good afternoon, Senator DeFronzo,
Representative Guerrero.

REP. GUERRERA: Good afternoon.

JEFF AIOSA: Good afternoon, Senator -- excuse
Representative Scibner and members of the
committee, my name is Jeff Aiosa, and I'm the
owner and operator of a local new car franchise
and also the chairman of the Connecticut
Automotive Retailers Association or CARA. CARA
represents more than 270 new car dealerships in
Connecticut, combined our field members employ
more than -- more than 13,000 employees in our
state.

HB 6648

Since this time last year, we have lost more
than 50 dealerships, 20 just since January 1st
of this year. And this has resulted in the
loss of approximately 2,000 jobs in our state.
Jobs, which on average, pay approximately

\$50,000 per year with excellent benefits for health and retirement.

I'm here today to urge to support HB 6648 legislation that will struggling car dealers survive this economical downturn. This will only save thousands of jobs and hundreds of businesses. It may also indirectly aid you in solving the difficult issues that you face in balancing the state budget.

New cars sales alone account for 17 percent of the state's sales tax revenue that is more than \$350 million in the budget. Ford, General Motors, Chrysler are getting -- or are eligible for taxpayers assistance from the federal government. Foreign manufacturers are receiving help from their own governments, as well, but none of this has reached down to the small business new car dealers mainly because we -- mainly because the help we need can only come from our state legislators in the form of state franchise laws.

This bill will set new and fair rules between the manufacturers and local car dealerships by ensuring that if a dealer is forced out of business, he gets his investment back from the manufacturer. Mandating that the manufacturer is to treat existing dealers fairly when reimbursing for warranty parts and labor work, requiring that the manufacturer take into account economic times before mandating dealers spend million on dealership renovations to comply with change in facility programs, setting fair and reasonable standards for dual dealership use, setting new reasonable statutory language to govern the mandate that manufacturers treat all franchises equal, demanding fair treatment for dealers when a manufacturer makes a public that intends to stop producing a specific franchise make.

In closing, when Ford, General Motors, and Chrysler needed help from the U.S. government, 20,000 dealerships and 140,000 dealership employees were there to help them, gone to support in Washington for loans and assistance from the federal government. Now, we are asking you and the manufacturers to help our small business new car dealerships survive as well. Thank you very much.

REP. GUERRERA: Thank you for your testimony.

Senator Boucher.

SENATOR BOUCHER: Thank you, Mr. Chairman.

And thank you for your testimony. I just have two questions if you wouldn't mind. The first one, how does your proposal today relate to the action that's been taken by Congress in Washington to free up more credit to you and your consumers?

RICHARD SOX: Senator, I'd like to answer that question. The help from Congress has not affected the dealers at all. Unfortunately, it's all been focused at the top with the manufacturers. These changes would assist the dealers to remain viable and continue to sell cars and take care of their consumers.

SENATOR BOUCHER: Thank you and a follow-up question. Can your customers get financing to buy cars from you and are you able to finance the cars you take from the manufacturers?

RICHARD SOX: Senator, that is very difficult for the members of the association both at the wholesale level. Floor plan financing has been very difficult to obtain and maintain and the at the consumer level as well. The dealers are

working very hard to find financing for what used to be very creditworthy customers.

SENATOR BOUCHER: Thank you.

REP. GURRERA: Thank you, Senator Boucher
Representative Sayers.

REP. SAYERS: Thank you. I don't really have an in-depth understanding of some of the franchising laws so I'm just wondering how will this bill, if passed, help -- help you?

RICHARD SOX: Representative, just so that everybody on the committee understands. I'm an attorney with Myers & Fuller from the state of Florida, and we represent dealers and have been representing dealers and their state associations for over twenty years. And in the last 24 months have been very involved with updating and crafting new franchise laws to assist dealers in these -- with these new and difficult issues in the industry. And just some highlights of how the changes that are being proposed in Raised Bill 6648 will help the dealers, as Mr. Aiosa said, dealers will now be reimbursed for warranty work required to be done by the manufacturer at a reasonable rate which will be consistent with their -- the rate they charge their retail customers.

With regard to franchise termination, which are occurring, unfortunately, more and more, dealers -- this new law would clarify that manufacturers have to repurchase certain vehicles, parts and tools from the dealer that they were required to maintain in their inventory while dealers.

It also addresses the termination of a franchise, such as Saturn, Hummer and Saab,

which everyone who watches the news understands that General Motors went before Congress last fall and announced to the world that they didn't have intention of continuing to manufacture those vehicles. They didn't find somebody to buy those lines. They were shut those line makes down. At that point, the dealers lose all value for their franchise and their investment. And this law would require the manufacturers, if they're going to make that kind of public announcement, that they -- it then triggers these repurchase obligations and the payment of fair market value of the franchise that's being taken away.

REP. SAYERS: Thank you. And I know it my way of there's been a number of dealerships that have already closed. So how many jobs could this possibly save if we did this?

JEFF AIOSA: Well, in this -- in this state, there's 13,000 jobs tied directly to new car dealerships.

REP. GUERRERA: Thank you.

Representative Mikutel.

REP. MIKUTEL: Yes, thank you, Mr. Chairman.

First of all, I want to say that this industry is a viable part of our economy. Just listening to the testimony here, 13,000 employees and \$350 million in sales tax revenue to the state catches our attention. And we need -- seems to me, we need to do something to -- to help these new car dealers. It seems like what the manufacturers, are they the bullies on the block or what?

JEFF AIOSA: Well --

REP. MIKUTEL: You don't have to answer that.

JEFF AIOSA: Well, the multinational big manufacturer, obviously, is -- is the 100-pound gorilla in the room, if you will, compared to the small dealer -- small businessman.

REP. MIKUTEL: Well, I'm all for small business and this is the case for helping small business. I don't necessarily think big corporations or big manufactures are bad, per se, but I want to do what I can to help small manufacturers, small businesses and hope that the Chairs will do what they can do work this bill through.

But, thank you, Mr. Chairman.

REP. GUERRERA: Thank you. I'd just like to make a comment, I know that both sides of the aisle in regards to say the manufacturing group and the auto dealers have talked to me in regards to this. And I want to be perfectly clear that I would like to see both, both sides, get into a room and try to work this out rather than this being something that's thrown on us. In regards in this session that we're dealing with the \$2 billion of deficit money and trying to work this out going throughout the whole session.

So I hope that you -- all parties can get together on this, and I would recommend that you did this as soon as possible because I, again, personally, I'm going to quite frank with everybody in this room. I'm not going to want to see this during, you know, next week after we already deadline or JF our bills, and so forth. I don't want this up in the House trying to work this, work it with my co-chairs up in the Senate. I think we got a lot of work to do already so I recommend that you all get together on this and try to resolve it and if

can't resolve it, then, again, I would ask that next year you better get together and try to resolve it at that point.

SENATOR DEFRONZO: I just want to add to that. I think I understand the complexity of this. I mean there's a relationship that's been established for many years, and we probably wouldn't be here today if the economy wasn't in the state it's in so what has been a tolerable or acceptable relationship over the years is now not so tolerable and not so enjoyable. So Tony has indicated that we know there's been a dialogue going on. We hope that that can come to some meaningful resolution, and I would appreciate if you can get back to us maybe by the end of the week. You and manufacturers, can get back to us. I understand that in the current situation the balance is sort of tipped in favor of the manufacturers here because no change at all cuts to their advantage. Right? Because you're looking for changes in a long established piece of legislation

JEFF AIOSA: That's correct.

SENATOR DEFRONZO: So no action really tips in their favor. And I, you know, I understand the difficulty and the complexity that Tony's talking about here, but, on the other hand, if we do want to take some action as Representative Mikutel suggests, we do need to have some dialogue continue and some -- some material to look at other than the bill that was submitted by your industry. We only have one -- we really have one side of the story so far, and I go to tell you this is a very complex issue for us to digest in a short time. So we do need some consultation from everybody and some good will from everybody in order to move this forward.

So I appreciate your testimony and look forward to working with you in the next couple days or week or so.

JEFF AIOSA: Thank you.

REP. GUERRERA: Thank you, Senator.

Thank you for your testimony.

JEFF AIOSA: Thank you very much.

REP. GUERRERA: Martin Mador?

MARTIN MADOR: Good afternoon, members of the committee, I'm Martin Mador. I'm the legislative chair for the Connecticut Sierra Club so I'm here representing our 10,000 members who are concerned about the health of our environment, our economic prosperity, and our quality of life. I want to talk about House Bill 735, and we can go from the complex to the extremely simple here.

This bill establishes a long over due state policy of promoting bicycle and pedestrian access to the states highways, roads, and streets. Under the concept of Complete Streets, it requires that all users be accommodated on the state roads; requires that a reasonable proportion of funds expended on roads be spent ensuring access for all users; and calls for very minimal use of those funds of at least 1 percent; establishes an advisory board within DOT; requires it 25 percent of certain federal funds be used for bicycle and pedestrian access; and creates a new share of the road commemorative license plate, which may generate a few dollars for the state.

Sierra believes that promoting nonvehicular transportation is an important priority for the

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Respond to Tallahassee Office

March 11, 2009

**MEMORANDUM IN SUPPORT
RAISED BILL 6648 (TRA)**

By: Richard N. Sox, Esq.
Myers & Fuller, P.A.
2822 Remington Green Circle
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**AN ACT MAKING REVISION TO CHAPTER 739 OF THE GENERAL STATUTES WITH
RESPECT TO AUTOMOBILE MANUFACTURERS, DISTRIBUTORS, FRANCHISES AND
DEALERSHIPS**

My name is Richard Sox and I am the Managing Partner of Myers & Fuller, P.A. located in Tallahassee, Florida. For over 20 years, Myers & Fuller has represented automobile dealers and their state associations in franchise matters. We have worked with numerous state associations over the years to create and amend state franchise laws. In the last 2 years, we have assisted the automobile dealers in Colorado, Florida, North Carolina and New York in updating their franchise laws to address changes in the industry. We have been retained by the Connecticut Automobile Retailers Association to assist with the preparation of amendments to Chapter 739 which are similar to what these states and others have recently passed into law or are seeking to include in state law.

The proposed legislation would amend Chapter 739 in order to clarify provisions already in the law, address situations that were unforeseen when this law was enacted, as well as institute amendments that would ensure continued fairness, openness and accountability in the relationship between automobile manufacturers and distributors, on the one hand, and automobile franchises and dealerships, on the other.

Sec. 1. Section 42-133r(10) – Definition of "Franchise"

This amendment serves the purpose of clarifying the definition of "franchise" as used in this Chapter. Under the existing definition, manufacturers and distributors have been able to

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utilize "side" agreements and contracts to avoid having that agreement fall under the strict definition of "franchise" which is currently limited to the "official" Dealer Sales and Service Agreement

The manufacturer and distributor side agreements come in the form of "facility agreements," "exclusive-use agreements," "site-control agreements," "market realignment agreements" and "sales performance agreements." Over time, manufacturers and distributors have begun to include within these agreements provisions that are fundamental to the franchise such as performance requirements, binding arbitration, waiver of right to protest a termination or other manufacturer action, and facility requirements

In order for dealers to receive the intended benefit of Chapter 739, it is imperative that the definition of "franchise" no longer be limited to an agreement whereby the dealer "purchases and resells the franchise product and leases or rents the dealership premises" but is properly expanded to encompass any agreement with the manufacturer

Sec. 2. Section 42-133s – Warranty Reimbursement and Manufacturer Audits

Reimbursement for Warranty Work

Another area in need of clarification involves the situation where a dealership performs repairs on vehicles under warranty. Reimbursement by the manufacturer is the way the dealership is paid for those services. The current law requires reimbursement at a "reasonable" rate. Manufacturers have been reimbursing dealers for parts and labor warranty work at a rate arbitrarily set by the manufacturer. These rates are unfairly low as compared to the rates the dealers are able to obtain in the "open market" when performing customer-paid, nonwarranty repair work. Dealers have no real recourse to pursue a fairer rate of reimbursement for warranty

This amendment provides for a simple but certain process to establish the rate at which the dealers are to be reimbursed for warranty work using the dealer's average customer-paid, nonwarranty rate for parts and labor as the standard. This solution is equitable to both the dealer and the manufacturer while avoiding conflicts of interest in rate setting

Lastly, this amendment prohibits the manufacturer from attempting to increase costs to the dealer in order to recover the costs of any increase in warranty reimbursement. In some other states which have passed a "retail warranty reimbursement" law, the manufacturers have simply levied a surcharge against the dealers by, for example, raising the dealer's cost of purchasing a new vehicle and, thus, reducing the dealers overall profit margin, to recover the additional warranty reimbursement cost. Such a recovery of costs *from the dealer* absolutely defeats the purpose and intent of a requirement that dealers receive additional warranty reimbursement at a level which is fair. Such a prohibition on recovery of costs has been challenged by the manufacturers in other states as an unconstitutional interference with contract but has been upheld by the courts as valid.

Process for Manufacturer Audits of Dealer Claims

Following payment of warranty and sales incentive claims, a manufacturer has the right to audit the dealer's books to insure that those claims were appropriate. Under existing law, manufacturers were permitted to review claims up to 2 years old from the time of the audit and

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there were no limits on which claims and how those claims could be charged back from the dealer. Without any such protection to the dealer, a manufacturer can charge a dealer back for claims directly from the dealer's "open account" with the manufacturer (the account in which the manufacturer makes debits and credits to the dealer for payment of various claims and parts)

The amendment to this section establishes a process by which the manufacturer may audit dealer claims records for up to 1 year from the time of the audit, places reasonable standards on which claims can be charged back, a right to protest any proposed chargeback and a stay of the chargeback until resolution of the protest

Sec. 3. Section 42-133v – Termination of a Franchise

The discontinuance of an entire motor vehicle linemake is something that had not regularly occurred until a few years ago when a major manufacturer discontinued a longstanding linemake, effectively terminating the franchise (Oldsmobile). In discontinuing a linemake, and all related franchises, manufacturers such as General Motors have avoided the provisions of state law by not providing the "official" notice of termination contemplated by motor vehicle franchise laws but, instead, have skirted those laws by publicly giving notice of its intent to discontinue a linemake. Most recently, General Motors has made this type of announcement as relates to the Hummer, Saturn and Saab linemakes

The result of these public announcements is to immediately destroy the going concern value of a dealer's franchise. These public announcements cause consumers to avoid purchasing vehicles from these dealers in fear that there will be no warranty coverage for their vehicle and the stigma of buying a car that has been deemed to no longer be worthy of production by the manufacturer. The manufacturer can then delay the official termination or sale of the franchise to a point at which dealers are forced to "voluntarily" terminate the franchise because they are no longer viable

The current law does not include this situation "discontinuance" as a "termination" under the provisions of Chapter 739. This amendment would now recognize a communication to the public as well as to the dealers as the trigger point for designating the manufacturer's act as a "termination" under the law and thus implicating related benefits to the effected dealer

Sec. 4. Section 42-133w – Benefits to be Paid Upon Termination

This section governs certain basic benefits to be paid a dealer upon the termination of a franchise such as repurchase of new vehicle inventory, unused parts and special tools. Currently, the law is not clear that such benefits are to be paid whether the dealer or the manufacturer initiates the termination. The first amendment to this section will make it clear that such benefits are to be paid in the case the manufacturer, distributor or the dealer initiate the termination.

The next amendment to this section will make it clear that the new vehicle inventory to be repurchased includes vehicles which are in the dealer's inventory as a result of a "dealer trade" which commonly takes place in the industry in order to accommodate a customer's needs. This amendment will also make it clear that certain accessories which are "customary" for that type of vehicle (i.e. side steps added to an SUV or pickup truck) will not cause that vehicle to be exempted from the manufacturer's repurchase obligation

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Sec. 5. Section 42-133x – Additional Benefits to be Paid Upon Termination

This section governs benefits in addition to the basic benefits of section 42-133w which are to be paid to dealers in certain termination situations. As a result of the devastating impact of a manufacturer's announcement of the unilateral discontinuance of a linemake, where the dealer has not violated any term of its dealer agreement, this section is being amended to require payment of "fair market value" of the franchise to the dealer as of the date immediately preceding the manufacturer's announcement

Sec. 6. Section 42-133bb – Manufacturer Prohibitions

Dealership Facilities

In recent times, manufacturers have gotten increasingly involved with management decisions previously within the purview of dealers to include the exact size and image for the dealer's facility. These manufacturer facility programs are often unreasonable in the cost of the material specified for use on the building, the square footage of a particular area of the dealership and the number of service bays. Manufacturers have used the threat of a non-renewal of the dealer's franchise agreement and certain sales incentive programs to coerce construction of otherwise nonviable facilities.

The addition of a new subsection (8) would prohibit a manufacturer or distributor from requiring renovations to a dealer's facility unless the manufacturer can show the facility requirements are reasonable in light of economic circumstances.

Sec. 7. Section 42-133cc – Manufacturer Prohibitions

Change in Wholesale Vehicle Price

The amendment in subsection (4) of this section serves the purpose of clarifying that a vehicle price may not be changed by a manufacturer once a consumer has executed a sales contract for that vehicle as long as the vehicle is ultimately delivered to the customer.

Relocation of Dealership

The addition of new subsection (18) is intended to prohibit a manufacturer or distributor from unreasonably denying a dealer's request to relocate his or her franchise to a new location. In the current economic situation, dealers are finding that in order to remain viable they must combine franchises into one location to accomplish necessary economies of scale. Historically, manufacturers have had a policy that they prefer stand-alone facilities for their franchises despite the fact that dealers believe that combining franchises in one location provides customers with a convenient and more informative shopping experience. The luxury of providing a stand-alone facility can no longer be justified in some circumstances. This amendment, however, would allow a manufacturer to deny a relocation request if the proposed site did not meet reasonable facility requirements. This amendment provides a 60 day time frame in which a manufacturer must make a determination as to the request for relocation.

Unfair Pricing

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The addition of new subsection (19) is intended to prohibit a manufacturer from instituting an unfair wholesale price scheme which would discriminate against some dealers in favor of others. Over the last several years, manufacturers have increasingly used incentives in an effort to increase sales volume. Unfortunately, these sales incentive programs are not always fairly applied to large and small market dealers. This provision will require that all incentives be "reasonably and practically available" to all same linemake dealers within the State of Connecticut.

Tying Unrelated Products to Franchise

The addition of a new subsection (20) is intended to prevent a manufacturer from coercing a dealer to purchase or sell some program or item that is not fundamental to the sale and service of the manufacturer's vehicles. Some manufacturers have begun to tie the availability of incentives or certified preowned cars to a dealer's agreement to sell products not directly related to the manufacturer's vehicles such as extended warranty programs. In many cases, these manufacturer-sponsored products are more expensive for the dealership's customers and the dealer should be free to offer a choice of product that is best for the customer.

Additional Amendment

Initiation of Warranty Period

Lastly, we would propose clarifying substitute language to the committee bill version addressing the initiation of the vehicle warranty period for the consumer. We would propose a new subsection (21) prohibiting a manufacturer from starting the vehicle warranty period, whether expressed in time or mileage, on a new vehicle until such time as purchased by a retail consumer. This amendment would relieve the situation where customers are being deprived of their full warranty period where the new vehicle has been in the dealer's inventory for several months or has accumulated mileage at the dealership or as a demonstrator vehicle.

I have attached the substitute language to this written testimony for the Committee's consideration.

Thank you for your consideration of this written testimony in support of Raised Bill 6648

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**To: Sen. DeFronzo, Co-Chair
Rep. Guerrero, Co-Chair
Members of the Transportation Committee**

**From: James T. Fleming, President
Connecticut Automotive Retailers Association**

Date: Wednesday, March 11, 2009

**Testimony of Mr. Jeffery Aiosa of New London, Connecticut
Chairman of the Connecticut Automotive Retailers Association on
House Bill 6648 'AN ACT MAKING REVISIONS TO CHAPTER 739 OF THE GENERAL STATUTES WITH
RESPECT TO AUTOMOBILE MANUFACTURERS, DISTRIBUTORS, FRANCHISES AND DEALERSHIPS.**

Good afternoon Senator DeFronzo, Representative Guerrero, Senator Boucher, Representative Scribner and members of the committee my name is Jeff Aiosa and I am the President of the Carriage House of New London, a locally owned and operated new car franchise, and I am the Chairperson of the Connecticut Automotive Retailers Association or CARA. CARA represents more than 270 new car dealerships in Connecticut. Combined, our dealer members employ more than 13,000 employees in our state. Since this time last year we have lost more than 50 dealerships, 20 just since January 1st of this year, and this has resulted in the loss of approximately 2000 jobs, jobs which, on average, pay about 50,000 dollars per year with excellent benefits for health and retirement.

I am here today to urge you to support H.B 6648 legislation that will help struggling car dealers survive this economic downturn and even begin to grow again once these difficult times are behind us. Your support of this bill will not only save thousands of jobs and hundreds of businesses it will also indirectly help you in solving the difficult issues that you face in balancing the state's budget. New car sales alone account for 17% of the state sales tax revenue. That is more than 350,000,000 million dollars in the budget. Passage of this bill will keep local dealers selling cars to Connecticut consumers who pay the state sales tax.

What I am asking you to do is to help your local small business new car dealer. Basically to level the playing field between the large multinational and domestic corporations that manufacture the cars that we sell. Ford, GM & Chrysler are getting, or are eligible for taxpayer assistance from the federal government. Foreign manufacturers are receiving help from their own governments as well. But NONE of this has reached down to the small business new car dealers, mainly because the help we need can only come from our state legislatures in the form of state franchise laws. It is important to keep in mind that if our national governments are able to save Detroit and the other auto manufacturers but we don't have enough dealerships left to buy the cars from the manufacturers and sell them to consumers here in Connecticut and across America, then what good have they done in Washington, Tokyo, Seoul and Berlin.

The bill before you will do several things:

It will set new and fairer rules between the manufacturers that grant the franchises and the local dealerships that are now being forced to go out of business.

First, the bill will ensure that if a dealer is forced out of business that he gets his investment back from the manufacture. Don't misunderstand... dealers are not looking to go out of business, rather they are looking for

the law to set the rule for what happens when they have no choice. Once these rules are reformed the credit from our banks that is so essential to dealers will begin to flow again because the banks will be able to adequately assess the risk of a loan. Right now they won't lend to dealers because they can't assess the risk if a dealership surrenders its franchise.

Second, this bill will mandate that manufacturers in Detroit, Japan, Germany, Sweden or Korea treat existing dealers fairly when they reimburse a dealer for warranty parts and labor work. Under existing laws manufacturers can arbitrarily set these reimbursement rates often below what it costs a dealer to perform the work.

It will require that a manufacturer takes into consideration the difficult economic times we are in before mandating that a dealer spend millions of dollars renovating a dealership "look" to meet some arbitrary and expensive marketing standard for the brand.

It will set fair and reasonable standards to allow dealers to share portions of dealership buildings with different brands of vehicles rather than build separate showrooms and service waiting areas and shop floors. This will encourage better and environmentally smarter land use and keep costs down for dealers who are trying to compete in a tough economy.

It will set new reasonable statutory standards to govern manufacturers' behavior with respect to treating all dealers the same. Existing law requires that manufacturers not discriminate between their franchised dealerships. But in practice they do discriminate between dealers with special incentives and availability of special rebates and programs. Stopping this practice will ensure that all areas of our state have a sufficient number of healthy dealerships and guarantee that Connecticut consumers have sufficient competition and choice for where they purchase and service their automobiles.

The bill will demand fair treatment for a dealer when a manufacture such as GM makes a public statement that it intends to stop making a franchised vehicle. Under existing law if a manufacturer wants to end a franchisee's/dealer's right to sell a car brand they are suppose to fairly compensate the dealer. When GM unilaterally states that it will stop making a car, such as Saturn, it destroys the value of the dealer's franchise. This way GM gets a fire sale price for the franchise surrender. This bill will require that the value of the franchise be based on the franchise before the announcement and not afterwards.

Members of the committee, there are other reforms in this bill that provide for fair treatment for all of Connecticut's new car dealerships. Attorney Richard Sox who is sitting next to me has submitted detailed language and testimony on this bill. I have also included some substitute language for the committee's consideration to clarify further the bill that you have before you. CARA is working closely with the manufacturers to develop a bill that will be fair to dealers and that the manufacturer can hopefully support or at least live with.

One final thought, when Ford, General Motors and Chrysler needed help from the US government 20,000 dealerships and 140,000 dealership employees were there to help them garner support in Washington for loans and assistance from the federal government. Now we are asking you and the manufactures to help our small business new car dealerships survive as well.

Proposed substitute language

42-133s - subsection (c) - references on lines 101 and 104 to "average markup" and "average percentage markup," respectively, should both be changed to "average labor rate." "Average markup" is the term used for the percentage increase over costs for use in reimbursing parts whereas the "average labor rate" is an actual dollar amount for reimbursement for labor work.

2. 42-133s - subsection (e) - references on lines 118 and 122 to "average markup" and "average percentage markup," respectively, should both be changed to "average labor rate." 3.
3. 42-133s - our new subsection (e) dealing with how a dealer is to be reimbursed for a part that is shipped to the dealer at no charge (can't take a percentage markup over a part that cost \$0) was left out entirely. With this new subsection (e), the currently drafted subsections (e) thru (n) should be re-lettered "(f)" thru "(o)."
4. 42-133x - subsection (b), line 370 reference to "subsection (b) of section 42-133v" should read subsection "(c)" of section 42-133v.
5. 42-133cc - our new subsection (21) dealing with the initiation of the warranty period on a vehicle was left out entirely. As this new subsection (21) would be the last subsection under 42-133cc there is no other renumbering necessary.