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New Florida Law May Have Implications For Franchisees Across the Country

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Florida legislation signed into law last month may have far-reaching implications for franchise dealers across the country, and possibly independent dealers, according to Alex Kurkin, a Florida lawyer who helped the Florida Auto Dealers Association get the new law passed.

Kurkin's Miami law practice focuses on complex contract law, real estate law and commercial litigation matters for companies in tightly regulated industries. He represents the Florida Automobile Dealers Association and conducts compliance seminars for its members.

The new legislation will require manufacturers to comply with a number of new laws that had been detrimental to dealer profitability for many years. The new law will require manufacturers to reimburse warranty work at customer pay rates through a clear formula and prohibit the manufacturers from altering or modifying those formulas.

Also, once a manufacturer has licensed a franchisee, it cannot coerce a dealer into upgrading building facilities or relocating by restricting certain inventory allocations or using other methods.

Last year, Kurkin said, the courts ruled that manufacturers must reimburse labor costs at the customer pay rates, and now the new legislation requires a formula that basically requires the same for parts.

"Each manufacturer had a cost factor at a certain percentage of the retail rate that was always less than the retail rate," Kurkin said. "Given the expenditures dealers must make to keep parts in inventory, it made it inequitable."

Kurkin said that as manufacturers increased warranty periods up to 10 years in recent years, they have sought ways to reduce warranty costs including having the franchisees shoulder some of that cost.

"This new law prevents that," Kurkin said.

As a result of the reduced margins on warranty work, franchise dealers have always charged significantly more for parts and labor than consumers could get at independent service centers or dealerships.

"Legislators noted that this could create more favorable conditions for improved competition in the marketplace and as result lower costs for parts and service for consumers," Kurkin said.

The other aspect of the new law is a concern franchisees have had for many years. Dealers often spend millions of dollars to build showrooms and service centers that meet specifications of the manufacturers. However, sometimes after only several years, new criteria are suggested or even

required.

"Often manufacturers would tie dealer incentives to facilities improvements," Kurkin said. "Dealers that spent huge sums to upgrade facilities would get the special dealer incentives, which can result in large increases in gross profit during incentive periods. Those that didn't spend the money to upgrade facilities would not get

the incentives.”

He said dealers who didn't upgrade facilities were also left wanting for "hot" inventory, while those that did, received more of those vehicles.

"Those types of coercive practices are now excluded by these new laws," Kurkin said. "Dealers have said, 'Enough is enough. We can only do what the market says we can do, and you must stop telling use what we will do.'"

He said that when dealers expend several million on a facility and amortize that cost over 15 or 20 years, it is burdensome to require major facility upgrades often on the whim of new marketing executives who decide granite floors or new exterior lighting or badging is now a requirement — or else.

"Dealers understand they must make reasonable maintenance improvements, but no longer have to have the incentive or inventory hammer over their heads."

The new law also addresses dealers exporting vehicles outside the U.S. Because of the weakened U.S. dollar, more vehicles are headed overseas. This is a violation of most franchise agreements, and dealers can be charged back for incentives and other fees.

"The new law tries to protect the dealer who unknowingly sells a vehicle that ends up being exported," Kurkin said. "Sure, dealers sometimes know the vehicles he's selling may be headed overseas by the nature of the transaction. However, in most cases, the dealer doesn't have the ability to track where a vehicle goes once it is paid for and leaves his lot."

The final item in the new legislation protects the dealer from losing his franchise as a result of fraud.

"Dealers who knowingly engage in fraud either with the manufacturer or consumers can lose their franchise," Kurkin said. "The new law now recognizes that dealerships are now very large operations, and fraud can occur without the knowledge of the franchisee. We wanted to create some certainty that protects a substantial investment in the event a weak link in the chain commits a fraud unbeknownst to the dealer."

Kurkin said FADA is proud to be the first state to pass legislation, which addresses a number of key issues with franchise dealers. He said many other state ADAs are using the precedent set by Florida to address similar franchise concerns.

"Florida could well be the first large domino that sets this all moving," Kurkin said. "The new laws shouldn't affect independent dealers, except for the legislation which addresses the retail rates for warranty repairs. Franchise dealers may be able to lower their customer pay rates, and create more competition with independent service centers and dealerships. That remains to be seen."

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