



Summary of Arbitration Rights of Terminated Auto Dealers

On December 16, 2009, President Obama signed into law H.R. 3288. The new law gives dealerships that were unlawfully terminated the right to seek reinstatement of their franchise agreement. This summary is for dealers that had their franchise terminated and are considering the arbitration process established by the new law to reinstate their franchise. It explains the timeline, the process, and the criteria that will be considered by the arbitrator.

Timeline

The bill contains a timeline for action by both the dealer and the manufacturer. By January 15, 2010, Chrysler and General Motors must provide terminated dealers with a summary of the terms and rights under the new law and the specific criteria pursuant to which a dealer was terminated. After receipt of the information, a dealer may elect binding arbitration with the manufacturer. The election must be made by January 25, 2010.

After a dealer elects arbitration, an independent arbitrator will be selected by mutual agreement of the dealership and the manufacturer. The arbitration must take place in the state that the dealer is located. All arbitrations must be completed 180 days from the law's enactment, though some may extend an additional 30 days if the arbitrator finds good cause for an extension. The dealer and the manufacturer may present any relevant information during the arbitration.

When the arbitration hearing is complete, the arbitrator will make a determination regarding reinstatement of the dealership within 7 days. If the arbitrator finds in favor of the dealer, the manufacturer will then have 7 business days to provide the dealer with a customary letter of intent to reinstate the franchise agreement. The arbitrator cannot award monetary damages to either party. Reinstated dealers will have to refund to the manufacturer any wind-down payments they received. The parties shall be responsible for their own fees, expenses and costs and shall share equally all other costs such as arbitration fees, room charges, and administrative costs.

Basis for Reinstatement

Under the new law, the arbitrator is required to balance the economic interests of the dealership, the economic interest of the manufacturer and the economic interest of the public and then decide whether the dealership franchise should be reinstated. In reaching its decision, the arbitrator is required to consider whether the dealership was terminated properly based on specific criteria. The following are the criteria listed in the law:

1. Dealership profitability in 2006, 2007, 2008 and 2009.
2. Ability to support the manufacturer's overall Business Plan.

3. Dealership's current economic viability.
4. Dealership performance pursuant to the Franchise Agreement.
5. Demographic and geographic characteristics of the Dealer's Market Territory.
6. Dealer's performance in relation to criteria used by the manufacturer to terminate or not renew the Dealer's Franchise Agreement.
7. Length of experience of the Dealership.

A dealer that is considering arbitration should do the following:

1. Follow the timeline established in the law.
2. Review the criteria provided by the manufacturer pursuant to which the franchise was terminated.
3. Review your sales performance and customer satisfaction and other performance issues in prior years.
4. Retain an attorney and other professionals with specific knowledge of retail auto industry to assist you in the process.

This is a summary of a very complex law and legal situation. Dealers are advised to retain professional counsel to assist them in the decision to elect to arbitrate and in the arbitration process.

The summary was prepared by the Auto Dealer Practice Group of Fraser Trebilcock Davis & Dunlap, P.C. Please contact Edward J. Castellani, Chair of the Practice Group, at 517.377.0845 or ecastellani@fraserlawfirm.com or Kenneth Wilson at 313.965.9022 or kwilson@fraserlawfirm.com with any questions.