

HB 1215 – The New Hampshire Small Business Investment Protection Act
Stand Rock Solid To Block HB 1215
Overview - Auto Dealer Laws v. Franchise Laws



- The automobile dealership laws have traditionally been treated differently by legislatures because the nature of the automobile dealer industry is very different from the nature of franchises in general. In fact, many states have enacted auto dealership laws which do not apply at all to other types of franchise arrangements.
- Auto dealership arrangements involve “product distribution” franchises – the automobile manufacturers (franchisors) provide the product, a trademark (logo) and limited marketing and advertising services. In turn, the auto dealer (franchisee) provides an outlet for the manufacturer’s products, and no royalty or franchise fee.
- The essence of the arrangement is that the dealer pays a wholesale price for the products (vehicles). As such, the few automobile manufacturers wield enormous power over the dealers. Therefore, auto dealership laws and auto dealer “bill of rights” are designed to provide protections to the dealer against the manufacturer. (Examples of such arrangements include auto dealers, gasoline service stations and soft-drink distributors.)
- By contrast, other franchises you might typically think of (e.g., McDonald’s, Burger King, Dunkin’ Donuts, The UPS Store, Marriott, etc.) are “business format” franchises. In this type of franchise – which HB 1215 would impact, the franchisor typically provides a trademark, start-up assistance, training (initial and on-going), product research and development, marketing support, joint advertising, site selection assistance and occasionally financial help.
- In turn, the franchisee provides capital to build/lease the unit, an initial franchise fee, ongoing royalties, new ideas, payments for advertising funds, joint advertising and day-to-day ownership and management of the business.
- The fundamental distinction between product-distribution franchising and business-format franchising is that while the franchisee in the product-distribution arrangement operates primarily to sell the franchisor’s products, the franchisee in the business format franchise arrangement operates using (as the name indicates) a “business format” and does so under a standardized method of operation prescribed by the franchisor. The business-format model generally includes long-term contracts (10-25 years), payments of royalties and a close working relationship over the length of the contract.
- Another major difference is that the auto dealership franchise involves a single-industry (i.e., the sale of autos or a particular product), while the business-format franchise model spans more than a hundred different business formats across a wide array of industries – from fast-food restaurants, hotels, real estate brokers, cleaning services, moving companies, tax preparation, , home healthcare, etc. Because of the inherent differences between these two recognized types of franchises, state legislators should not treat them the same way merely because they both happen to be called “franchises.”
- Accordingly, numerous provisions found in the auto-dealership laws are intended to address problems in that industry which are not even present in business-format franchising.
- Any legislature should move cautiously in adopting general franchise legislation on the basis that laws governing the auto dealership industry exist. HB 1215 which would intrude into the business-format franchise relationship, a model which is entirely different than SB 126 which passed in New Hampshire last year.
- HB 1215 would intrude into a franchise format which is already regulated by the Federal Trade Commission, and is a solution to a problem that does not currently exist in business-format franchising.
- This legislation does not protect the business-format franchise model, but instead would undermine the very tenets upon which this proven business model is built—a close working relationship between franchisees and franchisors, system standards and brand consistency.