

By: Menéndez

S.B. No. 2195

A BILL TO BE ENTITLED

AN ACT

relating to fair allocation requirements for manufacturers,  
distributors, or manufacturer representatives.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2301., Occupations Code is amended by adding  
Section 2301.4672 to read as follows:

Sec. 2301.4672 FAIR ALLOCATION REQUIREMENTS.

(a) Notwithstanding the terms of any franchise agreement or  
any other law, a manufacturer, distributor, or manufacturer  
representative shall, on a quarterly or any three month period, for  
each line-make, make available an allocation to each motor vehicle  
dealer sufficient numbers of vehicles, by model, to permit each  
motor vehicle dealer to meet any sales standards for that period  
that are required or set by the manufacturer, distributor, or  
manufacturer representative for such dealer, including but not  
limited to any sales measurement or criteria authored by the  
manufacturer and communicated to the dealer that sets a target,  
goal, or expectation of sales to be made by the dealer in the  
dealer's assigned geographic area or area of responsibility.

(b) A manufacturer, distributor, or manufacturer  
representative may assert a defense to a claim under this section by  
making a showing of good cause for the failure to comply. Good cause  
is demonstrated by establishing with clear and convincing evidence  
that the manufacturer, distributor, or manufacturer representative

1 was physically unable to make available an allocation of sufficient  
2 inventory to the affected dealer due to limited supply available to  
3 the manufacturer. This defense shall only apply if the  
4 manufacturer, distributor, or manufacturer representative is also  
5 able to demonstrate that the limited supply of inventory is borne,  
6 or has been borne, equally and fairly by all dealers of said  
7 manufacturer in this State as to the same line-make and model in  
8 proportion to each dealer's assigned geographic area or area of  
9 responsibility.

10 (c) Given the immediate economic impact on a motor vehicle  
11 dealer that is not allocated fair and sufficient inventory to  
12 permit the dealer to meet the manufacturer's sales expectations  
13 referenced in paragraph (a), on a complaint filed by the dealer  
14 alleging that a manufacturer, distributor, or manufacturer  
15 representative has failed to comply with paragraph (a), the  
16 Department of Motor Vehicles/SOAH shall set the matter for final  
17 hearing within 60-days of the manufacturer's, distributor's, or  
18 manufacturer representative's response to the complaint file by  
19 the complaining dealer.

20 (d) A manufacturer's sales standard or measurement referred  
21 to in subsection (a) is not relevant to the Board's determination  
22 of "good cause" under §2301.453 of this Chapter.

23 (e) On a finding by the Board of a violation of  
24 §2301.4672(a) or (c) by a manufacturer, the dealer may pursue all  
25 remedies available and as set forth under Subchapter E, Chapter 17,  
26 Business & Commerce Code §17.50 in any State Court of competent  
27 jurisdiction in the county where the dealer is located.

1           SECTION 2. This Act takes effect immediately if it receives  
2 a vote of two-thirds of all the members elected to each house, as  
3 provided by Section 39, Article III, Texas Constitution. If this  
4 Act does not receive the vote necessary for immediate effect, this  
5 Act takes effect September 1, 2023.