By:  Menéndez S.B. No. 2195

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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