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... AS DEALERS THWART FACTORY PLANS FOR RETAIL CONTROL

DONNA HARRIS Staff Reporter

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Dealer pressure in many states has slowed factory efforts to own or control retail operations and consolidate dealerships.

In some cases, dealer lobbying has derailed plans that were under way. In Texas, for example, new legislation hurt Ford Motor Co.'s attempt to buy and operate dealerships in Fort Worth as part of its Ford Auto Collections, and forced General Motors to relinquish plans to own and operate its Internet-based GM DriveSite used-car store in Houston.

Although dealers made strides to defend the status quo, they also were forced to strike some compromises.

Still, the war over factory stores rages.

More state dealer groups are expected to lobby for restrictions on factory ownership of dealerships in the next legislative sessions. Legislative sources say dealers in Colorado and Florida are likely to lobby for new restrictions on factory ownership.

'We will be working on legislation with (dealer associations in) several states,' said Loula Fuller, a partner in Myers & Forehand, a Tallahassee, Fla., law firm specializing in franchise law.

Although at least 10 states passed new factory-store restrictions during the 1998-99 legislative session, 18 states still have no constraints on factory ownership. At least three state dealer associations failed to get restrictions passed. And a dealer-supported bill in Wisconsin has stalled as part of a hotly debated budget bill.

DEALER SETBACKS

Dealer efforts to secure regulations against factory-owned dealerships in California and Florida have foundered. Industry lobbyists say factory ownership ignited more legislative activity than usual. Manufacturers and dealers alike have called the factory-ownership debate one of the most contentious in recent years.

Dealers are fighting changes that are inevitable, said Frank Dunne, GM's executive director of sales, service and marketing retail relationships. 'It is time - in fact, it is overdue - for manufacturers and dealers to work together to manage the change that is occurring in the sales and distribution of motor vehicles,' said Dunne.

The rash of franchise bills in the most recent legislative sessions were triggered by Ford and GM's growing ownership interest in retail operations. Both companies have entered joint ventures with dealers in the past two years, in some cases taking a controlling interest in the enterprise.

LANDMARK LIMITATIONS

Some new statutes contain landmark provisions, notably Illinois, North Carolina and Texas. Texas, for example, lets manufacturers own and operate a dealership no more than a year, lets them apply for a one-year extension and gives nearby dealers the right to protest further extensions.

'I don't think this exists anywhere else (outside of Texas),' said Gene Fondren, president of the Texas Automobile Dealers Association. 'Dealers have a right to protest as they would a new point or a relocation.'

All three of the states introduced unprecedented criteria for dealer development operations. Dealer development stores are dealerships awarded to people who could not otherwise afford to buy a store on their own. The factory owns the dealership, but the dealer buys out the manufacturer's stake over time.

Some state laws that otherwise prohibit factory ownership allow dealer development stores if the dealer has a 'significant' investment in the operation and can buy out the factory in a 'reasonable' period of time. But most states fail to define what terms are reasonable.

'The intent is to prevent the factories from using dealer development stores as a method of expanding their retail networks or have temporary ownership by using people who are in business and already successful,' said Fondren.

Texas now limits these joint ventures to groups that have been under-represented in auto retailing - minorities and women - or to economically disadvantaged dealers.

MINIMUM TERMS

North Carolina and Illinois spelled out minimum terms for dealer development stores. New Jersey was the only state to specify when dealers had to buy out the factory, requiring full dealer ownership within 10 years. Now North Carolina requires buyout in 12 years and Illinois requires buyout in five years.

North Carolina also requires the dealer to start with a minimum 6 percent stake in a joint venture with the manufacturer.

Bob Glaser, executive vice president of the North Carolina Automobile Dealers Association, acknowledges that the average buyout of a dealer development store is six years, and that dealers typically invest 15 percent up front. 'It was a compromise,' said Glaser. 'But we want to encourage more minority-owned dealerships in North Carolina.'

TRADE-OFFS

And there were other compromises.

For example, in Oregon, which has no restraints on factory ownership, dealers dropped proposed restrictions to get other legislation passed. 'We let go of factory ownership (restrictions), but we have the first legislation we know of that prohibits the manufacturers from establishing maximum prices on new vehicles,' said Darrell Fuller, lobbyist for the Oregon Automobile Dealers Association.

In Georgia, dealers dropped a prohibition on factory-owned dealerships and chose to let factories have up to a 45 percent stake in stores no closer than 15 miles from another independently operated dealership of the same make. Bill Morie, president of the Georgia Automobile Dealers Association, concedes the bill was a compromise, but says it was not a defeat. Georgia had no restrictions on factory stores before this session. If the new law is not tough enough, he said dealers will be back to duke it out in the legislature again.

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