

The Senate Regulated Industries and Utilities Committee offered the following substitute to HB 1072:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 22 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated,
2 relating to motor vehicle franchise practices, so as to provide legislative findings; to provide
3 definitions; to clarify provisions relating to voluntary releases entered into by a dealer; to
4 prohibit a franchisor from assessing a surcharge against a dealer for warranty repairs; to
5 require a franchisor to pay a dealer terminated as a result of a bankruptcy or industry
6 reorganization the fair market value of the terminated franchise as of the notice of
7 termination or 12 months prior, whichever is greater; to clarify franchisor termination
8 assistance requirements with regard to repurchase of new vehicles acquired by a dealer; to
9 require a franchisor to reimburse a dealer terminated as a result of a bankruptcy or industry
10 reorganization for upgrades or renovations to dealership facilities performed within two years
11 of bankruptcy or reorganization; to prohibit a franchisor from demanding exclusive facilities,
12 personnel, or showrooms if the imposition of such requirements is unreasonable in light of
13 economic conditions; to prohibit a franchisor from conditioning a franchise agreement or
14 renewal of a franchise agreement or participation in franchisor programs and incentives on
15 the relocation or exclusivity of a dealership facility; to prohibit a franchisor from
16 conditioning franchise agreements or renewals of franchise agreements, addition of line
17 makes, approval of relocation, sale or transfer on dealer's or prospective dealer's willingness
18 to enter into a site control agreement; to clarify existing law to prohibit a franchise from
19 charging back dealers for transactions that took place more than 12 months prior to an audit,
20 investigation, or independent inquiry of the franchisor; to prohibit a franchisor from charging
21 back, withholding payment, or denying vehicles to a dealer based on exportation by customer
22 unless franchisor can demonstrate that dealer had knowledge that customer intended to
23 export new vehicle; to provide for an effective date; to repeal conflicting laws; and for other
24 purposes.

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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SECTION 1.

WHEREAS, the General Assembly desires to reaffirm the legislative findings and declarations set forth in Code Section 10-1-621 and to make changes to the Georgia Motor Vehicle Franchise Practices Act in an effort to promote the stability of franchised motor vehicle dealerships in this state, thereby maintaining necessary reliable services to the consuming public, maintaining full and fair competition among dealers in the public interest, and providing continued employment to the citizens of this state.

SECTION 2.

Article 22 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to motor vehicle franchise practices, is amended in Code Section 10-1-622, relating to definitions pertaining to the Georgia Motor Vehicle Franchise Practices Act, by adding a new paragraph as follows:

“(8.1) 'Line-make' is a collection of models, series, or groups of motor vehicles manufactured by or for a particular manufacturer, distributor, or importer that are offered for sale, lease, or distribution pursuant to a common brand name or mark; provided, however:

(A) Multiple brand names or marks may constitute a single line-make, but only when included in a common dealer agreement and the manufacturer, distributor, or importer offers such vehicles bearing the multiple names or marks together only, and not separately, to its authorized dealers; and

(B) Motor vehicles bearing a common brand name or mark may constitute separate line-makes when pertaining to motor vehicles subject to separate dealer agreements or when such vehicles are intended for different types of use.”

SECTION 3.

Said article is further amended in Code Section 10-1-623, relating to actions for violations of the Georgia Motor Vehicle Franchise Practices Act, by revising subsection (d) as follows:

“(d) This Code section shall not prevent a dealer from voluntarily entering into a valid release agreement to resolve a specific claim, dispute, or action between the franchisor and the dealer or when separate and adequate consideration is offered and accepted, provided that the renewal of a franchise shall not by itself constitute separate and adequate consideration.”

SECTION 4.

Said article is further amended in Code Section 10-1-624, relating to applicability and written instruments that violate the provisions of the article, by revising subsection (c) as follows:

60 "(c) Any provision of any franchise, agreement, waiver, novation, or any other written
 61 instrument executed, modified, extended, or renewed after July 1, 1983, which is in
 62 violation of any Code section of this article, and any amendments thereto, shall be deemed
 63 null and void and without force and effect."

64 SECTION 5.

65 Said article is further amended by revising Code Section 10-1-627, relating to waivers, as
 66 follows:

67 "10-1-627.

68 No franchisor, nor any agent nor employee of a franchisor, shall use a written instrument,
 69 agreement, or waiver to attempt to nullify any of the provisions of this article and any such
 70 agreement, written instrument, or waiver shall be null and void. This Code section shall
 71 not prevent a dealer from voluntarily entering into a valid release agreement to resolve a
 72 specific claim, dispute, or action between the franchisor and the dealer or when separate
 73 and adequate consideration is offered and accepted, provided that the renewal of a
 74 franchise shall not by itself constitute separate and adequate consideration."

75 SECTION 6.

76 Said article is further amended in Code Section 10-1-641, relating to warranty and recall
 77 work obligations of franchisors, by revising subsection (b) and by adding a new subsection
 78 as follows:

79 "(b) Manufacturers and distributors shall include in written notices of factory recalls to
 80 new motor vehicle owners and dealers the expected date by which necessary parts and
 81 equipment will be available to dealers for the correction of such defects. Manufacturers
 82 and distributors shall compensate any dealers in this state for repairs ~~effected~~ affected by
 83 all recalls."

84 "(d) Subject to subsection (c) of Code Section 10-1-645, a manufacturer or distributor shall
 85 not otherwise recover its costs from dealers within this state, including an increase in the
 86 wholesale price of a vehicle or surcharge imposed on a dealer solely intended to recover
 87 the cost of reimbursing the dealer for parts and labor pursuant to this Code section,
 88 provided that a manufacturer or distributor shall not be prohibited from increasing prices
 89 for vehicles or parts in the normal course of business."

90 SECTION 7.

91 Said article is further amended by revising Code Section 10-1-651, relating to termination
 92 of a motor vehicle franchise, as follows:

93 "10-1-651.

94 (a) Notwithstanding the terms, provisions, or conditions of any franchise and
95 notwithstanding the terms or provisions of any waiver, no franchisor shall cancel,
96 terminate, or fail to renew any franchise with a dealer unless the franchisor:

97 (1) Has satisfied the notice requirement of subsection (e) of this Code section; and

98 (2) Has good cause for cancellation, termination, or nonrenewal.

99 (b) Notwithstanding the terms, provisions, or conditions of any franchise or the terms or
100 provisions of any waiver, good cause shall exist for the purposes of a termination,
101 cancellation, or nonrenewal when there is a failure by the dealer to comply with a provision
102 of the franchise which is both reasonable and of material significance to the franchise
103 relationship, provided the dealer has been notified in writing of the failure within 180 days
104 after the franchisor first acquired knowledge of such failure or after the dealer is given a
105 reasonable opportunity to correct such failure for a period of not less than 180 days.

106 (c) If the failure by the dealer, as defined in subsection (b) of this Code section, relates to
107 the performance of the dealer in sales or service, then good cause shall be defined as the
108 failure of the dealer to comply with reasonable performance criteria established by the
109 franchisor if: in light of existing circumstances, including but not limited to current and
110 forecasted economic conditions, provided the following conditions are satisfied:

111 (1) The dealer was notified by the franchisor in writing of such failure;

112 (2) Said notification stated that notice was provided of failure of performance pursuant
113 to this Code section; and

114 (3) The dealer was afforded a reasonable opportunity, for a period of not less than six
115 months, to comply with such criteria.

116 (d) The franchisor shall have the burden of proof under this Code section.

117 (e)(1) Notwithstanding franchise terms to the contrary, prior to the termination,
118 cancellation, or nonrenewal of any franchise, the franchisor shall furnish notification, as
119 provided in paragraph (2) of this subsection, of such termination, cancellation, or
120 nonrenewal to the dealer as follows:

121 (A) Not less than 90 days prior to the effective date of such termination, cancellation,
122 or nonrenewal;

123 (B) Not less than 15 days prior to the effective date of such termination, cancellation,
124 or nonrenewal with respect to any of the following:

125 (i) Insolvency of the dealer, or filing of any petition by or against the dealer under
126 any bankruptcy or receivership law;

127 (ii) Failure of the dealer to conduct its customary sales and service operations during
128 its customary business hours for seven consecutive business days, except for acts of
129 God or circumstances beyond the direct control of the dealer;

- 130 (iii) Conviction of the dealer, general manager, or managing executive or any owner
 131 with a substantial interest therein of any crime which materially relates to the
 132 operation of the dealership or any felony which is punishable by imprisonment;
- 133 (iv) Suspension for a period of more than 14 days or revocation of any license which
 134 the dealer is required to have to operate a dealership; or
- 135 (v) Fraud or intentional misrepresentation by the dealer which materially affects the
 136 franchise, provided the franchisor gives notice within one year of the time when the
 137 fraud or misrepresentation occurred or was discovered, whichever is later; or
- 138 (C) Not less than 180 days prior to the effective date of such termination or
 139 cancellation where the franchisor is discontinuing the sale of the product line.
- 140 (2) Notification under this Code section shall be in writing and shall be by certified mail
 141 or statutory overnight delivery or personally delivered to the dealer and shall contain:
- 142 (A) A statement of intention to terminate, cancel, or not to renew the franchise;
- 143 (B) A statement of the reasons for the termination, cancellation, or nonrenewal; and
- 144 (C) The date on which such termination, cancellation, or nonrenewal is to take effect.
- 145 (f)(1)(A) Upon the termination, cancellation, or nonrenewal of any franchise by the
 146 franchisor, the franchisor shall repurchase from the dealer any new and ~~unused~~
 147 undamaged motor vehicles of the current and one year prior model year and ~~any new~~
 148 ~~and unused motor vehicles~~ acquired by the dealer within 12 months of the date of
 149 termination, cancellation, or nonrenewal so long as such motor vehicles have been
 150 acquired from the franchisor or from another dealer of the franchisor same line make
 151 in the ordinary course of business prior to receipt of the notice of termination,
 152 cancellation, or nonrenewal and so long as such motor vehicles have not been altered,
 153 damaged, or materially changed while in the dealer's possession. Any new ~~and unused~~
 154 motor vehicle repurchased by the franchisor shall be repurchased at the net cost to the
 155 dealer. For purposes of this subparagraph, a motor vehicle shall be considered new ~~and~~
 156 ~~unused~~ if it has less than 500 miles on the odometer and has not been issued a
 157 certificate of title.
- 158 (B) In addition to the motor vehicles repurchased under subparagraph (A) of this
 159 paragraph, the franchisor shall repurchase ~~demonstration motor vehicles of the current~~
 160 ~~model year and~~ demonstration motor vehicles acquired by the dealer within 12 months
 161 of the date of termination, cancellation, or nonrenewal so long as such motor vehicles
 162 have been acquired from the franchisor or from another dealer of the franchisor prior
 163 to receipt of the notice of termination, cancellation, or nonrenewal and so long as such
 164 motor vehicles have not been altered, damaged, or materially changed and so long as
 165 such motor vehicles do not have more than 6,000 miles each on their odometers. Any
 166 such demonstration motor vehicle shall be repurchased at the net cost to the dealer less

167 an allowance for use equal to the net cost to the dealer times the current mileage
168 divided by 100,000. The franchisor shall repurchase a number of demonstration motor
169 vehicles equal to 10 percent of the number of motor vehicles repurchased under
170 subparagraph (A) of this paragraph; however, in no event shall the number of
171 demonstration motor vehicles which the franchisor is required to repurchase ever be
172 less than two or more than 15 motor vehicles.

173 (C) For purposes of this paragraph, a motor vehicle shall not be deemed to have been
174 altered, damaged, or materially changed if it has been provided with original equipment
175 or with nonoriginal equipment which does not alter, damage, or materially change the
176 motor vehicle, such as undercoating, pinstriping, interior conditioning, or paint sealant.

177 (2) Upon the termination, cancellation, or nonrenewal of any franchise by the dealer, the
178 franchisor shall repurchase from the dealer any new and ~~unused~~ undamaged motor
179 vehicles, except motorcycles as defined in paragraph (29) of Code Section 40-1-1 and
180 except motor homes as defined in paragraph (31) of Code Section 40-1-1 and except
181 school buses as defined in paragraph (55) of Code Section 40-1-1, of the current and prior
182 model year acquired by the dealer within 12 months prior to the effective date of the
183 termination so long as such motor vehicles have been acquired from the franchisor or
184 from another dealer of the franchisor of the same line-make and in the normal course of
185 business and so long as such motor vehicles have not been altered, damaged, or
186 materially changed while in the dealer's possession. Any new ~~and unused~~ motor vehicle
187 repurchased by the franchisor shall be repurchased at the net cost to the dealer. For
188 purposes of this paragraph, a motor vehicle shall be considered new ~~and unused~~ if it has
189 less than 500 miles on the odometer and has not been issued a certificate of title. For
190 purposes of this paragraph, a motor vehicle shall not be deemed to have been altered,
191 damaged, or materially changed if it has been provided with original equipment or with
192 nonoriginal equipment which does not alter, damage, or materially change the motor
193 vehicle, such as undercoating, pinstriping, interior conditioning, or paint sealant.

194 (3)(A) Upon the termination, cancellation, or nonrenewal of any franchise by the
195 franchisor or upon the termination, cancellation, or nonrenewal of any franchise by the
196 franchisee, the franchisor shall repurchase, at fair and reasonable compensation, from
197 the dealer the following:

198 (i) Any unused, undamaged, and unsold parts which have been acquired from the
199 franchisor, provided such parts are currently offered for sale by the franchisor in its
200 current parts catalog and are in salable condition. Such parts shall be repurchased by
201 the franchisor at the current catalog price, less any applicable discount;

202 (ii) Any supplies, equipment, and furnishings, including manufacturer or line-make
203 signs, purchased from the franchisor or its approved source within three years of the
204 date of termination, cancellation, or nonrenewal; and

205 (iii) Any special tools purchased from the franchisor within three years of the date
206 of termination, cancellation, or nonrenewal or any special tools or other equipment
207 which the franchisor required the dealer to purchase regardless of the time purchased.

208 (B) Except as provided in division (i) of subparagraph (A) of this paragraph, fair and
209 reasonable compensation shall be the net acquisition price if the item was acquired in
210 the 12 months preceding the effective date of the termination, cancellation, or
211 nonrenewal; 75 percent of the net acquisition price if the item was acquired between 13
212 and 24 months preceding the effective date of the termination, cancellation, or
213 nonrenewal; 50 percent of the net acquisition price if the item was acquired between 25
214 and 36 months preceding the effective date of the termination, cancellation, or
215 nonrenewal; 25 percent of the net acquisition price if the item was acquired between 37
216 and 60 months preceding the effective date of the termination, cancellation, or
217 nonrenewal; or fair market value if the item was acquired more than 60 months
218 preceding the effective date of the termination, cancellation, or nonrenewal.

219 (4) The repurchase of any item under this subsection shall be accomplished within 60
220 days of the effective date of the termination, cancellation, or nonrenewal or within 60
221 days of the receipt of the item by the franchisor, whichever is later in time, provided the
222 dealer has clear title to the inventory and other items or is able to convey such title to the
223 franchisor and does convey or transfer title and possession of the inventory and other
224 items to the franchisor.

225 (5) In the event the franchisor does not pay the dealer the amounts due under this
226 subsection or subsection ~~(g)~~ (h) of this Code section within the time period set forth in
227 this subsection, the franchisor shall, in addition to any amounts due, pay the dealer
228 interest on such amount. This interest shall not begin to accrue until the time for payment
229 has expired. The interest shall be computed monthly on any balance due and the monthly
230 interest rate shall be one-twelfth of the sum of the then current *Wall Street Journal* Prime
231 Interest Rate and 1 percentage point.

232 (g) If a termination or nonrenewal of a franchise is the result of a bankruptcy filing or
233 reorganization of a franchisor or the sale or other change in the business operation of the
234 franchisor, the franchisor shall be required to pay the fair market value of the franchise as
235 of the date of the notice of termination or nonrenewal or 12 months prior to the date of
236 notice of termination or nonrenewal, whichever is greater. Fair market value shall be the
237 goodwill value of the dealer's franchise in the dealer's community or territory. In addition,
238 if a termination or nonrenewal of a franchise is the result of a bankruptcy filing or

239 reorganization of a franchise or the sale or other change in the business operation of the
240 franchisor, the franchisor shall also be required to reimburse the dealer for the cost of
241 facility upgrades and renovations required by the franchisor within two years prior to
242 termination or nonrenewal. Termination assistance provided for in this subsection shall be
243 in addition to repurchase obligations otherwise set forth in this Code section.

244 ~~(g)~~(h) Within 60 days of the termination, cancellation, or nonrenewal of any franchise by
245 the franchisor, the franchisor shall commence to reimburse the dealer for one year of the
246 dealer's reasonable cost to rent or lease the dealership's facility or location or for the
247 unexpired term of the lease or rental period, whichever is less, or, if the dealer owns the
248 facility or location, for the equivalent of one year of the reasonable rental value of the
249 facilities or location. If more than one franchise is being terminated, canceled, or not
250 renewed, the reimbursement shall be prorated equally among the different franchisors.
251 However, if a franchise is terminated, canceled, or not renewed but the dealer continues in
252 business at the same location under a different franchise agreement, the reimbursement
253 required by this subsection shall not be required to be paid. The provisions of this
254 subsection shall not apply if the dealer is convicted of any criminal offense which
255 conviction is cause of the termination, cancellation, or nonrenewal. In addition, any
256 reimbursement due under this subsection shall be reduced by any amount received by the
257 dealer by virtue of the dealer leasing, subleasing, or selling the facilities or location during
258 the year immediately following the termination, cancellation, or nonrenewal. If
259 reimbursement is made under this subsection, the franchisor is entitled to possession and
260 use of the facilities or location for the period covered by such reimbursement.

261 ~~(h)~~(i) If, in an action for damages under this Code section, the franchisor fails to prove that
262 there was good cause for the franchise termination, cancellation, or nonrenewal, then the
263 franchisor may pay the dealer an amount equal to the value of the dealership as an ongoing
264 business, at which time the franchisor shall receive any title to the dealership facilities
265 which the dealer may have and the franchisee shall surrender his franchise agreement to
266 the franchisor. If the dealer receives an amount equal to the value as an ongoing business,
267 the dealer shall have no other recovery from the franchisor absent a showing such as would
268 warrant punitive damages under Code Section 10-1-623.

269 ~~(i)~~(j) Without limitation as to factors which may constitute or indicate a lack of good
270 cause, no termination shall be considered to be for good cause:

- 271 (1) If such termination relates to the death or disability of an owner and the franchisor
272 has not complied with Code Section 10-1-652; or
- 273 (2) If such termination relates to a change in ownership or management and the
274 franchisor has not complied with Code Section 10-1-653.

275 ~~(j)~~(k) All procedures, protections, and remedies afforded to a motor vehicle dealer under
 276 this Code section shall be available to a motor vehicle distributor whose distributor
 277 agreement is terminated, canceled, not renewed, modified, or replaced by a manufacturer
 278 or an importer."

279 SECTION 8.

280 Said article is further amended by revising Code Section 10-1-661, relating to delivery of
 281 motor vehicles and modification of dealership facilities, as follows:

282 "10-1-661.

283 (a) For purposes of this Code section, the term 'coerce' means to compel or attempt to
 284 compel by threat or use of force or to fail to act in good faith in performing or complying
 285 with any term or provision of a franchise or dealer agreement.

286 ~~(a)~~(b) No franchisor shall require, attempt to require, coerce, or attempt to coerce any
 287 dealer in this state:

288 (1) To order or accept delivery of any new motor vehicle, part, or accessory thereof,
 289 equipment, or any other commodity not required by law which shall not have been
 290 voluntarily ordered by the dealer, except that this paragraph does not affect any terms or
 291 provisions of a franchise requiring dealers to market a representative line of those motor
 292 vehicles which the franchisor is publicly advertising;

293 (2) To order or accept delivery of any new motor vehicle with special features,
 294 accessories, or equipment not included in the list price of such new motor vehicle as
 295 publicly advertised by the franchisor;

296 (3) To refrain from participation in the management of, investment in, or the acquisition
 297 of any other line of new motor vehicle or related products. However, this paragraph does
 298 not apply unless the dealer maintains a reasonable line of credit for each make or line of
 299 new motor vehicle, the dealer remains in compliance with any reasonable facilities
 300 requirements of the franchisor, the dealer provides acceptable sales performance, and no
 301 change is made in the principal management of the dealer;

302 (4) To expand, construct, or significantly modify facilities without assurances that the
 303 franchisor will provide a reasonable supply of new motor vehicles within a reasonable
 304 time so as to justify such an expansion in light of the market and economic conditions;

305 (5) To sell, assign, or transfer any retail installment sales contract obtained by such
 306 dealer in connection with the sale by such dealer in this state of new motor vehicles to a
 307 specified finance company or class of such companies or to any other specified persons;

308 (6) To provide warranty or other services for the account of franchisor, except as
 309 provided in Part 3 of this article, the 'Motor Vehicle Warranty Practices Act'; ~~or~~

310 (7) To acquire any line make of motor vehicle or to give up, sell, or transfer any line
 311 make of motor vehicle which has been acquired in accordance with this article once such
 312 dealer has notified the franchisor that it does not desire to acquire, give up, sell, or
 313 transfer such line make or to retaliate or take any adverse action against a dealer based
 314 on such desire; or

315 (8) To construct, renovate, or maintain exclusive facilities, personnel, or showroom area
 316 dedicated to a particular line make if the imposition of such a requirement would be
 317 unreasonable in light of the existing circumstances, including the franchisor's reasonable
 318 business considerations, present economic and market conditions, and forecasts for future
 319 economic and market conditions in the dealer's retail territory. The franchisor shall have
 320 the burden of proof to demonstrate that its demand for exclusivity is justified by
 321 reasonable business considerations and reasonable in light of the dealer's circumstances,
 322 but this provision shall not apply to a voluntary agreement when separate and adequate
 323 consideration was offered and accepted, provided that the renewal of a franchise
 324 agreement shall not by itself constitute separate and adequate consideration. The
 325 franchisor shall have the burden of proof to show that the dealer has entered into a
 326 voluntary, noncoerced agreement regarding exclusivity.

327 ~~(b) No action shall in any way be based on this Code section with respect to acts occurring~~
 328 ~~prior to July 1, 1983."~~

329 **SECTION 9.**

330 Said article is further amended by revising Code Section 10-1-662, relating to unlawful
 331 activities of motor vehicle franchisors, as follows:

332 "10-1-662.

333 (a) It shall be unlawful for any franchisor:

334 (1) To delay, refuse, or fail to deliver new motor vehicles or new motor vehicle parts or
 335 accessories in a reasonable time and in reasonable quantity if such vehicles, parts, or
 336 accessories are publicly advertised as being available for immediate delivery. This
 337 paragraph is not violated, however, if such failure is caused by acts or causes beyond the
 338 control of the franchisor;

339 (2) To obtain money, goods, services, or any other benefit from any other person with
 340 whom the dealer does business, on account of, or in relation to, the transaction between
 341 the dealer and such other person, other than as compensation for services rendered, unless
 342 such benefit is promptly accounted for and transmitted to the dealer;

343 (3) To release to any outside party, except under subpoena or as otherwise required by
 344 law or in an administrative, judicial, or arbitration proceeding involving the franchisor
 345 or dealer, any business, financial, or personal information which may be from time to

- 346 time provided by the dealer to the franchisor, without the express written consent of the
347 dealer;
- 348 (4) To resort to or to use any false or intentionally deceptive advertisement in the
349 conduct of business as a franchisor in this state;
- 350 (5) To make any false or intentionally deceptive statement, either directly or through any
351 agent or employee, in order to induce any dealer to enter into any agreement or franchise
352 or to take any action which is prejudicial to that dealer or that dealer's business;
- 353 (6) To require any dealer to assent prospectively to a release, assignment, novation,
354 waiver, or estoppel which would relieve any person from liability to be imposed by law
355 or to require any controversy between a dealer and a franchisor to be referred to any
356 person other than the duly constituted courts of the state or the United States if such
357 referral would be binding upon the dealer, provided that this Code section shall not
358 prevent any dealer from entering into a valid release agreement with the franchisor;
- 359 (7) To fail to observe good faith in any aspect of dealings between the franchisor and the
360 dealer;
- 361 (8) To deny any dealer the right of free association with any other dealer for any lawful
362 purposes;
- 363 (9) To engage in any predatory practice or discrimination against any dealer;
- 364 (10) To propose or make any material change in any franchise agreement without giving
365 the dealer written notice by certified mail or statutory overnight delivery of such change
366 at least 60 days prior to the effective date of such change;
- 367 (11) To cancel a franchise or to take any adverse action against a dealer based in whole
368 or in part on the failure of the dealer to meet the reasonable performance goals of the
369 manufacturer criteria established by the franchisor in light of existing circumstances,
370 including but not limited to current and forecasted economic conditions, or when that
371 failure is due to the failure of the franchisor to supply, within a reasonable period of time,
372 new motor vehicles ordered by or allocated to the dealer;
- 373 (12) To offer to sell or lease or to sell or lease any new motor vehicle or accessory to any
374 dealer at a lower actual price therefor than the actual price offered to any other dealer for
375 the same model vehicle similarly equipped or same accessory or to use any device,
376 including but not limited to an incentive, sales promotion plan, or other similar program,
377 which results in a lower actual price of a vehicle or accessory being offered to one dealer
378 and which is not offered to other dealers of vehicles of the same line make or the same
379 accessory;
- 380 (13) To conduct an audit, investigation, or inquiry of any dealer or dealership as to any
381 activity, transaction, conduct, or other occurrence which took place or as to any
382 promotion or special event which ends more than one year prior to such audit,

383 investigation, or inquiry or to base any decision adverse to the dealer or dealership on any
384 activity, transaction, conduct, or other occurrence which took place or as to any
385 promotion or special event which ends more than one year prior to such decision or
386 which took place any time prior to the period of time covered by such audit,
387 investigation, or inquiry or to apply the results of an audit, investigation, or inquiry to any
388 activity, transaction, conduct, or other occurrence which took place any time prior to the
389 time covered by such audit, investigation, or inquiry;

390 (14) To charge back to, deduct from, or reduce any account of a dealer or any amount
391 of money owed to a dealer by a franchisor any amount of money the franchisor alleges
392 is owed to such franchisor by such dealer as a result of an audit, investigation, or inquiry
393 of such dealer or based upon information obtained by the franchisor through other
394 resources which relates to any transaction that occurred more than 12 months prior to
395 notice to the dealer of the charge back or deduction, but rather if a franchisor alleges that
396 a dealer owes such franchisor any amount of money as a result of an audit, investigation,
397 or inquiry, such franchisor shall send a notice to such dealer for such amount and the
398 dealer shall have not less than 30 days to contest such amount or remit payment;

399 (15) To deny, delay payment for, restrict, or bill back a claim by a dealer for payment
400 or reimbursement for warranty service or parts, incentives, hold-backs, special program
401 money, or any other amount owed to such dealer unless such denial, delay, restriction,
402 or bill back is the direct result of a material defect in the claim which affects the validity
403 of the claim;

404 (16) To engage in business as a dealer or to manage, control, or operate, or own any
405 interest in a dealership either directly or indirectly, if the primary business of such dealer
406 or dealership is to perform repair services on motor vehicles, except motor homes,
407 pursuant to a manufacturer's or franchisor's warranty; ~~or~~

408 (17) To refuse to allow, to limit, or to restrict a dealer from maintaining, acquiring, or
409 adding a sales or service operation for another line make of motor vehicles at the same
410 or expanded facility at which the dealer currently operates a dealership unless the
411 franchisor can prove by a preponderance of the evidence that such maintenance,
412 acquisition, or addition will substantially impair the dealer's ability to adequately sell or
413 service such franchisor's motor vehicles;

414 (18) To directly or indirectly condition a franchise agreement or renewal of a franchise
415 agreement, addition of a line make, approval of relocation, or approval of a sale or
416 transfer on the dealer's or prospective dealer's willingness to enter into a site control
417 agreement; provided, however, that this paragraph shall not apply to a voluntary
418 agreement when separate and adequate consideration is paid to the dealer. The franchisor

419 shall have the burden of proof to show the voluntary, noncoerced acceptance of the site
420 control agreement by the dealer; or
421 (19) To charge back, withhold payment, deny vehicle allocation, or take other adverse
422 action against a dealer when a new vehicle sold by the dealer has been exported to a
423 foreign country unless the franchisor can demonstrate that the dealer knew or reasonably
424 should have known that the customer intended to export or resell the new vehicle. There
425 shall be a rebuttable presumption that the dealer had no such knowledge if the vehicle is
426 titled or registered in any state in this country.
427 (b) No action shall in any way be based on this Code section with respect to acts occurring
428 prior to July 1, 1983."

429 **SECTION 10.**

430 This Act shall become effective upon its approval by the Governor or upon its becoming law
431 without such approval.

432 **SECTION 11.**

433 All laws and parts of laws in conflict with this Act are repealed.