

House Bill 1072

By: Representatives Stephens of the 164<sup>th</sup>, Coan of the 101<sup>st</sup>, Bearden of the 68<sup>th</sup>, Shaw of the 176<sup>th</sup>, Sheldon of the 105<sup>th</sup>, and others

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

24 **SECTION 1.**

25 WHEREAS, the General Assembly desires to reaffirm the legislative findings and  
26 declarations set forth in Code Section 10-1-621 and to make changes to the Georgia Motor  
27 Vehicle Franchise Practices Act in an effort to promote the stability of franchised motor

28 vehicle dealerships in this state, thereby maintaining necessary reliable services to the  
 29 consuming public, maintaining full and fair competition among dealers in the public interest,  
 30 and providing continued employment to the citizens of this state,

31 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

32 **SECTION 2.**

33 Article 22 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to  
 34 motor vehicle franchise practices, is amended in Code Section 10-1-623, relating to actions  
 35 for violations of the Georgia Motor Vehicle Franchise Practices Act, by revising subsection  
 36 (d) as follows:

37 "(d) This Code section shall not prevent a dealer from voluntarily entering into a valid  
 38 release agreement to resolve a specific claim, dispute, or action between the franchisor and  
 39 the dealer."

40 **SECTION 3.**

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

43 "10-1-627.

44 No franchisor, nor any agent nor employee of a franchisor, shall use a written instrument,  
 45 agreement, or waiver to attempt to nullify any of the provisions of this article and any such  
 46 agreement, written instrument, or waiver shall be null and void. This Code section shall  
 47 not prevent a dealer from voluntarily entering into a valid release agreement to resolve a  
 48 specific claim, dispute, or action between the franchisor and the dealer."

49 **SECTION 4.**

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

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

58 "(d) A manufacturer or distributor shall not otherwise recover its costs from dealers within  
 59 this state, including an increase in the wholesale price of a vehicle or surcharge imposed  
 60 on a dealer solely intended to recover the cost of reimbursing the dealer for parts and labor"

61 pursuant to this Code section, provided that a manufacturer or distributor shall not be  
 62 prohibited from increasing prices for vehicles or parts in the normal course of business."

63 **SECTION 5.**

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

66 "10-1-651.

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

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

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

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

79 (c) If the failure by the dealer, as defined in subsection (b) of this Code section, relates to  
 80 the performance of the dealer in sales or service, then good cause shall be defined as the  
 81 failure of the dealer to comply with reasonable performance criteria ~~established by the~~  
 82 franchisor in light of the economic conditions during the period in which the franchisor  
 83 alleges that the dealer failed to meet performance criteria if:

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

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

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

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

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

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

- 96 (B) Not less than 15 days prior to the effective date of such termination, cancellation,  
 97 or nonrenewal with respect to any of the following:
- 98 (i) Insolvency of the dealer, or filing of any petition by or against the dealer under  
 99 any bankruptcy or receivership law;
  - 100 (ii) Failure of the dealer to conduct its customary sales and service operations during  
 101 its customary business hours for seven consecutive business days, except for acts of  
 102 God or circumstances beyond the direct control of the dealer;
  - 103 (iii) Conviction of the dealer, general manager, or managing executive or any owner  
 104 with a substantial interest therein of any crime which materially relates to the  
 105 operation of the dealership or any felony which is punishable by imprisonment;
  - 106 (iv) Suspension for a period of more than 14 days or revocation of any license which  
 107 the dealer is required to have to operate a dealership; or
  - 108 (v) Fraud or intentional misrepresentation by the dealer which materially affects the  
 109 franchise, provided the franchisor gives notice within one year of the time when the  
 110 fraud or misrepresentation occurred or was discovered, whichever is later; or
- 111 (C) Not less than 180 days prior to the effective date of such termination or  
 112 cancellation where the franchisor is discontinuing the sale of the product line.
- 113 (2) Notification under this Code section shall be in writing and shall be by certified mail  
 114 or statutory overnight delivery or personally delivered to the dealer and shall contain:
- 115 (A) A statement of intention to terminate, cancel, or not to renew the franchise;
  - 116 (B) A statement of the reasons for the termination, cancellation, or nonrenewal; and
  - 117 (C) The date on which such termination, cancellation, or nonrenewal is to take effect.
- 118 (f)(1)(A) Upon the termination, cancellation, or nonrenewal of any franchise by the  
 119 franchisor, the franchisor shall repurchase from the dealer any new and ~~unused~~  
 120 undamaged motor vehicles ~~of the current model year and any new and unused motor~~  
 121 ~~vehicles~~ acquired by the dealer within ~~12~~ 18 months of the date of termination,  
 122 cancellation, or nonrenewal so long as such motor vehicles have been acquired from the  
 123 franchisor or from another dealer of the franchisor prior to receipt of the notice of  
 124 termination, cancellation, or nonrenewal and so long as such motor vehicles have not  
 125 been altered, damaged, or materially changed while in the dealer's possession. Any  
 126 new and unused motor vehicle repurchased by the franchisor shall be repurchased at the  
 127 net cost to the dealer. For purposes of this subparagraph, a motor vehicle shall be  
 128 considered new and unused if it has less than 500 miles on the odometer and has not  
 129 been issued a certificate of title.
- 130 (B) In addition to the motor vehicles repurchased under subparagraph (A) of this  
 131 paragraph, the franchisor shall repurchase ~~demonstration motor vehicles of the current~~  
 132 ~~model year and~~ demonstration motor vehicles acquired by the dealer within 12 months

133 of the date of termination, cancellation, or nonrenewal so long as such motor vehicles  
 134 have been acquired from the franchisor or from another dealer of the franchisor prior  
 135 to receipt of the notice of termination, cancellation, or nonrenewal and so long as such  
 136 motor vehicles have not been altered, damaged, or materially changed and so long as  
 137 such motor vehicles do not have more than 6,000 miles each on their odometers. Any  
 138 such demonstration motor vehicle shall be repurchased at the net cost to the dealer less  
 139 an allowance for use equal to the net cost to the dealer times the current mileage  
 140 divided by 100,000. The franchisor shall repurchase a number of demonstration motor  
 141 vehicles equal to 10 percent of the number of motor vehicles repurchased under  
 142 subparagraph (A) of this paragraph; however, in no event shall the number of  
 143 demonstration motor vehicles which the franchisor is required to repurchase ever be  
 144 less than two or more than 15 motor vehicles.

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

149 (2) Upon the termination, cancellation, or nonrenewal of any franchise by the dealer, the  
 150 franchisor shall repurchase from the dealer any new and ~~unused~~ undamaged motor  
 151 vehicles, except motorcycles as defined in paragraph (29) of Code Section 40-1-1 and  
 152 except motor homes as defined in paragraph (31) of Code Section 40-1-1 and except  
 153 school buses as defined in paragraph (55) of Code Section 40-1-1, ~~of the current model~~  
 154 year acquired by the dealer within 12 months prior to the effective date of the termination  
 155 so long as such motor vehicles have been acquired from the franchisor or from another  
 156 dealer of the franchisor of the same line-make and in the normal course of business and  
 157 so long as such motor vehicles have not been altered, damaged, or materially changed  
 158 while in the dealer's possession. Any new and unused motor vehicle repurchased by the  
 159 franchisor shall be repurchased at the net cost to the dealer. For purposes of this  
 160 paragraph, a motor vehicle shall be considered new and unused if it has less than 500  
 161 miles on the odometer and has not been issued a certificate of title. For purposes of this  
 162 paragraph, a motor vehicle shall not be deemed to have been altered, damaged, or  
 163 materially changed if it has been provided with original equipment or with nonoriginal  
 164 equipment which does not alter, damage, or materially change the motor vehicle, such as  
 165 undercoating, pinstriping, interior conditioning, or paint sealant.

166 (3)(A) Upon the termination, cancellation, or nonrenewal of any franchise by the  
 167 franchisor or upon the termination, cancellation, or nonrenewal of any franchise by the  
 168 franchisee, the franchisor shall repurchase, at fair and reasonable compensation, from  
 169 the dealer the following:

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

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

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

180 (B) Except as provided in division (i) of subparagraph (A) of this paragraph, fair and  
 181 reasonable compensation shall be the net acquisition price if the item was acquired in  
 182 the 12 months preceding the effective date of the termination, cancellation, or  
 183 nonrenewal; 75 percent of the net acquisition price if the item was acquired between 13  
 184 and 24 months preceding the effective date of the termination, cancellation, or  
 185 nonrenewal; 50 percent of the net acquisition price if the item was acquired between 25  
 186 and 36 months preceding the effective date of the termination, cancellation, or  
 187 nonrenewal; 25 percent of the net acquisition price if the item was acquired between 37  
 188 and 60 months preceding the effective date of the termination, cancellation, or  
 189 nonrenewal; or fair market value if the item was acquired more than 60 months  
 190 preceding the effective date of the termination, cancellation, or nonrenewal.

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

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

204 (g) If a termination or nonrenewal of a franchise is the result of a bankruptcy filing or  
 205 reorganization of a franchisor, a plan or policy to reduce the number of dealers, whether  
 206 publicly announced or not, or the sale or other change in the business operation of the

207 franchisor, the franchisor shall be required to pay the fair market value of the franchise as  
208 of the date of the notice of termination or nonrenewal or 12 months prior to the date of  
209 notice of termination or nonrenewal, whichever is greater. Fair market value shall be the  
210 goodwill value of the dealer's franchise in the dealer's community or territory. In addition,  
211 if a termination or nonrenewal of a franchise is the result of a bankruptcy filing or  
212 reorganization of a franchise, a plan or policy to reduce the number of dealers, whether  
213 publicly announced or not, or the sale of other change in the business operation of the  
214 franchisor, the franchisor shall also be required to reimburse the dealer for the cost of  
215 facility upgrades and renovations required by the franchisor within two years prior to  
216 termination or nonrenewal. Termination assistance provided for in this subsection shall be  
217 in addition to repurchase obligations otherwise set forth in this Code section.

218 ~~(g)~~(h) Within 60 days of the termination, cancellation, or nonrenewal of any franchise by  
219 the franchisor, the franchisor shall commence to reimburse the dealer for one year of the  
220 dealer's reasonable cost to rent or lease the dealership's facility or location or for the  
221 unexpired term of the lease or rental period, whichever is less, or, if the dealer owns the  
222 facility or location, for the equivalent of one year of the reasonable rental value of the  
223 facilities or location. If more than one franchise is being terminated, canceled, or not  
224 renewed, the reimbursement shall be prorated equally among the different franchisors.  
225 However, if a franchise is terminated, canceled, or not renewed but the dealer continues in  
226 business at the same location under a different franchise agreement, the reimbursement  
227 required by this subsection shall not be required to be paid. The provisions of this  
228 subsection shall not apply if the dealer is convicted of any criminal offense which  
229 conviction is cause of the termination, cancellation, or nonrenewal. In addition, any  
230 reimbursement due under this subsection shall be reduced by any amount received by the  
231 dealer by virtue of the dealer leasing, subleasing, or selling the facilities or location during  
232 the year immediately following the termination, cancellation, or nonrenewal. If  
233 reimbursement is made under this subsection, the franchisor is entitled to possession and  
234 use of the facilities or location for the period covered by such reimbursement.

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

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

245 (1) If such termination relates to the death or disability of an owner and the franchisor  
 246 has not complied with Code Section 10-1-652; or

247 (2) If such termination relates to a change in ownership or management and the  
 248 franchisor has not complied with Code Section 10-1-653.

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

253 **SECTION 6.**

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

256 "10-1-661.

257 (a) For purposes of this Code section, the term 'coerce' means to compel or attempt to  
 258 compel by threat of adverse consequences, including but not limited to the franchisor's  
 259 refusal to renew a franchise agreement or to allow a dealer to participate in a program or  
 260 benefit made available to other dealers in this state.

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

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

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

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

- 277 (4) To expand, construct, or significantly modify facilities without assurances that the  
 278 franchisor will provide a reasonable supply of new motor vehicles within a reasonable  
 279 time so as to justify such an expansion in light of the market and economic conditions;
- 280 (5) To sell, assign, or transfer any retail installment sales contract obtained by such  
 281 dealer in connection with the sale by such dealer in this state of new motor vehicles to a  
 282 specified finance company or class of such companies or to any other specified persons;
- 283 (6) To provide warranty or other services for the account of franchisor, except as  
 284 provided in Part 3 of this article, the 'Motor Vehicle Warranty Practices Act'; ~~or~~
- 285 (7) To acquire any line make of motor vehicle or to give up, sell, or transfer any line  
 286 make of motor vehicle which has been acquired in accordance with this article once such  
 287 dealer has notified the franchisor that it does not desire to acquire, give up, sell, or  
 288 transfer such line make or to retaliate or take any adverse action against a dealer based  
 289 on such desire; or
- 290 (8) To construct, renovate, or maintain exclusive facilities, personnel, or showroom area  
 291 dedicated to a particular line make if the imposition of such a requirement would be  
 292 unreasonable in light of the existing circumstances, including present economic and  
 293 market conditions and forecasts for future economic and market conditions in the dealer's  
 294 retail territory. The franchisor shall have the burden of proof to demonstrate that its  
 295 demand for exclusivity is reasonable in light of the dealer's circumstances.
- 296 ~~(b) No action shall in any way be based on this Code section with respect to acts occurring~~  
 297 ~~prior to July 1, 1983."~~

298 **SECTION 7.**

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

301 "10-1-662.

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

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

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

- 312 (3) To release to any outside party, except under subpoena or as otherwise required by  
313 law or in an administrative, judicial, or arbitration proceeding involving the franchisor  
314 or dealer, any business, financial, or personal information which may be from time to  
315 time provided by the dealer to the franchisor, without the express written consent of the  
316 dealer;
- 317 (4) To resort to or to use any false or intentionally deceptive advertisement in the  
318 conduct of business as a franchisor in this state;
- 319 (5) To make any false or intentionally deceptive statement, either directly or through any  
320 agent or employee, in order to induce any dealer to enter into any agreement or franchise  
321 or to take any action which is prejudicial to that dealer or that dealer's business;
- 322 (6) To require any dealer to assent prospectively to a release, assignment, novation,  
323 waiver, or estoppel which would relieve any person from liability to be imposed by law  
324 or to require any controversy between a dealer and a franchisor to be referred to any  
325 person other than the duly constituted courts of the state or the United States if such  
326 referral would be binding upon the dealer, provided that this Code section shall not  
327 prevent any dealer from entering into a valid release agreement with the franchisor;
- 328 (7) To fail to observe good faith in any aspect of dealings between the franchisor and the  
329 dealer;
- 330 (8) To deny any dealer the right of free association with any other dealer for any lawful  
331 purposes;
- 332 (9) To engage in any predatory practice or discrimination against any dealer;
- 333 (10) To propose or make any material change in any franchise agreement without giving  
334 the dealer written notice by certified mail or statutory overnight delivery of such change  
335 at least 60 days prior to the effective date of such change;
- 336 (11) To cancel a franchise or to take any adverse action against a dealer based in whole  
337 or in part on the failure of the dealer to meet the reasonable performance goals of the  
338 manufacturer criteria in light of economic conditions when that failure is due to the  
339 failure of the franchisor to supply, within a reasonable period of time, new motor vehicles  
340 ordered by or allocated to the dealer or when such failure is due in part to unreasonable  
341 actions taken by the franchisor or its affiliate;
- 342 (12) To offer to sell or lease or to sell or lease any new motor vehicle or accessory to any  
343 dealer at a lower actual price therefor than the actual price offered to any other dealer for  
344 the same model vehicle similarly equipped or same accessory or to use any device,  
345 including but not limited to an incentive, sales promotion plan, or other similar program,  
346 which results in a lower actual price of a vehicle or accessory being offered to one dealer  
347 and which is not offered to other dealers of vehicles of the same line make or the same  
348 accessory;

349 (13) To conduct an audit, investigation, or inquiry of any dealer or dealership as to any  
350 activity, transaction, conduct, or other occurrence which took place or as to any  
351 promotion or special event which ends more than one year prior to such audit,  
352 investigation, or inquiry or to base any decision adverse to the dealer or dealership on any  
353 activity, transaction, conduct, or other occurrence which took place or as to any  
354 promotion or special event which ends more than one year prior to such decision or  
355 which took place any time prior to the period of time covered by such audit,  
356 investigation, or inquiry or to apply the results of an audit, investigation, or inquiry to any  
357 activity, transaction, conduct, or other occurrence which took place any time prior to the  
358 time covered by such audit, investigation, or inquiry;

359 (14) To charge back to, deduct from, or reduce any account of a dealer or any amount  
360 of money owed to a dealer by a franchisor any amount of money the franchisor alleges  
361 is owed to such franchisor by such dealer as a result of an audit, investigation, or inquiry  
362 of such dealer or based upon information obtained by the franchisor through other  
363 resources which relates to any transaction that occurred more than 12 months prior to  
364 notice to the dealer of the charge back or deduction, but rather if a franchisor alleges that  
365 a dealer owes such franchisor any amount of money as a result of an audit, investigation,  
366 or inquiry, such franchisor shall send a notice to such dealer for such amount and the  
367 dealer shall have not less than 30 days to contest such amount or remit payment;

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

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

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

383 (18) To directly or indirectly condition a franchise agreement or renewal of a franchise  
384 agreement, addition of a line make, approval of relocation, or approval of a sale or

385 transfer on the dealer's or prospective dealer's willingness to enter into a site control  
386 agreement; or  
387 (19) To charge back, withhold payment, deny vehicle allocation, or take other adverse  
388 action against a dealer when a new vehicle sold by the dealer has been exported to a  
389 foreign country unless the franchisor can demonstrate that the dealer knew that the  
390 customer intended to export or resell the new vehicle. There shall be a rebuttable  
391 presumption that the dealer had no such knowledge if the vehicle is titled or registered  
392 in any state in this country.  
393 (b) No action shall in any way be based on this Code section with respect to acts occurring  
394 prior to July 1, 1983."

395 **SECTION 8.**

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

398 **SECTION 9.**

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