

Senate Bill 122

By: Senators Kennedy of the 18th, Walker III of the 20th, Mullis of the 53rd, Butler of the 55th, Hufstetler of the 52nd 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 provide for protection of certain
3 consumer data in motor vehicle sales or lease transactions; to provide for definitions; to
4 impose certain requirements and restrictions on the use and disclosure of consumer data by
5 franchisors, manufacturers, distributors, and third parties; to provide for indemnification of
6 motor vehicle dealers for certain claims and damages related to disclosure of consumer data;
7 to change certain provisions for purposes of conformity; to change certain provisions relating
8 to uniform warranty reimbursement policies amongst dealers; to provide for performance
9 criteria and survey requirements; to specify certain requirements as to signs and other image
10 elements; to modify certain provisions related to unlawful activities by franchisors; to
11 provide for related matters; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

14 Article 22 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to
15 motor vehicle franchise practices, is amended in Code Section 10-1-622, relating to
16 definitions relative to motor vehicle franchise practices, by adding two new paragraphs to
17 read as follows:

18 “(1) 'Consumer data' means 'nonpublic personal information' as such term is defined in
19 15 U.S.C. s. 6809(4) as it existed on January 1, 2019, that is:

20 (A) Collected by a dealer; and

21 (B) Provided by the dealer directly to a manufacturer or third party acting on behalf of
22 a manufacturer.

23 (2) 'Data management system' means a computer hardware or software system that:

24 (A) Is owned, leased, or licensed by a dealer, including a system of web based
25 applications, computer software, or computer hardware;

26 (B) Is located at the dealership or hosted remotely; and

27 (C) Stores and provides access to consumer data collected or stored by a dealer.
 28 Such term shall include, but shall not be not limited to, dealership management systems
 29 and customer relations management systems."

30 **SECTION 2.**

31 Said article is further amended by adding a new Code section to read as follows:

32 "10-1-632.

33 (a) Notwithstanding the provisions of any franchise agreement, with respect to consumer
 34 data a franchisor, manufacturer, distributor, or a third party acting on behalf of a franchisor,
 35 manufacturer, or distributor:

36 (1) Shall comply with and shall not cause a dealer to violate any applicable restrictions
 37 on reuse or disclosure of the consumer data established by federal or state law;

38 (2) Shall provide a written statement to the dealer upon request describing the established
 39 procedures adopted by such franchisor, manufacturer, distributor, or third party acting on
 40 behalf of the franchisor, manufacturer, distributor, or third party which meet or exceed
 41 any federal or state requirements to safeguard the consumer data, including, but not
 42 limited to, those established in the Gramm-Leach-Bliley Act, 15 U.S.C. 6801, et seq.;

43 (3) Shall not provide consumer data obtained from the dealer to any person unless such
 44 dealer has previously consented in writing to such person receiving the consumer data
 45 provided and the dealer has not withdrawn such consent in writing;

46 (4) Shall, upon the written request of the dealer, provide a written list of the consumer
 47 data obtained from the dealer and all persons to whom any consumer data has been
 48 provided by the franchisor, manufacturer, distributor, or a third party acting on behalf of
 49 a franchisor, manufacturer, or distributor during the preceding 12 months. The dealer
 50 may make such a request no more than once every six months. The list must indicate the
 51 specific fields of consumer data which were provided to each person. Notwithstanding
 52 the foregoing, such a list shall not be required to include:

53 (A) A person to whom consumer data was provided, or the specific consumer data
 54 provided to such person, if the person was, at the time such consumer data was
 55 provided, a service provider, subcontractor, or consultant acting in the course of
 56 performance of services on behalf of or for the benefit of the franchisor, manufacturer,
 57 distributor, third party, or dealer, provided that the franchisor, manufacturer, distributor,
 58 third party, or dealer has entered into an agreement with such person requiring that such
 59 person comply with the safeguard requirements of applicable state and federal law,
 60 including, but not limited to, those established in the Gramm-Leach-Bliley Act, 15
 61 U.S.C. 6801, et seq.; and

62 (B) A person to whom consumer data was provided, or the specific consumer data
 63 provided to such person, if the dealer has previously consented in writing to such
 64 person receiving such consumer data and the dealer has not withdrawn such consent in
 65 writing;

66 (5) May not require that a dealer grant the franchisor, manufacturer, distributor or a third
 67 party acting on behalf of a franchisor, manufacturer, or distributor direct or indirect
 68 access to such dealer's data management system to obtain consumer data. A franchisor,
 69 manufacturer, distributor, or a third party acting on behalf of a franchisor, manufacturer,
 70 or distributor must permit a motor to furnish consumer data in a widely accepted file
 71 format, such as comma delimited, and through a third-party vendor selected by the dealer.
 72 However, a franchisor, manufacturer, or distributor, or a third party acting on behalf of
 73 a franchisor, manufacturer, or distributor may access or obtain consumer data directly
 74 from a dealer's data management system with the express consent of the dealer. The
 75 consent must be in the form of a written document that is separate from the parties'
 76 franchise agreement, is executed by the dealer, and may be withdrawn by the dealer upon
 77 30 days' written notice to the franchisor, manufacturer, or distributor, or the third party,
 78 as applicable. Such consent shall not be required as a condition to a dealer's participation
 79 in an incentive program; and

80 (6) Shall indemnify the dealer for any third-party claims asserted against or damages
 81 incurred by the dealer to the extent caused by access to, use of, or disclosure of consumer
 82 data in violation of this section by the franchisor, manufacturer, distributor or a third
 83 party to whom the franchisor, manufacturer or distributor has provided consumer data.

84 (b) Nothing contained in this Code section shall limit the ability of the franchisor, the
 85 manufacturer, or distributor, to require that the dealer provide, or use in accordance with
 86 the law, such customer information related solely to such manufacturer's or distributor's
 87 own vehicle makes to the extent necessary to do any of the following:

- 88 (1) Satisfy any safety or recall notice obligations;
 89 (2) Complete the sale and delivery of a new motor vehicle to a customer;
 90 (3) Validate and pay customer or dealer incentives; or
 91 (4) Submit to the franchisor, manufacturer, or distributor claims for any services supplied
 92 by the dealer for any claim for warranty parts or repairs."

93 **SECTION 3.**

94 Said article is further amended in Code Section 10-1-641, relating to dealer's predelivery
 95 preparation, warranty service, and recall work obligations to be provided in writing, recovery
 96 of costs, and 'stop-sale' defined, by revising subsection (c) as follows:

97 "~~(c) Subject to subsection (c) of Code Section 10-1-645, a~~ A franchisor, manufacturer, or
 98 distributor shall not ~~otherwise~~ recover its costs from dealers within this state, including a
 99 surcharge imposed on a dealer solely intended to recover the cost of reimbursing the dealer
 100 for parts and labor pursuant to this Code section, provided that a franchisor, manufacturer,
 101 or distributor shall not be prohibited from increasing prices for vehicles or parts in the
 102 normal course of business."

103 SECTION 4.

104 Said article is further amended by revising Code Section 10-1-645, relating to the uniform
 105 warranty reimbursement policy amongst dealers, as follows:

106 "10-1-645.

107 (a) Any motor vehicle franchisor and at least a majority of its dealers of the same line
 108 make may agree in an express written contract, citing this Code section, upon a uniform
 109 warranty reimbursement policy used by contracting dealers to perform warranty repairs.
 110 The policy shall only involve either reimbursement for parts used in warranty repairs or the
 111 use of a uniform time standards manual, or both. Reimbursement for parts under the
 112 agreement shall be used instead of the dealers' prevailing retail price charged by that dealer
 113 for the same parts as ~~defined~~ described in Code Section ~~10-1-644~~ 10-1-641 to calculate
 114 compensation due from the franchisor for parts used in warranty repairs. This Code section
 115 does not authorize a franchisor and its dealers to establish a uniform hourly labor
 116 reimbursement.

117 (b) Each franchisor shall only have one such agreement with each line make. Any such
 118 agreement shall:

119 (1) Establish a uniform parts reimbursement rate. The uniform parts reimbursement rate
 120 shall be greater than the franchisor's nationally established parts reimbursement rate in
 121 effect at the time the first such agreement becomes effective; however, any subsequent
 122 agreement shall result in a uniform reimbursement rate that is greater or equal to the rate
 123 set forth in the immediately prior agreement;

124 (2) Apply to all warranty repair orders written during the period that the agreement is
 125 effective;

126 (3) Be available, during the period it is effective, to any ~~motor vehicle~~ dealer of the same
 127 line make at any time and on the same terms; and

128 (4) Be for a term not to exceed three years so long as any party to the agreement may
 129 terminate the agreement upon the annual anniversary of the agreement and with 30 days'
 130 prior written notice; however, the agreement shall remain in effect for the term of the
 131 agreement regardless of the number of dealers of the same line make that may terminate
 132 the agreement.

133 ~~(c)(1) As used in this subsection, the term 'costs' means the difference between the~~
 134 ~~uniform reimbursement rate set forth in an agreement entered into pursuant to~~
 135 ~~subsection (b) of this Code section and the prevailing retail price charged by that dealer~~
 136 ~~received by those dealers of the same line make.~~

137 ~~(2) A franchisor that enters into an agreement with its dealers may seek to recover its~~
 138 ~~costs from only those dealers that are receiving their prevailing retail price charged by~~
 139 ~~that dealer under Code Section 10-1-644 as follows:~~

140 ~~(A) The costs shall be recovered only by increasing the invoice price on new vehicles~~
 141 ~~received by those dealers not a party to an agreement under this Code section; and~~

142 ~~(B) Price increases imposed for the purpose of recovering costs under this Code section~~
 143 ~~may vary from time to time and from model to model but shall apply uniformly to all~~
 144 ~~dealers of the same line make in the State of Georgia that have requested~~
 145 ~~reimbursement for warranty repairs at their prevailing retail price charged by that~~
 146 ~~dealer, except that a franchisor may make an exception for vehicles that are titled in the~~
 147 ~~name of a consumer in another state.~~

148 ~~(d)(c)~~ If a franchisor contracts with its dealers, the franchisor shall certify under oath to
 149 the Department of Revenue that a majority of the dealers of that line make did agree to
 150 such an agreement and file a sample copy of the agreement. ~~On an annual basis, each~~
 151 ~~dealer shall certify under oath to the department that the reimbursement costs it recovers~~
 152 ~~under subparagraph (c)(2)(A) of this Code section do not exceed the amounts authorized~~
 153 ~~by subparagraph (c)(2)(A) of this Code section.~~ The franchisor shall maintain for a period
 154 of three years a file that contains the information upon which its certification is based.

155 ~~(e)(d)~~ If a franchisor and its dealers do not enter into an agreement pursuant to this Code
 156 section, and for any matter that is not the subject of an agreement, this Code section shall
 157 have no effect whatsoever.

158 ~~(f)(e)~~ For purposes of this Code section, a uniform time standard manual is a document
 159 created by a franchisor that establishes the time allowances for the diagnosis and
 160 performance of warranty work and service. The allowances shall be reasonable and
 161 adequate for the work and service to be performed. Each franchisor shall have a reasonable
 162 and fair process that allows a dealer to request a modification or adjustment of a standard
 163 or standards included in such a manual."

164 **SECTION 5.**

165 Said article is further amended in Code Section 10-1-651, relating to termination of
 166 franchise, grounds, notice, dealer costs reimbursed by franchisor, applicability to distributors,
 167 by revising subsection (c) as follows:

168 "(c) If the failure by the dealer, as ~~defined~~ described in subsection (b) of this Code section,
 169 relates to the performance of the dealer in sales or service, then ~~good cause shall be defined~~
 170 as in this Code section the term 'good cause' means the failure of the dealer to comply with
 171 reasonable performance criteria established by the franchisor in light of existing
 172 circumstances, including, but not limited to, current and forecasted economic conditions,
 173 provided the following conditions are satisfied:

- 174 (1) The dealer was notified by the franchisor in writing of such failure;
 175 (2) Said notification stated that notice was provided of failure of performance pursuant
 176 to this Code section; ~~and~~
 177 (3) The performance criteria established by the franchisor was reasonable, fair, and
 178 equitable; was based on accurate information; included all relevant and material local and
 179 regional data; and, if such criteria included a survey, that such survey was based on a
 180 statistically significant and valid random sample; and
 181 ~~(3)~~(4) The dealer was afforded a reasonable opportunity, for a period of not less than six
 182 months, to comply with such criteria."

183 **SECTION 6.**

184 Said article is further amended in Code Section 10-1-661, relating to the delivery of motor
 185 vehicles, modification of facilities, transfer of sales contracts, and warranties, by revising
 186 paragraphs (7) and (8) of subsection (b) and adding new paragraphs to read as follows:

- 187 "(7) To acquire any line-make of motor vehicle or to give up, sell, or transfer any
 188 line-make of motor vehicle which has been acquired in accordance with this article once
 189 such dealer has notified the franchisor that it does not desire to acquire, give up, sell, or
 190 transfer such line-make or to retaliate or take any adverse action against a dealer based
 191 on such desire; ~~or~~
 192 (8) To construct, renovate, or maintain exclusive facilities, personnel, or showroom area
 193 dedicated to a particular line-make if the imposition of such a requirement would be
 194 unreasonable in light of the existing circumstances, including the franchisor's reasonable
 195 business considerations, present economic and market conditions, and forecasts for future
 196 economic and market conditions in the dealer's retail territory. The franchisor shall have
 197 the burden of proof to demonstrate that its demand for exclusivity is justified by
 198 reasonable business considerations and reasonable in light of the dealer's circumstances,
 199 but this provision shall not apply to a voluntary agreement when separate and adequate
 200 consideration was offered and accepted, provided that the renewal of a franchise
 201 agreement shall not by itself constitute separate and adequate consideration. The
 202 franchisor shall have the burden of proof to show that the dealer has entered into a
 203 voluntary, noncoerced agreement regarding exclusivity.;

204 (9)(A) Whether by agreement, program, incentive provision, or otherwise, to
205 substantially change, alter, or remodel its dealership or to install new signs or other
206 franchisor image elements that replace or substantially alter those improvements, signs,
207 or franchisor image elements completed within the preceding ten years that were
208 required or approved by the franchisor, factory branch, distributor, or distributor branch
209 or one of its affiliates.

210 (B) If a manufacturer, factory branch, distributor, or distributor branch or one of its
211 affiliates offers incentives or other payments under a program that is made available to
212 more than one dealer in this state and such incentives or other payments are premised
213 wholly or in part on dealer facility improvements or installation of franchisor signs or
214 other franchisor image elements, a dealer that constructed improvements or installed
215 signs or other franchisor image elements required by or approved by the manufacturer,
216 factory branch, distributor, or distributor branch or one of its affiliates and completed
217 such within ten years preceding any such program shall be deemed to be in compliance
218 with such program requirements pertaining to construction of facilities or installation
219 of signs or other franchisor image elements that would replace or substantially alter
220 those previously constructed or installed within such ten-year period.

221 (C) The provisions of this paragraph shall not prohibit a franchisor from:

222 (i) Continuing any facility improvement program in effect on July 1, 2019, with more
223 than one franchised dealer in the state;

224 (ii) Providing lump sum or regularly scheduled payments to assist a franchised dealer
225 in making a facility improvement, including construction, alteration or remodeling,
226 or installing signage or a franchisor image element; or

227 (iii) Providing reimbursement to a franchised dealer on reasonable, written terms for
228 a portion of such franchised dealer's costs of making a facility improvement,
229 including construction; alteration or remodeling; the purchase of goods, building
230 materials or services; or installing signage or a franchisor image element which are
231 not paid on a per vehicle basis.

232 (D) As used in this paragraph, the term 'to substantially change, alter, or remodel'
233 means to make an alteration that has a major impact on the architectural features,
234 characteristics, or integrity of the structure or lot or that costs more than \$10,000.00, but
235 shall not include routine maintenance, such as interior painting, reasonably necessary
236 to keep a dealership facility in attractive condition;

237 (10)(A) To purchase goods or services to make improvements to the dealer's facilities
238 from a vendor selected, identified, or designated by a manufacturer or one of its
239 affiliates by agreement, program, incentive provision, or otherwise without making
240 available to the dealer the option to obtain the goods or services of substantially similar

241 quality and overall design from a vendor chosen by the dealer and approved by the
 242 manufacturer; provided, however, that such approval by the manufacturer shall not be
 243 unreasonably withheld, and the dealer's option to select a vendor shall not be available
 244 if the manufacturer provides substantial reimbursement for the goods or services
 245 offered.

246 (B) If signs, other than signs containing the manufacturer's brand or logo or
 247 freestanding signs that are not directly attached to a building, or other franchisor image
 248 or design elements or trade dress are to be leased to the dealer by a vendor selected,
 249 identified, or designated by the manufacturer, such dealer has the right to purchase the
 250 signs or other franchisor image or design elements or trade dress of substantially similar
 251 quality and design from a vendor selected by the dealer if such signs, franchisor image
 252 or design elements, or trade dress are approved by the manufacturer. Approval by the
 253 manufacturer shall not be unreasonably withheld.

254 (C) Nothing in this paragraph shall be construed to allow:

255 (i) A dealer or vendor to impair, infringe upon, or eliminate, directly or indirectly, the
 256 intellectual property rights of the manufacturer including, but not limited to, the
 257 manufacturer's intellectual property rights in any trademarks or trade dress, or other
 258 intellectual property interests owned or controlled by the manufacturer; or

259 (ii) A dealer to erect or maintain signs that do not conform to the manufacturer's
 260 intellectual property rights or trademarks or trade dress usage guidelines.

261 (D) As used in this paragraph, the term:

262 (i) 'Goods' shall not include movable displays, brochures, and promotional materials
 263 containing material subject to the intellectual property rights of a manufacturer.

264 (ii) 'Substantial reimbursement' means an amount equal to or greater than the cost
 265 savings that would result if the dealer were to utilize a vendor of the dealer's own
 266 selection instead of using the vendor identified by the manufacturer; or

267 (11) Whether by agreement, program, incentive, or otherwise, to sell, lease, offer to
 268 sell or lease, solicit, or advertise the sale or lease of new motor vehicles in a manner
 269 that violates a law or any rule or regulation of this state."

270 **SECTION 7.**

271 Said article is further amended in Code Section 10-1-662, relating to unlawful activities by
 272 franchisors, by revising paragraphs (13), (14), (18), and (19) of subsection (a) and by adding
 273 new paragraphs to read as follows:

274 "(13) To conduct an audit, investigation, or inquiry of any dealer or dealership as to any
 275 activity, transaction, conduct, or other occurrence which took place or ~~as to any~~
 276 ~~promotion or special event which ends more than one year~~ more than six months prior

277 to such audit, investigation, or inquiry or to base any decision adverse to the dealer or
278 dealership on any activity, transaction, conduct, or other occurrence which took place ~~or~~
279 ~~as to any promotion or special event which ends~~ more than ~~one year~~ six months prior to
280 such decision or which took place ~~any time~~ more than six months prior to ~~the period of~~
281 ~~time covered by~~ such audit, investigation, or inquiry or to apply the results of an audit,
282 investigation, or inquiry to any activity, transaction, conduct, or other occurrence which
283 took place ~~any time prior to the time covered by such audit, investigation, or inquiry~~ more
284 than six months prior to such audit, investigation, or inquiry;

285 (14) To charge back to, deduct from, or reduce any account of a dealer or any amount
286 of money owed to a dealer by a franchisor any amount of money the franchisor alleges
287 is owed to such franchisor by such dealer as a result of an audit, investigation, or inquiry
288 of such dealer or based upon information obtained by the franchisor through other
289 resources which relates to any transaction that occurred more than ~~12~~ six months prior
290 to notice to the dealer of the charge back or deduction, ~~but rather if a franchisor alleges~~
291 ~~that a dealer owes such franchisor any amount of money as a result of an audit,~~
292 ~~investigation, or inquiry, such franchisor shall send a notice to such dealer for such~~
293 ~~amount and the dealer shall have not less than 30 days to contest such amount or remit~~
294 ~~payment and only if the franchisor can show by a preponderance of evidence that the~~
295 ~~transaction was fraudulent, intentionally and materially false, or not reasonably~~
296 ~~substantiated. A franchisor shall not charge back to, deduct from, or reduce any account~~
297 ~~of a dealer or any amount owed to a dealer based solely on such dealer's incidental failure~~
298 ~~to comply with a specific claim processing requirement, such as a clerical error, that does~~
299 ~~not put into question the legitimacy of the claim. If a franchisor alleges that a dealer~~
300 ~~owes such franchisor any amount of money as a result of an audit, investigation, or~~
301 ~~inquiry, such franchisor shall send a notice to such dealer for such amount and the dealer~~
302 ~~shall have not less than 30 days to contest such amount or remit payment. If the dealer~~
303 ~~contests such amount, the charge shall be stayed pending a final resolution as provided~~
304 ~~in this Code section. Upon the dealer contesting the charge, the parties shall attempt to~~
305 ~~resolve the dispute through an internal dispute resolution procedure of the franchisor, if~~
306 ~~available, provided that such procedure occurs within a reasonable amount of time. If the~~
307 ~~internal dispute resolution procedure is unavailable, unsuccessful, or does not occur in~~
308 ~~a timely manner, such dealer may file a petition with the commissioner not later than 60~~
309 ~~days after receipt of such notice from the franchisor or not later than 30 days after~~
310 ~~conclusion of the internal dispute resolution procedure, whichever is later. If such a~~
311 ~~petition is filed, the commissioner shall inform the franchisor, manufacturer, or~~
312 ~~distributor that a timely petition has been filed and that a hearing shall be held on such~~
313 ~~issue. In any hearing held pursuant to this paragraph, the burden of proof shall be upon~~

314 the franchisor to demonstrate by a preponderance of evidence the transaction was
 315 fraudulent, intentionally and materially false or not reasonably substantiated."

316 "(18) To directly or indirectly condition a franchise agreement or renewal of a franchise
 317 agreement, addition of a line-make, approval of relocation, or approval of a sale or
 318 transfer on the dealer's or prospective dealer's willingness to enter into a site control
 319 agreement; provided, however, that this paragraph shall not apply to a voluntary
 320 agreement when separate and adequate consideration is paid to the dealer. The franchisor
 321 shall have the burden of proof to show the voluntary, noncoerced acceptance of the site
 322 control agreement by the dealer; or

323 (19) To charge back, withhold payment, deny vehicle allocation, or take other adverse
 324 action against a dealer when a new vehicle sold by the dealer has been exported to a
 325 foreign country unless the franchisor can demonstrate that the dealer knew or reasonably
 326 should have known that the customer intended to export or resell the new vehicle. There
 327 shall be a rebuttable presumption that the dealer had no such knowledge if the vehicle is
 328 titled or registered in any state in this country;

329 (20) To take any adverse action against a dealer, including with respect to a dealer's right
 330 to participate in or derive a benefit or payment from any incentive or reimbursement
 331 program, based on criteria it has established, implemented, or enforced for measuring the
 332 performance, including, but not limited to, sales or service performance, of a dealer
 333 unless such criteria:

334 (A) Is fair, reasonable, and equitable;

335 (B) Is based on accurate information;

336 (C) Includes all relevant and material local and regional data; and

337 (D) Is based, if such criteria is based on a survey, on a statistically significant and valid
 338 random sample; or

339 (21) To deny, delay payment for, restrict, or bill back a claim by a dealer for payment
 340 or reimbursement for incentives, hold-backs, sales or service promotion or other special
 341 program money, or any other amount owed to such dealer by the franchisor, if the dealer's
 342 compliance with a specific program requirement of the franchisor would cause the dealer
 343 to violate a law or any properly promulgated rule or regulation of this state."

344 **SECTION 8.**

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