

The Senate Committee on Regulated Industries and Utilities offered the following substitute to SB 122:

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. Such term shall not include the same or similar data obtained by a  
23 manufacturer from any source other than the dealer or dealer's data management  
24 system.

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

- 26 (A) Is owned, leased, or licensed by a dealer, including a system of web based  
 27 applications, computer software, or computer hardware;  
 28 (B) Is located at the dealership or hosted remotely; and  
 29 (C) Stores and provides access to consumer data collected or stored by a dealer.  
 30 Such term shall include, but shall not be limited to, dealership management systems and  
 31 customer relations management systems."

## 32 SECTION 2.

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

34 "10-1-632.

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

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

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

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

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

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

65 (4) May not require that a dealer grant the franchisor, manufacturer, distributor or a third  
66 party acting on behalf of a franchisor, manufacturer, or distributor direct or indirect  
67 access to such dealer's data management system to obtain consumer data. A franchisor,  
68 manufacturer, distributor, or a third party acting on behalf of a franchisor, manufacturer,  
69 or distributor must permit a motor to furnish consumer data in a widely accepted file  
70 format, such as comma delimited, and through a third-party vendor selected by the dealer.  
71 However, a franchisor, manufacturer, or distributor, or a third party acting on behalf of  
72 a franchisor, manufacturer, or distributor may access or obtain consumer data directly  
73 from a dealer's data management system with the express consent of the dealer. The  
74 consent must be in the form of a written document that is separate from the parties'  
75 franchise agreement, is executed by the dealer, and may be withdrawn by the dealer upon  
76 30 days' written notice to the franchisor, manufacturer, or distributor, or the third party,  
77 as applicable. For incentive programs beginning on or after July 1, 2019, such consent  
78 shall not be required as a condition to a motor vehicle dealer's participation in an  
79 incentive program unless such consent is necessary to obtain consumer data to implement  
80 the program; and

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

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

89 (1) Satisfy any safety or recall notice obligations or other legal notice obligations on the  
90 part of the manufacturer;

91 (2) Complete the sale and delivery of a new motor vehicle to a customer;

92 (3) Validate and pay customer or dealer incentives;

93 (4) Submit to the franchisor, manufacturer, or distributor claims for any services supplied  
94 by the dealer for any claim for warranty parts or repairs;

95 (5) Market analysis;

96 (6) Evaluate sales and service customer satisfaction with the dealer, including surveys;

97 or

98 (7) Reasonable marketing purposes that benefit the dealer.  
 99 (c) In any cause of action against a franchisor, manufacturer, or distributor for a violation  
 100 of this Code section, the party bringing the action shall have the burden of proof."

### 101 SECTION 3.

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

106 "(B) Shall, at the election of the dealer, reasonably compensate the dealer for parts and  
 107 labor provided for such warranty service work as provided in paragraph (2) of this  
 108 subsection;"

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

### 115 SECTION 4.

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

118 "10-1-645.

119 (a) Any ~~motor vehicle~~ manufacturer or franchisor and at least a majority of its dealers of  
 120 the same line make may agree to a uniform warranty reimbursement agreement in an  
 121 express written contract, ~~citing this Code section, upon a uniform warranty reimbursement~~  
 122 ~~policy used by contracting dealers to perform warranty repairs~~ executed by a dealer  
 123 principal or authorized dealer representative that specifically cites this Code section. The  
 124 ~~policy agreement~~ shall only involve either reimbursement for parts used in warranty repairs  
 125 or the use of a uniform time standards manual, or both. Reimbursement for parts under the  
 126 agreement shall be used instead of the dealers' prevailing retail price rate charged by that  
 127 dealer for the same parts as defined in Code Section ~~10-1-644~~ 10-1-641 to calculate  
 128 compensation due from the franchisor for parts used in warranty repairs. This Code section  
 129 does not authorize a franchisor and its dealers to establish a uniform hourly labor  
 130 reimbursement.

131 (b) A manufacturer or franchisor that proposes a uniform reimbursement agreement must  
 132 provide all of its line make dealers a minimum of 30 days to consider such proposal which

133 shall be in writing and provided to the dealer principal via certified mail or other trackable  
 134 delivery method, including electronic transmission, to which a notice containing following  
 135 language in all capital letters shall be affixed:

136 GEORGIA LAW ALLOWS TWO ALTERNATIVE METHODS OF WARRANTY  
 137 REIMBURSEMENT:

138 1. DEALERS MAY SUBMIT A REQUEST TO RECEIVE RETAIL RATE  
 139 PURSUANT TO O.C.G.A. SECTION 10-1-641; OR

140 2. A MAJORITY OF LINE MAKE DEALERS MAY AGREE TO A UNIFORM  
 141 WARRANTY REIMBURSEMENT AGREEMENT, AS PROPOSED WITH THIS  
 142 NOTICE.

143 IN THE EVENT A MAJORITY OF LINE MAKE DEALERS AGREE TO THE  
 144 ATTACHED UNIFORM WARRANTY REIMBURSEMENT AGREEMENT,  
 145 DEALERS THAT OPT TO SEEK RETAIL RATE PURSUANT TO O.C.G.A.  
 146 SECTION 10-1-641 MAY BE SUBJECT TO A COST RECOVERY SURCHARGE ON  
 147 ALL NEW VEHICLE INVOICES.

148 ~~(b)~~(c) Each franchisor shall only have one such agreement with each line make. Any such  
 149 agreement shall:

150 (1) Establish a uniform parts reimbursement rate. The uniform parts reimbursement rate  
 151 shall be ~~greater than~~ not less than the greater of the nationally established rate set forth  
 152 in the franchisor's sales and service agreement or other warranty manual or policy or the  
 153 franchisor's ~~nationally established~~ national average warranty parts reimbursement rate in  
 154 effect at the time the first such agreement becomes effective;

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

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

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

164 ~~(e)~~(d)(1) As used in this subsection, the term 'costs' means the difference between the  
 165 uniform reimbursement rate set forth in an agreement entered into pursuant to  
 166 ~~subsection (b) of this Code section and the prevailing retail price charged by that dealer~~  
 167 received by those dealers of the same line make retail rate received by an individual  
 168 dealer pursuant to Code Section 10-1-641.

169 (2) A manufacturer or franchisor that enters into a uniform warranty reimbursement  
 170 agreement as provided in this Code section may seek to recover its costs from only those  
 171 dealers that are receiving their retail rate pursuant to Code Section 10-1-641 ~~A franchisor~~  
 172 ~~that enters into an agreement with its dealers may seek to recover its costs from only~~  
 173 ~~those dealers that are receiving their prevailing retail price charged by that dealer under~~  
 174 ~~Code Section 10-1-644 as follows:~~

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

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

183 ~~(d)~~(e) If a manufacturer or franchisor enters into a uniform reimbursement agreement with  
 184 its dealers, the manufacturer or franchisor shall within 60 days of entering into such  
 185 agreement, certify under oath to the Department of Revenue that a majority of the dealers  
 186 of that line make have entered into such an agreement and shall file a sample copy of the  
 187 agreement, the required notice, a list of the line make dealers that have agreed to the  
 188 uniform warranty reimbursement, and the date upon which such agreement was made. On  
 189 an annual basis, the manufacturer shall certify under oath to the department that the  
 190 reimbursement costs it recovers under subsection (d) of this Code section do not exceed the  
 191 amounts authorized by subsection (d) of this Code section. The manufacturer or franchisor  
 192 shall maintain for a period of three years a file that contains the information upon which  
 193 its certification is based. ~~If a franchisor contracts with its dealers, the franchisor shall~~  
 194 ~~certify under oath to the Department of Revenue that a majority of the dealers of that line~~  
 195 ~~make did agree to such an agreement and file a sample copy of the agreement. On an~~  
 196 ~~annual basis, each dealer shall certify under oath to the department that the reimbursement~~  
 197 ~~costs it recovers under subparagraph (c)(2)(A) of this Code section do not exceed the~~  
 198 ~~amounts authorized by subparagraph (c)(2)(A) of this Code section. The franchisor shall~~  
 199 ~~maintain for a period of three years a file that contains the information upon which its~~  
 200 ~~certification is based.~~

201 ~~(e)~~(f) If a manufacturer or franchisor and its dealers do not enter into an agreement  
 202 pursuant to this Code section, and for any matter that is not the subject of an agreement,  
 203 this Code section shall have no effect whatsoever.

204 ~~(f)~~(g) For purposes of this Code section, a uniform time standard manual is a document  
 205 created by a franchisor that establishes the time allowances for the diagnosis and

206 performance of warranty work and service. The allowances shall be reasonable and  
 207 adequate for the work and service to be performed. Each franchisor shall have a reasonable  
 208 and fair process that allows a dealer to request a modification or adjustment of a standard  
 209 or standards included in such a manual."

210 **SECTION 5.**

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

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

- 220 (1) The dealer was notified by the franchisor in writing of such failure;  
 221 (2) Said notification stated that notice was provided of failure of performance pursuant  
 222 to this Code section; ~~and~~  
 223 (3) The performance criteria established by the franchisor was:  
 224 (A) Reasonable, fair, and equitable;  
 225 (B) Based on accurate information;  
 226 (C) Inclusive of relevant and material local and regional data considered by the  
 227 franchisor that was provided by the dealer;  
 228 (D) Beyond the control of the dealer that adversely affected the dealer's performance;  
 229 and  
 230 (E) Based on a statistically significant and valid random sample as it pertains to the  
 231 particular dealer, if such criteria was included in a survey; and  
 232 ~~(3)~~(4) The dealer was afforded a reasonable opportunity, for a period of not less than six  
 233 months, to comply with such criteria."

234 **SECTION 6.**

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

238 "(7) To acquire any line-make of motor vehicle or to give up, sell, or transfer any  
 239 line-make of motor vehicle which has been acquired in accordance with this article once  
 240 such dealer has notified the franchisor that it does not desire to acquire, give up, sell, or

241 transfer such line-make or to retaliate or take any adverse action against a dealer based  
242 on such desire; or

243 (8) To construct, renovate, or maintain exclusive facilities, personnel, or showroom area  
244 dedicated to a particular line-make if the imposition of such a requirement would be  
245 unreasonable in light of the existing circumstances, including the franchisor's reasonable  
246 business considerations, present economic and market conditions, and forecasts for future  
247 economic and market conditions in the dealer's retail territory. The franchisor shall have  
248 the burden of proof to demonstrate that its demand for exclusivity is justified by  
249 reasonable business considerations and reasonable in light of the dealer's circumstances,  
250 but this provision shall not apply to a voluntary agreement when separate and adequate  
251 consideration was offered and accepted, provided that the renewal of a franchise  
252 agreement shall not by itself constitute separate and adequate consideration. The  
253 franchisor shall have the burden of proof to show that the dealer has entered into a  
254 voluntary, noncoerced agreement regarding exclusivity;

255 (9)(A) To substantially change, alter, or remodel its dealership or to install new signs  
256 or other franchisor image elements that replace or substantially alter those  
257 improvements, signs, or franchisor image elements completed within the preceding ten  
258 years that were required and approved by the franchisor, factory branch, distributor, or  
259 distributor branch or one of its affiliates as part of a program, standard, or policy.

260 (B) If, during such ten-year period, the manufacturer revises or discontinues an existing  
261 program, standard, or policy or establishes a new program, standard, or policy or other  
262 benefit relating to construction or substantial alteration of a dealership, a motor vehicle  
263 dealer that completed construction or substantial alteration of a dealership as part of a  
264 prior program, standard, or policy and elects not to participate in the new or revised  
265 program, standard, or policy, shall not be entitled to bonus, incentive, benefit, or  
266 otherwise under the new or revised program but shall remain entitled to all benefits  
267 under the prior program, standard, or policy according to the terms of such prior  
268 program, standard, or policy. If the prior program, standard, or policy under which the  
269 dealer completed a construction or substantial alteration does not contain a specific time  
270 period during which the manufacturer or distributor must provide payments or benefits  
271 to a dealer, then the manufacturer or distributor may not deny the dealer payment or  
272 benefits under the terms of that prior program, as it existed when the dealer began to  
273 perform under the prior program, for the balance of the ten-year term, regardless of  
274 whether the manufacturer's or distributor's program, standard, or policy has been  
275 revised or discontinued.

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



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

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

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

287 (D) Nothing in this paragraph shall be construed to permit a dealer to erect or maintain  
288 signs that do not conform to the manufacturer's intellectual property rights, trademarks,  
289 or trade dress usage guidelines.

290 (E) As used in this paragraph, the term 'to substantially change, alter, or remodel'  
291 means to make an alteration that has a major impact on the architectural features,  
292 characteristics, or integrity of the structure or lot. Such term shall include the relocation  
293 or erection of freestanding signs, but shall not include routine maintenance, such as  
294 interior painting, reasonably necessary to keep a dealership facility in attractive  
295 condition;

296 (10)(A) To purchase goods or services to make improvements to the dealer's facilities  
297 from a vendor selected, identified, or designated by a manufacturer or one of its  
298 affiliates by program, incentive provision, or otherwise without making available to the  
299 dealer the option to obtain the goods or services of comparable grade, quality, and  
300 overall design, and the same or substantially the same materials and characteristics from  
301 a vendor chosen by the dealer and approved by the manufacturer; provided, however,  
302 that such approval by the manufacturer shall not be unreasonably withheld, and the  
303 dealer's option to select a vendor shall not be available if the manufacturer provides  
304 substantial reimbursement for the goods or services offered.

305 (B) If signs, other than signs containing the manufacturer's brand or logo or  
306 freestanding signs that are not directly attached to a building, or other franchisor image  
307 or design elements or trade dress are to be leased to the dealer by a vendor selected,  
308 identified, or designated by the manufacturer, such dealer has the right to purchase the  
309 signs or other franchisor image or design elements or trade dress of comparable grade,  
310 quality, and overall design, and the same or substantially the same materials and  
311 characteristics from a vendor selected by the dealer if such signs, franchisor image or  
312 design elements, or trade dress are approved by the manufacturer. Approval by the  
313 manufacturer shall not be unreasonably withheld.

314 (C) Nothing in this paragraph shall be construed to allow a dealer or vendor to impair,  
 315 infringe upon, or eliminate, directly or indirectly, the intellectual property rights of the  
 316 manufacturer including, but not limited to, the manufacturer's intellectual property  
 317 rights in any trademarks or trade dress, or other intellectual property interests owned  
 318 or controlled by the manufacturer.

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

320 (i) 'Goods' shall not include movable displays, brochures, and promotional materials  
 321 containing material subject to the intellectual property rights of a manufacturer,  
 322 including copyright, trademark, or trade dress rights or any manufacturer's design or  
 323 architectural review service.

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

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

### 330 **SECTION 7.**

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

334 "(13) To conduct an audit, investigation, or inquiry of any dealer or dealership as to any  
 335 activity, transaction, conduct, or other occurrence which took place ~~or as to any~~  
 336 ~~promotion or special event which ends~~ more than one year prior to such audit,  
 337 investigation, or inquiry or to base any decision adverse to the dealer or dealership on any  
 338 activity, transaction, conduct, or other occurrence which took place ~~or as to any~~  
 339 ~~promotion or special event which ends~~ more than one year prior to such decision or  
 340 which took place ~~any time more than one year~~ prior to ~~the period of time covered by~~ such  
 341 audit, investigation, or inquiry or to apply the results of an audit, investigation, or inquiry  
 342 to any activity, transaction, conduct, or other occurrence which took place ~~any time prior~~  
 343 ~~to the time covered by such audit, investigation, or inquiry~~ more than one year prior to  
 344 such audit, investigation, or inquiry. If the franchisor has reason to believe that  
 345 fraudulent or intentionally false claims have been submitted, the franchisor may extend  
 346 the audit, investigation, or inquiry period beyond the time periods provided in this  
 347 paragraph; provided, however, that in no event shall the time period be extended beyond  
 348 four years prior to such audit, investigation, or inquiry;

349 (14) To charge back to, deduct from, or reduce any account of a dealer or any amount  
350 of money owed to a dealer by a franchisor any amount of money the franchisor alleges  
351 is owed to such franchisor by such dealer as a result of an audit, investigation, or inquiry  
352 of such dealer or based upon information obtained by the franchisor through other  
353 resources which relates to any transaction that occurred more than ~~12 months~~ one year  
354 prior to notice to the dealer of the charge back or deduction, ~~but rather if a franchisor~~  
355 ~~alleges that a dealer owes such franchisor any amount of money as a result of an audit,~~  
356 ~~investigation, or inquiry, such franchisor shall send a notice to such dealer for such~~  
357 ~~amount and the dealer shall have not less than 30 days to contest such amount or remit~~  
358 ~~payment and only if the franchisor can show by a preponderance of evidence that the~~  
359 ~~transaction was fraudulent, intentionally and materially false, not reasonably~~  
360 ~~substantiated, or did not follow the franchisor's written repair or claim submission~~  
361 ~~requirements. A franchisor shall not charge back to, deduct from, or reduce any account~~  
362 ~~of a dealer or any amount owed to a dealer based solely on such dealer's clerical error that~~  
363 ~~does not put into question the legitimacy of the claim. If a claim is rejected for a clerical~~  
364 ~~error, then the dealer may resubmit a corrected claim within 30 days. If a franchisor~~  
365 ~~alleges that a dealer owes such franchisor any amount of money as a result of an audit,~~  
366 ~~investigation, or inquiry, such franchisor shall send a notice to such dealer for such~~  
367 ~~amount and the dealer shall have not less than 30 days to contest such amount or remit~~  
368 ~~payment. If the dealer contests such amount, the charge shall be stayed pending a final~~  
369 ~~resolution as provided in this Code section. Upon the dealer contesting the charge, the~~  
370 ~~parties shall attempt to resolve the dispute through an internal dispute resolution~~  
371 ~~procedure of the franchisor, if available, provided that such procedure occurs within a~~  
372 ~~reasonable amount of time. If the internal dispute resolution procedure is unavailable,~~  
373 ~~unsuccessful, or does not occur in a timely manner, such dealer may file a petition with~~  
374 ~~the commissioner not later than 60 days after receipt of such notice from the franchisor~~  
375 ~~or not later than 30 days after conclusion of the internal dispute resolution procedure,~~  
376 ~~whichever is later. If such a petition is filed, the commissioner shall inform the~~  
377 ~~franchisor, manufacturer, or distributor that a timely petition has been filed and that a~~  
378 ~~hearing shall be held on such issue. In any hearing held pursuant to this paragraph, the~~  
379 ~~burden of proof shall be upon the franchisor to demonstrate by a preponderance of~~  
380 ~~evidence the transaction was fraudulent, intentionally and materially false, not reasonably~~  
381 ~~substantiated or did not follow the franchisor's written repair or claim submission~~  
382 ~~requirements;"~~

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; provided, however, that this paragraph shall not apply to a voluntary  
387 agreement when separate and adequate consideration is paid to the dealer. The franchisor  
388 shall have the burden of proof to show the voluntary, noncoerced acceptance of the site  
389 control agreement by the dealer; ~~or~~

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

396 (20) To take any materially adverse action against a dealer, including a dealer's ability  
397 to participate in or receive a benefit or payment owed from any incentive or  
398 reimbursement program, based on criteria it has established, implemented, or enforced  
399 for measuring the performance, including, but not limited to, sales or service  
400 performance, of a dealer unless such criteria:

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

402 (B) Is based on accurate and relevant information; and

403 (C) Is based, if such criteria is based on a survey, on a statistically significant and valid  
404 random sample as such sample pertains to the particular dealer; or

405 (21) To deny, delay payment for, restrict, or bill back a claim by a dealer for payment  
406 or reimbursement for incentives, hold-backs, sales or service promotion or other special  
407 program money, or any other amount owed to such dealer by the franchisor, if based  
408 solely on the dealer's compliance with a specific program requirement of the franchisor  
409 that would cause the dealer to violate a law or any properly promulgated rule or  
410 regulation of this state."

411 **SECTION 8.**

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