

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

AS PASSED SENATE

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 **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 the
 135 following 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 THE SAME LINE MAKE DEALERS AGREE TO
 144 THE 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 parts
 190 warranty reimbursement in the agreement is no less than the greater of the franchisor's
 191 nationally established rate or the national average parts reimbursement rate and that the
 192 reimbursement costs it recovers under subsection (d) of this Code section do not exceed the
 193 amounts authorized by subsection (d) of this Code section. The manufacturer or franchisor
 194 shall maintain for a period of three years a file that contains the information upon which
 195 its certification is based. ~~If a franchisor contracts with its dealers, the franchisor shall~~
 196 ~~certify under oath to the Department of Revenue that a majority of the dealers of that line~~
 197 ~~make did agree to such an agreement and file a sample copy of the agreement. On an~~
 198 ~~annual basis, each dealer shall certify under oath to the department that the reimbursement~~
 199 ~~costs it recovers under subparagraph (c)(2)(A) of this Code section do not exceed the~~
 200 ~~amounts authorized by subparagraph (c)(2)(A) of this Code section. The franchisor shall~~
 201 ~~maintain for a period of three years a file that contains the information upon which its~~
 202 ~~certification is based.~~

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

206 ~~(f)~~(g) For purposes of this Code section, a uniform time standard manual is a document
 207 created by a franchisor that establishes the time allowances for the diagnosis and
 208 performance of warranty work and service. The allowances shall be reasonable and
 209 adequate for the work and service to be performed. Each franchisor shall have a reasonable
 210 and fair process that allows a dealer to request a modification or adjustment of a standard
 211 or standards included in such a manual."

212 **SECTION 5.**

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

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

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

235 **SECTION 6.**

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

239 "(7) To acquire any line-make of motor vehicle or to give up, sell, or transfer any
 240 line-make of motor vehicle which has been acquired in accordance with this article once

241 such dealer has notified the franchisor that it does not desire to acquire, give up, sell, or
242 transfer such line-make or to retaliate or take any adverse action against a dealer based
243 on such desire; or

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

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

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

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

278 (i) Continuing any facility improvement program in effect on July 1, 2019, with more
279 than one franchised dealer in the state;
280 (ii) Providing lump sum or regularly scheduled payments to assist a franchised dealer
281 in making a facility improvement, including construction, alteration or remodeling,
282 or installing signage or a franchisor image element; or
283 (iii) Providing compensation or reimbursement to a franchised dealer on reasonable,
284 written terms for a portion of such franchised dealer's costs of making a facility
285 improvement, including construction; alteration or remodeling; the purchase of goods,
286 building materials or services; or installing signage or a franchisor image element
287 which are not paid on a per vehicle basis.

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

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

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

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

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

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

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

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

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

331 **SECTION 7.**

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

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

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

384 "(18) To directly or indirectly condition a franchise agreement or renewal of a franchise
385 agreement, addition of a line-make, approval of relocation, or approval of a sale or
386 transfer on the dealer's or prospective dealer's willingness to enter into a site control

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

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

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

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

403 (B) Is based on accurate and relevant information; or

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

410 **SECTION 8.**

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