

1 HB255
2 173571-2
3 By Representative Johnson (R)
4 RFD: Transportation, Utilities and Infrastructure
5 First Read: 18-FEB-16

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8 SYNOPSIS: Under existing law, the ownership or
9 operation of a new motor vehicle dealership selling
10 or leasing new vehicles or owning or operating a
11 repair or warranty repair service facility by
12 certain manufacturers or distributors of motor
13 vehicles are considered an unfair or deceptive
14 trade practice with certain exemptions. The term
15 new motor vehicle also means an engine for certain
16 vehicles as defined.

17 This bill would further exempt certain
18 manufacturers or distributors that manufacture or
19 distribute engines for installation in certain
20 vehicles having a gross weight rating of more than
21 16,000 pounds.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

1 To amend Section 8-20-4, Code of Alabama 1975,
2 relating to unfair and deceptive trade practices of certain
3 manufacturers and distributors of new motor vehicles and
4 exemptions of certain manufacturers; to provide further an
5 exemption for certain manufacturers and distributors of motor
6 vehicles manufacturing or distributing engines for certain
7 vehicles having a gross weight rating of more than 16,000
8 pounds.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Section 8-20-4, Code of Alabama 1975, is
11 amended to read as follows:

12 "§8-20-4.

13 "Notwithstanding the terms, provisions, or
14 conditions of any dealer agreement or franchise or the terms
15 or provisions of any waiver, prior to the termination,
16 cancellation, or nonrenewal of any dealer agreement or
17 franchise, the following acts or conduct shall constitute
18 unfair and deceptive trade practices:

19 "(1) For any manufacturer, factory branch, factory
20 representative, distributor, or wholesaler, distributor
21 branch, or distributor representative to coerce or attempt to
22 coerce any motor vehicle dealer to do any of the following:

23 "a. To accept, buy, or order any motor vehicle or
24 vehicles, appliances, equipment, parts, or accessories
25 therefor, or any other commodity or commodities or service or
26 services which such motor vehicle dealer has not voluntarily
27 ordered or requested except items required by applicable

1 local, state, or federal law; or to require a motor vehicle
2 dealer to accept, buy, order, or purchase such items in order
3 to obtain any motor vehicle or vehicles or any other commodity
4 or commodities which have been ordered or requested by such
5 motor vehicle dealer.

6 "b. To order or accept delivery of any motor vehicle
7 with special features, appliances, accessories, or equipment
8 not included in the list price of the motor vehicles as
9 publicly advertised by the manufacturer thereof, except items
10 required by applicable law.

11 "c. To enter into any agreement with such
12 manufacturer, factory branch, factory representative,
13 distributor, or wholesaler, distributor branch or distributor
14 representative, to do any other act prejudicial to the dealer,
15 the effect of which is to reduce the motor vehicle dealer's
16 allocation of motor vehicles or cancel or fail to renew any
17 franchise or any dealer agreement existing between the parties
18 other than as hereinafter provided; provided, however, that
19 this subsection is not intended to preclude the manufacturer
20 or distributor from insisting on compliance with the
21 reasonable terms or provisions of the franchise, and notice in
22 good faith to any motor vehicle dealer of the dealer's
23 violation of any reasonable terms or provisions of such
24 franchise or dealer agreement or of any law or regulation
25 applicable to the conduct of a motor vehicle dealer shall not
26 constitute a violation of this chapter.

1 "d. To participate monetarily in an advertising
2 campaign or contest, or to purchase any promotional materials,
3 training materials, showroom, or other display decorations or
4 materials at the expense of the new motor vehicle dealer. This
5 paragraph is not intended to modify any reasonable and
6 uniformly applied provision of the franchise which requires
7 the new motor vehicle dealer to advertise and promote the sale
8 of vehicles and does not apply to campaigns, contests,
9 advertising, and other promotional programs in which the new
10 motor vehicle dealer voluntarily elects to participate.

11 "e. To refrain from participation in the management
12 of, investment in, or the acquisition of any other line of new
13 motor vehicle or related products; provided that the new motor
14 vehicle dealer maintains a reasonable line of credit for each
15 make or line of new motor vehicle, and that the new motor
16 vehicle dealer remains in substantial compliance with the
17 terms and conditions of the franchise.

18 "f. To change the location of the new motor vehicle
19 dealership or, during the course of the agreement, to make any
20 substantial alterations to the dealership premises when to do
21 so would be unreasonable.

22 "g. To establish or maintain exclusive sales
23 facilities or sales display space for a new motor vehicle line
24 make unless such exclusive sales facilities or sales display
25 space are reasonable and are otherwise justified by reasonable
26 business considerations. The burden of proving that reasonable
27 business considerations justify exclusive sales facilities or

1 sales display space is on the manufacturer. Provided, however,
2 a manufacturer or distributor may not coerce, attempt to
3 coerce, or require a motor vehicle dealer to establish or
4 maintain exclusive personnel or exclusive service, parts, or
5 administrative facilities for a line make.

6 "h. To adhere to performance standards that are not
7 fair, reasonable, and equitable or that are not applied
8 uniformly to other similarly situated dealers. A performance
9 standard, sales objective, or program for measuring dealership
10 performance that may have a material effect on a dealer,
11 including the dealer's right to payment under any incentive or
12 reimbursement program shall be fair, reasonable, equitable,
13 and based on accurate information.

14 "i. To engage in any acts which constitute fraud,
15 deceit, or suppression under Sections 6-5-100 to 6-5-104,
16 inclusive.

17 "j. To offer to sell or to sell any extended service
18 contract or extended maintenance plan offered, sold, backed
19 by, or sponsored by the manufacturer or to sell, assign, or
20 transfer any retail installment sales contract or lease
21 obtained by the dealer in connection with the sale or lease of
22 a new motor vehicle manufactured by the manufacturer to a
23 specified finance company, class of finance companies, leasing
24 company, or class of leasing companies, or to any other
25 specified persons.

26 "(2) For any manufacturer, factory branch, factory
27 representative, distributor, or wholesaler, distributor

1 branch, distributor representative, or motor vehicle dealer to
2 engage in any action with respect to a franchise which is
3 arbitrary, unconscionable, unreasonable, or is not in good
4 faith and which causes damage to any of the parties.

5 "(3) For any manufacturer, factory branch, factory
6 representative, distributor, or wholesaler, distributor
7 branch, or distributor representative to do any of the
8 following:

9 "a. To adopt, change, establish, or implement a plan
10 or system for the allocation and distribution of new or used
11 motor vehicles to motor vehicle dealers which is arbitrary,
12 capricious, or unreasonably discriminatory or to modify an
13 existing plan so as to cause the same to be arbitrary,
14 capricious, or unreasonably discriminatory.

15 "b. To fail or refuse to advise or disclose to any
16 motor vehicle dealer having a franchise or dealer agreement,
17 upon written request therefor, the basis upon which new motor
18 vehicles of the same line make are allocated or distributed to
19 motor vehicle dealers in the state and the basis upon which
20 the current allocation or distribution is being made or will
21 be made to such motor vehicle dealer.

22 "c. To refuse to deliver to a motor vehicle dealer
23 in reasonable quantities and within a reasonable time after
24 receipt of the motor vehicle dealer's order any such motor
25 vehicles as are covered by a franchise or dealer agreement and
26 specifically publicly advertised in the state by such
27 manufacturer, factory branch, factory representative,

1 distributor, or wholesaler, distributor branch, or distributor
2 representative to be available for immediate delivery;
3 provided, however, that the failure to deliver any motor
4 vehicle shall not be considered a violation of this chapter if
5 such failure is due to an act of God, a work stoppage or delay
6 due to a strike or labor difficulty, a shortage of materials,
7 lack of available manufacturing capacity, a freight embargo,
8 or other cause over which the manufacturer, factory branch,
9 factory representative, distributor, or wholesaler,
10 distributor branch, or distributor representative shall have
11 no control.

12 "d. To cancel or terminate the franchise or dealer
13 agreement of a motor vehicle dealer other than as hereinafter
14 provided.

15 "e. To fail or refuse to extend the franchise or
16 dealer agreement of a motor vehicle dealer upon its expiration
17 other than as hereinafter provided.

18 "f. To offer a renewal, replacement, or succeeding
19 franchise or dealer agreement containing terms and provisions
20 the effect of which is to substantially change or modify the
21 sales and service obligations or capital requirements of the
22 motor vehicle dealer other than as hereinafter provided.

23 "g. To offer to sell or lease, or to sell or lease,
24 any new motor vehicle to any motor vehicle dealer at a lower
25 actual price therefor than the actual price offered to any
26 other motor vehicle dealer for the same model vehicle
27 similarly equipped or to utilize any device including, but not

1 limited to, sales promotion plans or programs which result in
2 such lesser actual price and which are not offered to dealers
3 of vehicles of the same line make; provided, however, that the
4 provisions of this paragraph shall not apply to sale to a
5 motor vehicle dealer for resale to any unit of the United
6 States government, the state, or any of its political
7 subdivisions.

8 "h. To offer to sell or lease, or to sell or lease,
9 any new motor vehicle to any person, except a wholesaler's or
10 distributor's or manufacturer's employees, at a lower actual
11 price therefor than the actual price offered and charged to a
12 motor vehicle dealer for the same model vehicle similarly
13 equipped or to utilize any device which results in such lesser
14 actual price and which are not offered to dealers of vehicles
15 of the same line make; provided, however, that the provisions
16 of this paragraph shall not apply to sales to a motor vehicle
17 dealer for resale to any unit of the United States government,
18 the state, or any of its political subdivisions.

19 "i. To prevent or attempt to prevent by contract or
20 otherwise any motor vehicle dealer from changing the executive
21 management control of the motor vehicle dealer unless such
22 change of executive management control will result in
23 executive management control by a person or persons who are
24 not of good moral character or who do not meet the
25 manufacturer's or wholesaler's or distributor's existing and
26 reasonable capital standards and, with consideration given to
27 the volume of sales and service of the new motor vehicle

1 dealer, uniformly applied minimum business experience
2 standards in the market area; provided, however, that where
3 the manufacturer, or distributor, or wholesaler rejects a
4 proposed change in executive management control, the
5 manufacturer, or distributor, or wholesaler shall give written
6 notice of his or her reasons to the motor vehicle dealer
7 within 45 days of notice to the manufacturer, or wholesaler,
8 or distributor by the motor vehicle dealer of the proposed
9 change accompanied by information reflecting the identity,
10 business experience and affiliations, and source of investment
11 funds of the proposed new management.

12 "j. To prevent or attempt to prevent by contract or
13 otherwise any motor vehicle dealer from establishing or
14 changing the capital structure of his or her dealership or the
15 means by or through which he or she finances the operation
16 thereof; provided the dealer meets any reasonable capital
17 standards agreed to between the motor vehicle dealer and the
18 manufacturer, distributor, or wholesaler, who may require that
19 the sources, method, and manner by which the motor vehicle
20 dealer finances or intends to finance its operation,
21 equipment, or facilities be fully disclosed.

22 "k. To refuse to give effect to or prevent or
23 attempt to prevent by contract or otherwise any motor vehicle
24 dealer or any officer, partner, or stockholder of any motor
25 vehicle dealer from selling or transferring any part of the
26 interest of any of them to any other person unless such sale
27 or transfer is to a transferee who would not otherwise qualify

1 for a new motor vehicle dealer's license issued by the State
2 of Alabama or a political subdivision thereof or unless such
3 sale or transfer is to a person who is not of good moral
4 character or who does not meet the manufacturer's or
5 wholesaler's or distributor's existing and reasonable capital
6 standards and, with consideration given to the volume of sales
7 and service of the dealership, uniformly applied minimum
8 business experience standards in the market area; provided,
9 however, that where such a rejection of a transfer is made the
10 manufacturer or distributor or wholesaler shall give written
11 notice of his or her reasons to the motor vehicle dealer
12 within 60 days of notice to the manufacturer or wholesaler or
13 distributor by the dealer of the proposed transfer accompanied
14 by information reflecting the identity of the new owner or
15 owners, their business experience and affiliations and the pro
16 forma balance sheet and source of investment funds of the
17 proposed new dealership. A manufacturer or distributor may
18 exercise a contractual right of first refusal with respect to
19 the sale or transfer of the interest of the dealer only if
20 each of the following requirements are met:

21 "1. The sale or transfer is not to a family member
22 of an owner of the dealership, nor a managerial employee of
23 the dealership owning 15 percent or more of the dealership,
24 nor a corporation, partnership, or other legal entity owned by
25 the existing owners of the dealership. For purposes of this
26 subparagraph, a "family member" means the spouse of an owner
27 of the dealership, the child, grandchild, brother, sister, or

1 parent of an owner, or a spouse of one of those family
2 members.

3 "2. The manufacturer or distributor notifies the
4 dealer in writing within 60 days after receipt of the
5 completed application forms and related information generally
6 used by a manufacturer or distributor to conduct its review
7 and a copy of all agreements regarding the proposed transfer
8 of its intent to exercise its right of first refusal or its
9 rejection of the proposed transfer. If the manufacturer or
10 distributor fails to notify the dealer of its exercise of the
11 right of first refusal or its rejection of the proposed
12 transferee within the 60-day period, the effect of such
13 failure shall constitute approval of the proposed sale or
14 transfer. If the manufacturer or distributor exercises a right
15 of first refusal under this section, the transfer shall be
16 deemed to be rejected.

17 "3. The exercise of the right of first refusal
18 provides to the dealer the same compensation as, or greater
19 compensation than, the dealer had negotiated to receive from
20 the proposed buyer or transferee.

21 "4. The manufacturer or distributor agrees to pay
22 the reasonable expenses, including reasonable attorneys' and
23 accountants' fees that do not exceed the usual, customary, and
24 reasonable fees charged for similar work done for other
25 clients incurred by the proposed buyer or transferee before
26 the manufacturer's or distributor's exercise of its right of
27 first refusal in negotiating and implementing the contract for

1 the sale or transfer. The proposed buyer or transferee shall
2 provide to the manufacturer or distributor a written
3 itemization of the expenses incurred within 30 days of the
4 receipt by the proposed buyer or transferee of a written
5 request from the manufacturer or distributor for an accounting
6 of the expenses. The manufacturer or distributor shall make
7 payment of these expenses within 30 days of exercising the
8 right of first refusal.

9 "1. To unreasonably and without notice to existing
10 motor vehicle dealers, as hereinafter provided, enter into a
11 franchise with an additional motor vehicle dealer who intends
12 to conduct its dealership operations from a place of business
13 situated within the relevant market area of an existing motor
14 vehicle dealer or motor vehicle dealers representing the same
15 line make. The appointment of a successor motor vehicle dealer
16 at the same location as its predecessor or within a two-mile
17 radius therefrom within two years from the date on which its
18 predecessor ceased operations or was terminated, whichever
19 occurred later, shall not be construed as the entering into of
20 an additional franchise. Any manufacturer, distributor, or
21 wholesaler, factory branch, factory representative,
22 distributor branch, or distributor representative which
23 intends to enter into an additional franchise shall, at least
24 60 days prior to granting such franchise, give written notice
25 of its intention to do so to each motor vehicle dealer of the
26 same line make within the relevant market area. Such notice
27 shall state the date on or after which such proposed franchise

1 shall be granted or entered into. Prior to the date set forth
2 in said notice on or after which such franchise will be
3 entered into, any such motor vehicle dealer may petition a
4 court of competent jurisdiction to determine whether such
5 appointment or proposed appointment is unreasonable in which
6 action the manufacturer, wholesaler, or distributor shall have
7 the burden of proof that such action is not unreasonable. No
8 bond shall be required as a precondition to entry of an
9 injunction enjoining appointment of an additional franchise.
10 Such petition shall be entitled to a speedy trial. In
11 determining whether such proposed appointment is unreasonable,
12 the court shall consider all pertinent circumstances. These
13 may include but are not limited to:

14 "1. Whether the establishment of such additional
15 franchise is warranted by economic and marketing conditions
16 including anticipated future changes.

17 "2. The past, present, and anticipated retail sales
18 and service business transacted by the objecting motor vehicle
19 dealer or dealers and other motor vehicle dealers of the same
20 line make with a place of business in the relevant market
21 area.

22 "3. The investment made and obligations incurred by
23 the objecting motor vehicle dealer or dealers and other motor
24 vehicle dealers of the same line make with a place of business
25 in the relevant market area.

26 "4. Whether it is beneficial or injurious to the
27 public welfare for an additional franchise to be established.

1 "m. To prospectively assent to a release,
2 assignment, novation, agreement, waiver, or estoppel 1. which
3 would relieve any person from any liability or obligation
4 under this chapter, 2. which would require any controversy
5 between a new motor vehicle dealer and a manufacturer to be
6 referred to any person other than the duly constituted courts
7 of this state or the United States, if the referral would be
8 binding on the new motor vehicle dealer, 3. which would limit
9 the entitlement to recover damages under this chapter or other
10 Alabama law, 4. which specifies the jurisdiction or venues in
11 which disputes arising with respect to the franchise shall or
12 shall not be submitted for resolution or otherwise prohibits a
13 dealer from bringing an action in the courts of Alabama, or 5.
14 which would waive the right to trial by jury.

15 "n. To prevent or refuse to give effect to the
16 succession to the ownership or management control of a
17 dealership upon the death or incapacity of a motor vehicle
18 dealer to any legatee or devisee under the will of a dealer or
19 to an heir under the laws of descent and distribution of this
20 state unless the successor is a person who is not of good
21 moral character or who does not meet the manufacturer's or
22 distributor's or wholesaler's existing and reasonable capital
23 standards and, with consideration given to the volume of the
24 sales and service of the dealership, uniformly applied minimum
25 business experience standards in the market area; provided,
26 however, that where such a rejection of succession is made,
27 the manufacturer or distributor or wholesaler shall give

1 written notice of his or her reasons to the proposed successor
2 within 60 days of notice to the manufacturer or wholesaler or
3 distributor by the proposed successor of his or her intent to
4 succeed to the ownership or management of the dealership
5 accompanied by information reflecting the identity of the new
6 owner or owners, their business experience and affiliation and
7 the pro forma balance sheet and source of investment funds of
8 the proposed new dealership. This section does not preclude
9 the owner of a new motor vehicle dealer from designating any
10 person as his or her successor by written instrument filed
11 with the manufacturer or distributor and, in the event there
12 is a conflict between such written instrument and the
13 provisions of this section, the written instrument shall
14 govern.

15 "o. To fail to indemnify and hold harmless its motor
16 vehicle dealers against any losses, including, but not limited
17 to, court costs and reasonable attorneys' fees, or damages
18 arising out of complaints, claims, or lawsuits, including, but
19 not limited to, strict liability, negligence,
20 misrepresentation, warranty (express or implied), or
21 rescission of the sale where the complaint, claim, or lawsuit
22 relates to 1. the manufacture, assembly, or design of new
23 motor vehicles, parts, or accessories; 2. a defect in any
24 forms furnished to the dealer or in the written instructions
25 for the completion of such forms by the manufacturer, an
26 affiliate of the manufacturer, or person controlled by the
27 manufacturer used in connection with the sale, lease, or

1 financing of a vehicle and associated products, unless the
2 dealer improperly completes the forms or makes
3 misrepresentations contrary either to the terms of the forms
4 or the written instructions for their completion; or 3. other
5 functions by the manufacturer, beyond the control of the
6 dealer, including, without limitation, the selection by the
7 manufacturer of parts or components for the vehicle, or any
8 damages to merchandise occurring in transit to the dealer
9 where the carrier is designated by the manufacturer.

10 "p. To increase prices of new motor vehicles which
11 the new motor vehicle dealer had ordered for retail consumers
12 prior to the dealer's receipt of the written official price
13 increase notification. A sales contract signed by a retail
14 consumer shall constitute evidence of each such order;
15 provided that the vehicle is in fact delivered to that
16 customer. In the event of manufacturer price reductions or
17 cash rebates, the amount of any such reduction or rebate
18 received by a dealer shall be passed on to the retail consumer
19 by the dealer if the retail price was negotiated on the basis
20 of the previous higher price to the dealer. Price reductions
21 shall apply to all vehicles in the dealer's inventory which
22 were subject to the price reduction. Price differences
23 applicable to new model or series motor vehicles at the time
24 of the introduction of new models or series shall not be
25 considered a price increase or price decrease. Price changes
26 caused by either: 1. the addition to a motor vehicle of
27 required or optional equipment pursuant to state or federal

1 law; 2. revaluation of the United States dollar, in the case
2 of foreign-made vehicles or components; or 3. an increase in
3 transportation charges due to increased rates imposed by
4 common or contract carriers, shall not be subject to the
5 provisions of this paragraph.

6 "q. To offer any refunds or other types of
7 inducements to any person for the purchase of new motor
8 vehicles of a certain line make to be sold to the state or any
9 political subdivision thereof without making the same offer to
10 all other new motor vehicle dealers in the same line make
11 within the state.

12 "r. To release to any outside party, except under
13 subpoena, or as otherwise required by law or in an
14 administrative, judicial, or arbitration proceeding, any
15 business, financial, or personal information which may be from
16 time to time provided by the dealer to the manufacturer,
17 without the express written consent of the dealer.

18 "s. To own an interest in a new motor vehicle
19 dealership, to operate or control a dealership, to make direct
20 sales or leases of new motor vehicles to the public in
21 Alabama, or to own, operate, or control a facility for
22 performance of motor vehicle warranty or repair service work,
23 except as follows:

24 "1. The manufacturer or distributor is owning or
25 operating a new motor vehicle dealership or a warranty repair
26 facility for a temporary period of not more than 24 months, as
27 long as the new motor vehicle dealership or warranty repair

1 center is for sale at a reasonable price and on reasonable
2 terms and conditions; or

3 "2. The manufacturer's or distributor's
4 participation is in a bona fide relationship with an
5 independent person (i) who is required to make significant
6 investment in the new motor vehicle dealership or warranty
7 repair center subject to loss, (ii) and operates the
8 dealership or warranty repair center and may reasonably be
9 expected to acquire full ownership of the dealership or
10 warranty repair center within a reasonable time and under
11 reasonable terms and conditions.

12 "3. The manufacturer or distributor is selling or
13 leasing new motor vehicles in Alabama to its qualified
14 vendors, not-for-profit organizations, fleets, or the federal,
15 state, or local government if sold or leased and delivered
16 through new motor vehicle dealers in this state. The
17 manufacturer or distributor is selling or leasing new motor
18 vehicles in Alabama to its employees and employees' families
19 if delivered through new motor vehicle dealers in this state.
20 The manufacturer or distributor is implementing a program to
21 sell or lease or offer to sell or lease new motor vehicles
22 through new motor vehicle dealers in this state.

23 "4. The manufacturer or distributor owns a passive
24 interest of not more than 10 percent in a publicly traded
25 corporation held exclusively for investment purposes.

26 "5. A manufacturer of recreational vehicles which as
27 of December 31, 1999, owns, operates, or controls a facility

1 in this state for performance of motor vehicle warranty repair
2 or service work on recreational vehicles manufactured by that
3 manufacturer.

4 "6. The manufacturer or distributor is owning,
5 operating, or controlling an entity primarily engaged in the
6 business of renting passenger and commercial motor vehicles
7 and industrial and construction equipment, as well as
8 activities incidental to said businesses, including warranty
9 and repair work on vehicles that it owns, previously owned, or
10 takes in trade.

11 "7. A manufacturer or distributor that:

12 "(i) Manufactures or distributes engines for
13 installation in a vehicle having as its primary purpose the
14 transport of a person or persons or property on a public
15 highway and having a gross vehicle weight rating of more than
16 16,000 pounds, provided that the manufacturer does not
17 otherwise manufacture motor vehicles as defined in Section
18 8-20-3; and

19 "(ii) Owned, operated, or controlled a new motor
20 vehicle dealership or a warranty repair facility in this state
21 prior to January 1, 2016; and

22 "(iii) Does not own or operate more than three new
23 motor vehicle dealership or warranty repair facilities in this
24 state; and

25 "(iv) Does not regularly provide motor vehicle
26 warranty or repair service work in this state to noncommercial
27 single-family passenger motor vehicles having a gross vehicle

1 weight rating of less than 16,000 pounds unless the repair is
2 not reasonably available at a motor vehicle dealer that sells
3 new motor vehicles with a gross vehicle weight rating of less
4 than 16,000 pounds or at the request of such motor vehicle
5 dealer; and

6 "(v) To further avoid any acts or practices the
7 effect of which may be to lessen or eliminate competition that
8 provided to dealers on materially equal terms access to all
9 support for completing repairs, including, but not limited to,
10 parts and assembles, training, and technical service bulletins
11 and other information concerning repairs that the manufacturer
12 provides to facilities owned, operated, or controlled by the
13 manufacturer.

14 "t. To make any material change in any franchise
15 agreement without giving the dealer written notice by
16 certified mail of such change at least 60 days prior to the
17 effective date of such change.

18 "u. To fail to pay or otherwise compensate its new
19 motor vehicle dealers for sales incentives, service
20 incentives, rebates, or other forms of incentive compensation
21 earned by the dealer as a consequence of incentive programs of
22 the manufacturer. The manufacturer shall have the right to
23 audit any such incentive payments made to the dealer and to
24 charge back the dealer for any fraudulent claims for incentive
25 payments made to the dealer for a period not to exceed 12
26 months from the date the claim was paid. A manufacturer shall
27 not disapprove claims for which the dealer has received

1 preauthorization from the manufacturer or its representative
2 nor shall the manufacturer unreasonably disapprove a claim
3 solely based on the dealer's incidental failure to comply with
4 a specific claim processing requirement that results only in a
5 clerical error or administrative error; rather a claim denial
6 must be based upon a material defect and deviation from the
7 reasonable written claim submission requirements of the
8 manufacturer. In the event of neglect, oversight, or mistake
9 by the dealer, a dealer may submit an amended claim, or may
10 submit a claim not submitted within the time required by the
11 manufacturer, for sales incentives, service incentives,
12 rebates, or other forms of incentive compensation up to 120
13 days from the date on which such claim was first submitted or
14 could have been submitted.

15 "v. To fail or refuse to offer its same line make
16 franchised dealers all models of new motor vehicles
17 manufactured for that line make and offered to any dealer in
18 this state. No unreasonable additional requirements, over the
19 requirements originally required to obtain a franchise from
20 the manufacturer, may be required of existing franchised
21 dealers to receive any model by that line make. The provisions
22 in this paragraph shall not apply to recreational vehicles and
23 reasonable requirements of a manufacturer that its dealers
24 obtain tools or diagnostic equipment to properly service its
25 line make of motor vehicles. The failure to deliver any such
26 new motor vehicle shall not be considered a violation of this
27 section if the failure is due to a lack of manufacturing

1 capacity or to a strike or labor difficulty, a shortage of
2 materials, a freight embargo, or any other cause over which
3 the manufacturer has no control.

4 "w. To prohibit a motor vehicle dealer from changing
5 the location of the new motor vehicle dealership to another
6 location within the dealer's assigned area of responsibility
7 if the refusal to approve the relocation is not reasonable
8 under the circumstances.

9 "x. To charge back, deny vehicle allocation,
10 withhold payments, or take any other adverse actions against a
11 dealer because of a sale of a new motor vehicle which is
12 exported from the United States unless the manufacturer can
13 prove that the dealer knew or reasonably should have known on
14 the date of the sale that the new motor vehicle was to be
15 exported. A dealer is rebuttably presumed to have no knowledge
16 of the intended export if the vehicle is sold by the dealer to
17 a United States resident who titles and registers the vehicle
18 in any state in the United States.

19 "y. To condition the sale, transfer, relocation, or
20 renewal of a franchise or dealer agreement or to condition
21 sales, service, parts, or finance incentives upon site control
22 or an agreement to renovate or make substantial improvements
23 to a facility; provided, however, that voluntary and
24 non-coerced acceptance of such conditions by the dealer in
25 writing, including, but not limited to, a written agreement
26 for which the dealer has accepted separate and valuable
27 consideration, shall not constitute a violation.

1 "z. To assign or change a dealer's area of
2 responsibility under the franchise or dealer agreement
3 arbitrarily or without due regard to the present or projected
4 future pattern of motor vehicle sales and registrations within
5 the dealer's market area and without first having provided the
6 dealer with written notice of the change in the dealer's area
7 of responsibility and a detailed description of the change and
8 reasons therefor."

9 Section 2. This act shall become effective on the
10 first day of the third month following its passage and
11 approval by the Governor, or its otherwise becoming law.