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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES -- REGULATION OF BUSINESS
PRACTICES AMONG MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, AND
DEALERS

Introduced By: Representative Peter F. Kilmartin

Date Introduced: April 21, 2009

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 31-5.1-1, 31-5.1-2, 31-5.1-3, 31-5.1-4, 31-5.1-11, and 31-5.1-21 of
2 the General Laws in Chapter 31-5.1 entitled "Regulation of Business Practices Among Motor
3 Vehicle Manufacturers, Distributors, and Dealers" are hereby amended to read as follows:

4 **31-5.1-1. Definitions.** -- The following words and phrases, for the purposes of this
5 chapter, have the following meanings:

6 (1) "Designated family member" means the spouse, child, grandchild, parent, brother, or
7 sister of the owner of a new motor vehicle dealership who, in the case of the owner's death, is
8 entitled to inherit the ownership interest in the new motor vehicle dealership under the terms of
9 the owner's will, or who has been nominated in any other written instrument, or who, in the case
10 of an incapacitated owner of a new motor vehicle dealership, has been appointed by a court as the
11 legal representative of the new motor vehicle dealer's property.

12 (2) "Distributor" means any person, firm, association, corporation, or trust, resident or
13 nonresident, who in whole or in part offers for sale, sells, or distributes any new motor vehicle to
14 new motor vehicle dealers, who maintains factory representatives or who controls any person,
15 firm, association, corporation or trust, resident or nonresident, who in whole or in part offers for
16 sale, sells or distributes any new motor vehicle to new motor vehicle dealers.

17 (3) "Established place of business" means a permanent, commercial building located
18 within this state, easily accessible and open to the public at all reasonable times, and at which the

1 business of a new motor vehicle dealer, including the display and repair of vehicles, may be
2 lawfully carried on in accordance with the terms of all applicable building codes, zoning, and
3 other land-use regulatory ordinances.

4 (4) "Factory branch" means a branch office maintained by a manufacturer for the
5 purpose of selling, or offering for sale, vehicles to a distributor or new motor vehicle dealer, or
6 for directing or supervising in whole or in part factory or distributor representatives.

7 (5) "Franchise" means the agreement or contract between any new motor vehicle
8 manufacturer, written or otherwise, and any new motor vehicle dealer which purports to fix the
9 legal rights and liabilities of the parties to that agreement or contract, and pursuant to which the
10 dealer purchases and resells the franchise product or leases or rents the dealership premises.

11 (6) "Fraud" includes, in addition to its normal legal connotation, the following: a
12 misrepresentation in any manner, whether intentionally false or due to gross negligence, of a
13 material fact; a promise or representation not made honestly and in good faith; and an intentional
14 failure to disclose a material fact.

15 (7) "Good faith" means honesty in fact and the observation of reasonable commercial
16 standards of fair dealing in the trade as defined and interpreted in section 6A-2-103(1)(b).

17 (8) "Manufacturer" means any person, partnership, firm, association, corporation, or
18 trust, resident or nonresident, who manufactures or assembles new motor vehicles, or imports for
19 distribution through distributors of motor vehicles, or any partnership, firm, association, joint
20 venture, corporation, or trust, resident or nonresident, which is controlled by the manufacturer.

21 (9) "Motor vehicle" means every vehicle intended primarily for use and operation on the
22 public highways which is self-propelled, not including farm tractors and other machines and tools
23 used in the production, harvesting, and care of farm products.

24 (10) "New motor vehicle" means a vehicle which has been sold to a new motor vehicle
25 dealer and which has not been used for other than demonstration purposes and on which the
26 original title has not been issued from the new motor vehicle dealer. The term "motor vehicle"
27 also includes any engine, transmission, or rear axle, regardless of whether it is attached to a
28 vehicle chassis, that is manufactured for installation in any motor-driven vehicle with a gross
29 vehicle weight rating of more than sixteen thousand (16,000) pounds that is required to be
30 registered.

31 (11) "New motor vehicle dealer" means any person engaged in the business of selling,
32 offering to sell, soliciting, or advertising the sale of new motor vehicles and who holds, or held at
33 the time a cause of action under this chapter accrued, a valid sales and service agreement,
34 franchise, or contract, granted by the manufacturer or distributor for the retail sale of that

1 manufacturer's or distributor's new motor vehicles.

2 (12) "Person" means a natural person, corporation, partnership, trust, or other entity, and,
3 in case of an entity, it includes any other entity in which it has a majority interest or effectively
4 controls, as well as the individual officers, directors, and other persons in active control of the
5 activities of that entity.

6 (13) "Relevant market area" means the area within a radius of twenty (20) miles around
7 an existing dealer or the area of responsibility defined in the franchise, whichever is greater.

8 **31-5.1-2. Application of chapter.** -- Any person who engages directly or indirectly in
9 purposeful contacts within this state in connection with the offering or advertising for sale of, or
10 has business dealings with respect to, a motor vehicle within the state shall be subject to the
11 provisions of this chapter and shall be subject to the jurisdiction of the courts of this state, upon
12 service of process in accordance with the provisions of the general laws.

13 **31-5.1-3. Unlawful acts and practices.** -- (a) Unfair methods of competition, and unfair
14 or deceptive acts or practices, as defined in this chapter, are declared to be unlawful.

15 (b) In construing subsection (a) of this section, the courts may be guided by the
16 interpretations of section 45 of the Federal Trade Commission Act (15 U.S.C. section 45), as
17 from time to time amended.

18 (c) The department of revenue ([hereinafter in this chapter, the "department"](#)) may make
19 rules and regulations interpreting the provisions of subsection (a) of this section. The rules and
20 regulations shall not be inconsistent with the rules, regulations, and decisions of the Federal Trade
21 Commission and the federal courts interpreting the provisions of the Federal Trade Commission
22 Act (15 U.S.C. section 45), as from time to time amended.

23 **31-5.1-4. Violations.** -- (a) It shall be deemed a violation of this chapter for any
24 manufacturer or motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or
25 unconscionable and which causes damage to any of the parties involved or to the public.

26 (b) It shall be deemed a violation of this chapter for a manufacturer or officer, agent, or
27 other representative of a manufacturer to coerce, or attempt to coerce, any motor vehicle dealer:

28 (1) To order or accept delivery of any motor vehicle or vehicles, equipment, parts, or
29 accessories for them, or any other commodity or commodities which the motor vehicle dealer has
30 not voluntarily ordered.

31 (2) To order or accept delivery of any motor vehicle with special features, accessories, or
32 equipment not included in the list price of that motor vehicle as publicly advertised by the
33 manufacturer of the vehicle.

34 (3) To participate monetarily in an advertising campaign or contest, or to purchase any

1 promotional materials, or training materials, showroom or other display decorations or materials
2 at the expense of the new motor vehicle dealership.

3 (4) To enter into any agreement with the manufacturer or to do any other act prejudicial
4 to the new motor vehicle dealer by threatening to terminate or cancel a franchise or any
5 contractual agreement existing between the dealer and the manufacturer; except that this
6 subdivision is not intended to preclude the manufacturer or distributor from insisting on
7 compliance with the reasonable terms or provisions of the franchise or other contractual
8 agreement, and notice in good faith to any new motor vehicle dealer of the new motor vehicle
9 dealer's violation of those terms or provisions shall not constitute a violation of the chapter.

10 (5) To refrain from participation in the management of, investment in, or acquisition of
11 any other line of new motor vehicle or related products. This subdivision does not apply unless
12 the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new
13 motor vehicle, the new motor vehicle dealer remains in compliance with any reasonable facilities
14 requirements of the manufacturer, and no change is made in the principal management of the new
15 motor vehicle dealer.

16 (6) To ~~prospectively~~ assent to a release, assignment, novation, waiver, or estoppel in
17 connection with the transfer or voluntary termination of a franchise, or which would relieve any
18 person from the liability to be imposed by this law or to require any controversy between a new
19 motor vehicle dealer and a manufacturer, distributor, or representative to be referred to any
20 person other than the duly constituted courts of this state or of the United States of America, or to
21 the department of revenue of this state, if that referral would be binding upon the new motor
22 vehicle dealer.

23 (7) To order for any person any parts, accessories, equipment, machinery, tools or any
24 commodities.

25 (c) It shall be deemed a violation of this chapter for a manufacturer, or officer, agent, or
26 other representative:

27 (1) ~~⊕~~ To refuse to deliver in reasonable quantities and within a reasonable time after
28 receipt of the dealer's order, to any motor vehicle dealer having a franchise or contractual
29 arrangement for the retail sale of new motor vehicles sold or distributed by the manufacturer, any
30 motor vehicles covered by the franchise or contract, specifically publicly advertised by the
31 manufacturer to be available for immediate delivery. However, the failure to deliver any motor
32 vehicle shall not be considered a violation of this chapter if that failure is due to an act of God,
33 work stoppage or delay due to a strike or labor difficulty, shortage of materials, a freight
34 embargo, or other cause over which the manufacturer, distributor, or wholesaler, or its agent,

1 shall have no control.

2 ~~(ii)~~ ~~(A)~~ (2) To refuse to deliver or otherwise deny to any motor vehicle dealer having a
3 franchise or contractual arrangement for the retail sale of new motor vehicles sold or distributed
4 by the manufacturer any particular new motor vehicle model made or distributed by the
5 manufacturer under the name of the division of the manufacturer of which the dealer is an
6 authorized franchise.

7 ~~(B)~~ (3) It shall be deemed a prima facie violation of this chapter for any automotive
8 vehicle division manufacturer to require any separate franchise or contractual arrangement with
9 any new motor vehicle dealer already a party to a franchise or contractual arrangement with that
10 automotive vehicle division for the retail sale of any particular new motor vehicle model made or
11 distributed by that division.

12 ~~(2)~~ (4) To coerce, or attempt to coerce, any motor vehicle dealer to enter into any
13 agreement with the manufacturer, or ~~its~~ their ~~offieer~~ officers, ~~agent~~ agents, or other ~~representative~~
14 representatives, or to do any other act prejudicial to the dealer, by threatening to cancel any
15 franchise or any contractual agreement existing between the manufacturer and the dealer. Notice
16 in good faith to any motor vehicle dealer of the dealer's violation of any terms or provisions of the
17 franchise or contractual agreement shall not constitute a violation of this chapter.

18 ~~(3)~~ (5) To resort to or use any false or misleading advertisement in connection with his or
19 her business as a manufacturer, an officer, agent, or other representative.

20 ~~(4)~~ ~~(i)~~ (6) To sell or lease any new motor vehicle to, or through, any new motor vehicle
21 dealer at a lower actual price therefore than the actual price offered to any other new motor
22 vehicle dealer for the same model vehicle similarly equipped or to utilize any device, including,
23 but not limited to, sales promotion plans or programs, which result in a lesser actual price. The
24 provisions of this paragraph shall not apply to sales to a new motor vehicle dealer for resale to
25 any unit of the United States government, or to the state or any of its political subdivisions. A
26 manufacturer may not reduce the price of a motor vehicle charged to a dealer or provide different
27 financing terms to a dealer in exchange for the dealer's agreement to:

28 (i) Maintain an exclusive sales or service facility;

29 (ii) Build or alter a sales or service facility; or

30 (iii) Participate in a floor plan or other financing.

31 ~~(ii)~~ (7) To sell or lease any new motor vehicle to any person, except a manufacturer's
32 employee, at a lower actual price than the actual price offered and charged to a new motor vehicle
33 dealer for the same model vehicle similarly equipped or to utilize any device which results in a
34 lesser actual price. The provisions of this paragraph shall not apply to sales to a new motor

1 vehicle dealer for resale to any unit of the United States government, or to the state or any of its
2 political subdivisions.

3 ~~(8)~~(8) To offer in connection with the sale of any new motor vehicle or vehicles directly
4 or indirectly to a fleet purchaser within or without this state terms, discounts, refunds, or other
5 similar types of inducements to that purchaser without making the same offer or offers available
6 to all of its new motor vehicles dealers in this state. No manufacturer may impose or enforce any
7 restrictions against new motor vehicle dealers in this state or their leasing, rental, or fleet
8 divisions or subsidiaries that are not imposed or enforced against any other direct or indirect
9 purchaser from the manufacturer. The provisions of this paragraph shall not apply to sales to a
10 new motor vehicle dealer for resale to any unit of the United States government, or to the state or
11 any of its political subdivisions.

12 (9) To use or consider the performance of a motor vehicle dealer relating to the sale of
13 the manufacturer's vehicles or the motor vehicle dealer's ability to satisfy any minimum sales or
14 market share quota or responsibility relating to the sale of the manufacturer's new vehicles in
15 determining:

16 (i) The motor vehicle dealer's eligibility to purchase program, certified, or other used
17 motor vehicles from the manufacturer;

18 (ii) The volume, type, or model of program, certified, or other used motor vehicles that a
19 motor vehicle dealer is eligible to purchase from the manufacturer;

20 (iii) The price of any program, certified, or other used motor vehicle that the dealer is
21 eligible to purchase from the manufacturer; or

22 (iv) The availability or amount of any discount, credit, rebate, or sales incentive that the
23 dealer is eligible to receive from the manufacturer for the purchase of any program, certified, or
24 other used motor vehicle offered for sale by the manufacturer.

25 ~~(5)~~(10) To offer to sell or to sell parts or accessories to any new motor vehicle dealer for
26 use in the dealer's own business for the purpose of repairing or replacing the same parts or
27 accessories or a comparable part or accessory, at a lower actual price than the actual price
28 charged to any other new motor vehicle dealer for similar parts or accessories to use in the
29 dealer's own business. In those cases where new motor vehicle dealers operate or serve as
30 wholesalers of parts and accessories to retail outlets, these provision shall be construed to prevent
31 a manufacturer, or ~~its~~ their agent agents, from selling to a new motor vehicle dealer who operates
32 and services as a wholesaler of parts and accessories, any parts and accessories that may be
33 ordered by that new motor vehicle dealer for resale to retail outlets, at a lower actual price than
34 the actual price charged a new motor vehicle dealer who does not operate or serve as a wholesaler

1 of parts and accessories.

2 ~~(6)~~(11) To prevent or attempt to prevent by contract or otherwise any new motor vehicle
3 dealer from changing the capital structure of his or her dealership or the means by which or
4 through which the dealer finances the operation of his or her dealership. However, the new motor
5 vehicle dealer shall at all times meet any reasonable capital standards agreed to between the
6 dealership and the manufacturer, provided that any change in the capital structure by the new
7 motor vehicle dealer does not result in a change in the executive management control of the
8 dealership.

9 ~~(7)~~(12) To prevent or attempt to prevent by contract or otherwise any new motor vehicle
10 dealer or any officer, partner, or stockholder of any new motor vehicle dealer from selling or
11 transferring any part of the interest of any of them to any other person or persons or party or
12 parties. Provided, however, that no dealer, officer, partner, or stockholder shall have the right to
13 sell, transfer or assign the franchise or power of management or control without the consent of the
14 manufacturer, except that the consent shall not be unreasonably withheld.

15 ~~(8)~~(13) To obtain money, goods, services, anything of value, or any other benefit from
16 any other person with whom the new motor vehicle dealer does business, on account of or in
17 relation to the transactions between the dealer and that other person, unless that benefit is
18 promptly accounted for and transmitted to the new motor vehicle dealer.

19 ~~(9)~~(14) To compete with a new motor vehicle dealer operating under an agreement or
20 franchise from the manufacturer in the state of Rhode Island, through the ownership, operation, or
21 control of any new motor vehicle dealers in this state or by participation in the ownership,
22 operation, or control of any new motor vehicle dealer in this state. A manufacturer shall not be
23 deemed to be competing when operating, controlling, or owning a dealership either temporarily
24 for a reasonable period in any case not to exceed one year, which one year period may be
25 extended for a one-time additional period of up to six (6) months upon application to and
26 approval by the motor vehicle dealers license and hearing board, which approval shall be subject
27 to the manufacturer demonstrating the need for this extension, and with other new motor vehicle
28 dealers of the same line making being given notice and an opportunity to be heard in connection
29 with said application, or in a bona fide relationship in which an independent person had made a
30 significant investment subject to loss in the dealership and can reasonably expect to acquire full
31 ownership of the dealership on reasonable terms and conditions within a reasonable period of
32 time.

33 ~~(10)~~(15) To refuse to disclose to any new motor vehicle dealer, handling the same line or
34 make, the manner and mode of distribution of that line or make within the relevant market area.

1 ~~(11)~~(16) To increase prices of new motor vehicles which the new motor vehicle dealer
2 had ordered for private retail consumers prior to the new motor vehicle dealer's receipt of the
3 written official price increase notification. A sales contract signed by a private retail consumer
4 shall constitute evidence of an order provided that the vehicle is in fact delivered to that customer.
5 In the event of manufacturer price reductions or cash rebates paid to the new motor vehicle
6 dealer, the amount of any reduction or rebate received by a new motor vehicle dealer shall be
7 passed on to the private retail consumer by the new motor vehicle dealer. Price reductions shall
8 apply to all vehicles in the dealer's inventory which were subject to the price reduction. Price
9 differences applicable to new model or series motor vehicles at the time of the introduction of
10 new models or series shall not be considered a price increase or price decrease. Price changes
11 caused by either: (i) the addition to a motor vehicle of required or optional equipment; (ii)
12 revaluation of the United States dollar, in the case of foreign-make vehicles or components; or
13 (iii) an increase in transportation charges due to increased rates imposed by common carriers,
14 shall not be subject to the provisions of this subdivision.

15 ~~(12)~~(17) To release to any outside party, except under subpoena or as otherwise required
16 by law or in an administrative, judicial, or arbitration proceeding involving the manufacturer or
17 new motor vehicle dealer, any business, financial, or personal information which may be from
18 time to time provided by the new motor vehicle dealer to the manufacturer, without the express
19 written consent of the new motor vehicle dealer.

20 ~~(13)~~(18) To unfairly discriminate among its new motor vehicle dealers with respect to
21 warranty reimbursement, or any program that provides assistance to its dealers, including Internet
22 listings; sales leads; warranty policy adjustments; marketing programs; and dealer recognition
23 programs.

24 ~~(14)~~(19) To unreasonably withhold consent to the sale, transfer, or exchange of the
25 franchise to a qualified buyer capable of being licensed as a new motor vehicle dealer in this
26 state.

27 ~~(15)~~(20) To fail to respond in writing to a request for consent as specified in subdivision
28 ~~(14)~~ (19) of this subsection within sixty (60) days of the receipt of a written request on the forms,
29 if any, generally utilized by the manufacturer or distributor for those purposes and containing the
30 information required therein. The failure to respond shall be deemed to be a consent to the
31 request. A manufacturer may not impose a condition on the approval of a sale, transfer, or
32 exchange of the franchise if the condition would violate the provisions of this chapter if imposed
33 on an existing dealer.

34 ~~(16)~~(21) To unfairly prevent a new motor vehicle dealer from receiving fair and

1 reasonable compensation for the value of the new motor vehicle dealership.

2 ~~(17)~~(22) To require that a new motor vehicle dealer execute a written franchise
3 agreement that does not contain substantially the same provisions as the franchise agreement
4 being offered to other new motor vehicle dealers handling the same line or make. In no instance
5 shall the term of any franchise agreement be of a duration of less than three (3) years.

6 ~~(18)~~(23) To require that a new motor vehicle dealer provide exclusive facilities,
7 personnel, or display space taking into consideration changing market conditions, or that a dealer
8 execute a site control agreement giving a manufacturer control over the dealer's facilities.

9 ~~(19)~~(24) To require that a dealer expand facilities without a guarantee of a sufficient
10 supply of new motor vehicles to justify that expansion or to require that a dealer expand facilities
11 to a greater degree than is necessary to sell and service the number of vehicles that the dealer sold
12 and serviced in the most recent calendar year.

13 ~~(20)~~(25) To prevent a dealer from adjusting his or her facilities to permit a relocation of
14 office space, showroom space, and service facilities so long as the relocation is within five
15 hundred (500) yards of the present location.

16 ~~(21)~~(26) To engage in any predatory practice against a new motor vehicle dealer.

17 (d) ~~(H)~~ It shall be a violation of this chapter for a manufacturer to terminate, cancel, or
18 fail to renew the franchise of a new motor vehicle dealer except as provided in this subsection:

19 ~~(2)~~(1) Notwithstanding the terms, provisions, or conditions of any franchise, whether
20 entered into before or after the enactment of this chapter or any of its provisions, or
21 notwithstanding the terms or provisions of any waiver, whether entered into before or after the
22 enactment of this chapter or any of its provisions, no manufacturer shall cancel, terminate, or fail
23 to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has:

- 24 (i) Satisfied the notice requirement ~~of subdivision (5)~~ of this subsection;
- 25 (ii) Has good cause for the cancellation, termination, or nonrenewal;
- 26 (iii) Has not committed any violations set forth in subsection (b) of this section; and
- 27 (iv) Has acted in good faith as defined in this chapter and has complied with all
28 provisions of this chapter.

29 ~~(3)~~(2) Notwithstanding the terms, provisions, or conditions of any franchise or the terms
30 or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation,
31 or nonrenewal when:

- 32 (i) There is a failure by the new motor vehicle dealer to comply with a provision of the
33 franchise which provision is both reasonable and of material significance to the franchise
34 relationship, provided that the dealer has been notified in writing of the failure within one

1 hundred eighty (180) days after the manufacturer first acquired knowledge of that failure;

2 (ii) If the failure by the new motor vehicle dealer, as provided in paragraph (i) of this
3 subdivision, relates to the performance of the new motor vehicle dealer in sales or service, then
4 good cause shall be defined as the failure of the new motor vehicle dealer to comply with
5 reasonable performance criteria established by the manufacturer if the new motor vehicle dealer
6 was apprised by the manufacturer in writing of that failure; and:

7 (A) ~~This~~ The notification stated that notice was provided of failure of performance
8 pursuant to paragraph (i) of this subdivision;

9 (B) The new motor vehicle dealer was afforded a reasonable opportunity, for a period of
10 not less than six (6) months, to comply with those criteria; and

11 (C) The new motor vehicle dealer did not demonstrate substantial progress towards
12 compliance with the manufacturer's performance criteria during that period.

13 ~~(4)~~(3) The manufacturer shall have the burden of proof for showing that the notice
14 requirements have been complied with, that there was good cause for the franchise termination,
15 cancellation or nonrenewal, and that the manufacturer has acted in good faith.

16 ~~(5) Notification of termination, cancellation, and nonrenewal.~~

17 (i) Notwithstanding the terms, provisions, or conditions of any franchise, prior to the
18 termination, cancellation, or nonrenewal of any franchise, the manufacturer shall furnish
19 notification of the termination, cancellation, or nonrenewal to the new motor vehicle dealer as
20 follows:

21 (A) In the manner described in paragraph (ii) of this subdivision; and

22 (B) Not fewer than ninety (90) days prior to the effective date of the termination,
23 cancellation, or nonrenewal; or

24 (C) Not fewer than fifteen (15) days prior to the effective date of the termination,
25 cancellation, or nonrenewal for any of the following reasons:

26 (I) Insolvency of the new motor vehicle dealer, or the filing of any petition by or against
27 the new motor vehicle dealer under any bankruptcy or receivership law;

28 (II) Failure of the new motor vehicle dealer to conduct his customary sales and service
29 operations during his or her customary business hours for seven (7) consecutive business days;

30 (III) Final conviction of the new motor vehicle dealer, or any owner or operator of the
31 dealership, of a crime which is associated with or related to the operation of the dealership;

32 (IV) Revocation of any license which the new motor vehicle dealer is required to have to
33 operate a dealership; or

34 (D) Not fewer than one hundred eighty (180) days prior to the effective date of the

1 termination or cancellation where the manufacturer or distributor is discontinuing the sale of the
2 product line.

3 (ii) Notification under this subsection shall be in writing, shall be by certified mail or
4 personally delivered to the new motor vehicle dealer, and shall contain:

5 (A) A statement of intention to terminate, cancel, or not to renew the franchise;

6 (B) A statement of the reasons for the termination, cancellation, or nonrenewal; and

7 (C) The date on which the termination, cancellation, or nonrenewal shall take effect.

8 ~~(6) Payments.~~

9 ~~(i)~~ (iii) Upon the involuntary or voluntary termination, nonrenewal, or cancellation of any
10 franchise, by either the manufacturer, or the new motor vehicle dealer, notwithstanding the terms
11 of any franchise whether entered into before or after the enactment of this chapter or any of its
12 provisions, the new motor vehicle dealer shall be allowed fair and reasonable compensation by
13 the manufacturer for the following:

14 ~~(A) New motor vehicle inventory which has been acquired from the manufacturer;~~

15 ~~(B) Supplies and parts which have been acquired from the manufacturer;~~

16 ~~(C) Equipment and furnishings, provided the new motor vehicle dealer purchased them~~
17 ~~from the manufacturer or its approved sources; and~~

18 ~~(D) Special tools. — The fair and reasonable compensation for the above shall in no~~
19 ~~instance be less than the acquisition price and shall be paid by the manufacturer within ninety~~
20 ~~(90) days of the effective date of the termination, cancellation, or nonrenewal, provided the new~~
21 ~~motor vehicle dealer has clear title to the inventory and other items and is in a position to convey~~
22 ~~that title to the manufacturer.~~

23 (A) The new motor vehicle dealer's cost, less allowances paid by the manufacturer, of
24 each new, undamaged, unsold and unaltered, except for dealer installed manufacturer-authorized
25 accessories, motor vehicle, regardless of model year purchased from the manufacturer or another
26 dealer of the same line-make in the ordinary course of business within twenty-four (24) months of
27 termination, having five hundred (500) or fewer miles recorded on the odometer that is in the new
28 motor vehicle dealer's inventory at the time of termination, nonrenewal, or cancellation.

29 (B) The new motor vehicle dealer's cost of each new, unused, undamaged, and unsold
30 part or accessory that is in the current parts catalogue or is identical to a part or accessory in the
31 current parts catalogue except for the number assigned to the part or accessory due to a change in
32 the number after the purchase of the part or accessory, and that is still in the original, resalable
33 merchandising package and in an unbroken lot, except that, in the case of sheet metal, a
34 comparable substitute for the original package may be used.

1 (C) The fair market value of each undamaged sign, normal wear and tear excepted,
2 owned by the dealer that bears a trademark or trade name used or claimed by the manufacturer
3 that were purchased as a requirement of the manufacturer.

4 (D) The fair market value of all special tools, and automotive services equipment owned
5 by the dealer that: (I) Were recommended in writing and designated as special tools and
6 equipment; (II) Were purchased as a requirement of the manufacturer; and (III) Are in usable and
7 good condition except for reasonable wear and tear.

8 (E) The cost of transporting, handling, packing, storing, and loading any property that is
9 subject to repurchase under this section.

10 (F) The payments above are due within sixty (60) days from the date the dealer submits
11 an accounting to the manufacturer of the vehicle inventory subject to repurchase, and for other
12 items within sixty (60) days from the date the dealer submits an accounting of the other items
13 subject to repurchase, provided, the new motor vehicle dealer has clear title (or will have clear
14 title upon using the repurchase funds to obtain clear title) to the inventory and other items and is
15 in a position to convey that title to the manufacturer. If the inventory or other items are subject to
16 a security interest, the manufacturer, wholesaler, or franchisor may make payment jointly to the
17 dealer and the holder of the security interest. In no event shall the payments be made later than
18 ninety (90) days of the effective date of the termination, cancellation, or nonrenewal.

19 ~~(ii)~~(iv) In the event the termination, cancellation or nonrenewal is involuntary and not
20 pursuant to subsection (3)(i)(C) of this section, and:

21 (A) The new motor vehicle dealer is leasing the dealership facilities from a lessor other
22 than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent
23 to the rent for the unexpired term of the lease or ~~one~~ two (2) year's rent, whichever is less; or

24 (B) If the new motor vehicle dealer owns the facilities, the manufacturer shall pay the
25 new motor vehicle dealer a sum equivalent to the reasonable rental value of the facilities for ~~one~~
26 two (2) years ~~year~~; if:

27 (I) The new motor vehicle dealer is unable to reasonably utilize the facilities for another
28 purpose;

29 (II) The new motor vehicle dealer, or the manufacturer acting as ~~his~~ its agent, is unable
30 to make arrangements for the cancellation or assumption of its lease obligations by another party
31 in the case of leased facilities, or is unable to sell dealer owned facilities, and

32 (III) Only to the extent those facilities were required as a condition of the franchise and
33 used to conduct sales and service operations related to the franchise product.

34 ~~(ii)~~(v) In addition to any injunctive relief and any other damages allowable by this

1 chapter, if the manufacturer is discontinuing the product line or fails to prove that there was good
2 cause for the termination, cancellation, or nonrenewal or if the manufacturer fails to prove that
3 the manufacturer acted in good faith, then the manufacturer shall pay the new motor vehicle
4 dealer fair and reasonable compensation for the value of the dealership as an ongoing business.

5 In addition to the other compensation described in paragraphs (iii) and (iv) above and in
6 this section, the manufacturer shall also reimburse the dealer for any costs incurred for facility
7 upgrades or alterations required by the manufacturer within two (2) years of the effective date of
8 the termination.

9 (vi) If a manufacturer is discontinuing the product line and thus as a result a franchise for
10 the sale of motor vehicles is subject to termination, cancellation, or nonrenewal, the manufacturer
11 shall:

12 (A) Authorize the dealer at the dealer's option, that remains a franchised dealer of the
13 manufacturer regardless of the discontinuation of a product line, to continue servicing and
14 supplying parts (without prejudice to the right of the manufacturer to also authorize other
15 franchised dealers to provide service and parts for a discontinued produce line), including
16 services and parts pursuant to a warranty issued by the manufacturer for any goods or services
17 marketed by the dealer pursuant to the motor vehicle franchise for a period of not less than five
18 (5) years from the effective date of the termination, cancellation, or nonrenewal;

19 (B) Continue to reimburse the dealer that remains a franchised dealer of the manufacturer
20 regardless of the discontinuation of a product line or another franchised dealer of the
21 manufacturer in the area for warranty parts and service in an amount and on terms not less
22 favorable than those in effect prior to the termination, cancellation, or nonrenewal;

23 (C) The manufacturer shall continue to supply the dealer that remains a franchised dealer
24 of the manufacturer regardless of the discontinuation of a product line or another franchised
25 dealer of the manufacturer in the area with replacement parts for any goods or services marketed
26 by the dealer pursuant to the franchise agreement for a period of not less than five (5) years from
27 the effective date of the termination, cancellation, or nonrenewal, at a price and on terms not less
28 favorable than those in effect prior to the termination, cancellation, or nonrenewal;

29 (vii) The requirement of this section do not apply to a termination, cancellation or
30 nonrenewal due to the sale of the assets or stock of the motor vehicle dealer.

31 (D) To be entitled to facilities assistance from the manufacturer as described above, the
32 dealer shall have the obligation to mitigate damages by listing the dealership facilities for lease or
33 sublease with a licensed real estate agent within thirty (30) days after the effective date of the
34 termination of the franchise and thereafter be reasonably cooperating with such real estate agent

1 in the performance of the agent's duties and responsibilities. If the dealer is able to lease or
2 sublease the dealership facilities on terms that are consistent with local zoning requirements to
3 preserve the right to sell motor vehicles from the dealership facilities and the terms of the dealer's
4 lease, the dealer shall be obligated to pay the manufacturer the net revenue received from such
5 mitigation, but only following receipt of facilities assistance payments pursuant to this chapter,
6 and only up to the total amount of facilities assistance payments that the dealer has received.

7 (e) It shall be deemed a violation of this chapter for a motor vehicle dealer:

8 (1) To require a purchaser of a new motor vehicle, as a condition of the sale and delivery
9 thereof, to also purchase special features, equipment, parts, or accessories not desired or
10 requested by the purchaser. This prohibition shall not apply as to special features, equipment,
11 parts, or accessories which are already installed on the car before sale by the dealer.

12 (2) To represent and sell as a new motor vehicle any motor vehicle which is a used motor
13 vehicle.

14 (3) To resort to or use any false or misleading advertisement in connection with his or
15 her business as a motor vehicle dealer.

16 (4) To engage in any deception or fraudulent practice in the repair of motor vehicles.

17 **31-5.1-21. Promotional activities.** -- (a) Upon filing of a claim, a manufacturer, ~~factory~~
18 ~~branch~~, or distributor shall compensate a dealer for any incentive or reimbursement program
19 sponsored by the manufacturer, ~~factory branch~~, or distributor, under the terms of which the dealer
20 is eligible for compensation.

21 (b) (1) A claim filed under this section shall be:

22 (i) In the manner and form prescribed by the manufacturer, factory branch, or distributor;
23 and

24 (ii) Approved or disapproved within thirty (30) days of receipt.

25 (2) A claim not approved or disapproved within thirty (30) days of receipt shall be
26 deemed approved.

27 (3) Payment of a claim filed under this section shall be made within thirty (30) days of
28 approval.

29 (c) (1) If a claim filed under this section is shown by the manufacturer, ~~factory branch~~, or
30 distributor to be false or unsubstantiated, the manufacturer, ~~factory branch~~, or distributor may
31 charge back the claim within ~~twenty-four (24) months~~ one year from the date the claim was paid
32 or credit issued or one year from the end of a manufacturer program that does not exceed one year
33 in length, whichever is later.

34 (2) This paragraph does not limit the right of a manufacturer, ~~factory branch~~, or

1 distributor to charge back for any claim that is proven fraudulent.

2 SECTION 2. This act shall take effect upon passage.

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LC02397/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES -- REGULATION OF BUSINESS
PRACTICES AMONG MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, AND
DEALERS

- 1 This act would amend various sections of the motor vehicle laws with respect to
- 2 regulation of business practices among motor vehicle manufacturers, distributors and dealers.
- 3 This act would take effect upon passage.

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LC02397/SUB A
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