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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

A N A C T

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

Introduced By: Senator William A. Walaska

Date Introduced: February 27, 2014

Referred To: Senate Commerce

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 31-5.1-4, 31-5.1-6 and 31-5.1-21 of the General Laws in Chapter
2 31-5.1 entitled "Regulation of Business Practices Among Motor Vehicle Manufacturers,
3 Distributors, and Dealers" are hereby amended to read as follows:

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

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

9 (1) To order or accept delivery of any motor vehicle or vehicles, equipment, parts, or
10 accessories for them, or any other commodity or commodities ~~which~~ that the motor vehicle dealer
11 has not voluntarily ordered.

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

15 (3) To participate monetarily in an advertising campaign or contest, or to purchase any
16 promotional materials, or training materials, showroom, or other display decorations, or materials
17 at the expense of the new motor vehicle dealership.

18 (4) To enter into any agreement with the manufacturer or to do any other act prejudicial

1 to the new motor vehicle dealer by threatening to terminate or cancel a franchise or any
2 contractual agreement existing between the dealer and the manufacturer; except that this
3 subdivision is not intended to preclude the manufacturer or distributor from insisting on
4 compliance with the reasonable terms or provisions of the franchise or other contractual
5 agreement, ~~and~~ ~~n~~Notice in good faith to any new motor vehicle dealer of the new motor vehicle
6 dealer's violation of those terms or provisions shall not constitute a violation of the chapter.

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

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

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

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

23 (1) To refuse to deliver in reasonable quantities and within a reasonable time after
24 receipt of the dealer's order, to any motor vehicle dealer having a franchise or contractual
25 arrangement for the retail sale of new motor vehicles sold or distributed by the manufacturer, any
26 motor vehicles covered by the franchise or contract, specifically publicly advertised by the
27 manufacturer to be available for immediate delivery. However, the failure to deliver any motor
28 vehicle shall not be considered a violation of this chapter if that failure is due to an act of God,
29 work stoppage, or delay due to a strike or labor difficulty, shortage of materials, a freight
30 embargo, or other cause over which the manufacturer, distributor, or wholesaler, ~~or~~ its agent,
31 shall have no control.

32 (2) To refuse to deliver, or otherwise deny, to any motor vehicle dealer having a
33 franchise or contractual arrangement for the retail sale of new motor vehicles sold or distributed
34 by the manufacturer any particular new motor vehicle model made or distributed by the

1 manufacturer under the name of the division of the manufacturer of which the dealer is an
2 authorized franchise.

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

8 (4) To coerce, or attempt to coerce, any motor vehicle dealer to enter into any agreement
9 with the manufacturer, or their officers, agents, or other representatives, or to do any other act
10 prejudicial to the dealer, by threatening to cancel any franchise or any contractual agreement
11 existing between the manufacturer and the dealer. Notice in good faith to any motor vehicle
12 dealer of the dealer's violation of any terms or provisions of the franchise or contractual
13 agreement shall not constitute a violation of this chapter.

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

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

- 24 (i) Maintain an exclusive sales or service facility;
- 25 (ii) Build or alter a sales or service facility; or
- 26 (iii) Participate in a floor plan or other financing.

27 (7) To sell or lease any new motor vehicle to any person, except a manufacturer's
28 employee, at a lower actual price than the actual price offered and charged to a new motor vehicle
29 dealer for the same model vehicle similarly equipped or to utilize any device which results in a
30 lesser actual price. The provisions of this paragraph shall not apply to sales to a new motor
31 vehicle dealer for resale to any unit of the United States government, or to the state or any of its
32 political subdivisions.

33 (8) To offer in connection with the sale of any new motor vehicle or vehicles, directly or
34 indirectly, to a fleet purchaser, within or without this state, terms, discounts, refunds, or other

1 similar types of inducements to that purchaser without making the same offer or offers available
2 to all of its new motor vehicles dealers in this state. No manufacturer may impose or enforce any
3 restrictions against new motor vehicle dealers in this state or their leasing, rental, or fleet
4 divisions or subsidiaries that are not imposed or enforced against any other direct or indirect
5 purchaser from the manufacturer. The provisions of this paragraph shall not apply to sales to a
6 new motor vehicle dealer for resale to any unit of the United States government, or to the state or
7 any of its political subdivisions.

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

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

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

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

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

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

32 (11) To prevent, or attempt to prevent, by contract or otherwise, any new motor vehicle
33 dealer from changing the capital structure of his or her dealership or the means by which, or
34 through which the dealer finances the operation of his or her dealership. However, the new motor

1 vehicle dealer shall at all times meet any reasonable capital standards agreed to between the
2 dealership and the manufacturer, provided that any change in the capital structure by the new
3 motor vehicle dealer does not result in a change in the executive management control of the
4 dealership.

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

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

15 (14) To compete with a new motor vehicle dealer operating under an agreement or
16 franchise from the manufacturer in the state of Rhode Island, through the ownership, operation, or
17 control of any new motor vehicle dealers in this state, or by participation in the ownership,
18 operation, or control of any new motor vehicle dealer in this state. A manufacturer shall not be
19 deemed to be competing when operating, controlling, or owning a dealership, either temporarily
20 for a reasonable period, in any case not to exceed one year, which one-year (1) period may be
21 extended for a one-time, additional period of up to six (6) months upon application to, and
22 approval by, the motor vehicle dealers license and hearing board, which approval shall be subject
23 to the manufacturer demonstrating the need for this extension, and with other new motor vehicle
24 dealers of the same line making being given notice and an opportunity to be heard in connection
25 with said application, or in a bona fide relationship in which an independent person had made a
26 significant investment subject to loss in the dealership and can reasonably expect to acquire full
27 ownership of the dealership on reasonable terms and conditions within a reasonable period of
28 time.

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

31 (16) To increase prices of new motor vehicles ~~which~~ that the new motor vehicle dealer
32 had ordered for private retail consumers prior to the new motor vehicle dealer's receipt of the
33 written, official price increase notification. A sales contract signed by a private retail consumer
34 shall constitute evidence of an order, provided that the vehicle is in fact delivered to that

1 customer. In the event of manufacturer price reductions or cash rebates paid to the new motor
2 vehicle dealer, the amount of any reduction or rebate received by a new motor vehicle dealer shall
3 be passed on to the private retail consumer by the new motor vehicle dealer. Price reductions
4 shall apply to all vehicles in the dealer's inventory ~~which~~ that were subject to the price reduction.
5 Price differences applicable to new model or series motor vehicles at the time of the introduction
6 of new models or series shall not be considered a price increase or price decrease. Price changes
7 caused by either: (i) ~~T~~The addition to a motor vehicle of required or optional equipment; (ii)
8 ~~R~~Reevaluation of the United States dollar, in the case of foreign-make vehicles or components; or
9 (iii) ~~A~~An increase in transportation charges due to increased rates imposed by common carriers,
10 shall not be subject to the provisions of this subdivision.

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

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

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

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

29 (21) To unfairly prevent a new motor vehicle dealer from receiving fair and reasonable
30 compensation for the value of the new motor vehicle dealership.

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

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

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

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

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

12 (27) To prevent, prohibit, or coerce any new motor vehicle dealer from charging any
13 consumer any fee allowed to be charged by the dealer under Rhode Island law or regulation
14 except as related to eligible participants under a military discount program in which the dealer
15 voluntarily participates and receives financial compensation from the manufacturer or distributor,
16 to the extent that such a program is not offered to the general public.

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

19 (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 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 (2) Notwithstanding the terms, provisions, or conditions of any franchise or the terms or
30 provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation, or
31 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) The notification stated that notice was provided of failure of performance pursuant to
8 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 (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 (i) Notwithstanding the terms, provisions, or conditions of any franchise, prior to the
17 termination, cancellation, or nonrenewal of any franchise, the manufacturer shall furnish
18 notification of the termination, cancellation, or nonrenewal to the new motor vehicle dealer as
19 follows:

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

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

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

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

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

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

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

33 (D) Not fewer than one hundred eighty (180) days prior to the effective date of the
34 termination or cancellation where the manufacturer or distributor is discontinuing the sale of the

1 product line.

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

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

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

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

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

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

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

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

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

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

33 (F) The payments above are due within sixty (60) days from the date the dealer submits
34 an accounting to the manufacturer of the vehicle inventory subject to repurchase, and for other

1 items within sixty (60) days from the date the dealer submits an accounting of the other items
2 subject to repurchase, provided, the new motor vehicle dealer has clear title (or will have clear
3 title upon using the repurchase funds to obtain clear title) to the inventory and other items and is
4 in a position to convey that title to the manufacturer. If the inventory or other items are subject to
5 a security interest, the manufacturer, wholesaler, or franchisor may make payment jointly to the
6 dealer and the holder of the security interest. In no event shall the payments be made later than
7 ninety (90) days of the effective date of the termination, cancellation, or nonrenewal.

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

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

13 (B) If the new motor vehicle dealer owns the facilities, the manufacturer shall pay the
14 new motor vehicle dealer a sum equivalent to the reasonable rental value of the facilities for two
15 (2) years; if:

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

18 (II) The new motor vehicle dealer, or the manufacturer acting as its agent, is unable to
19 make arrangements for the cancellation or assumption of its lease obligations by another party in
20 the case of leased facilities, or is unable to sell dealer-owned facilities; and

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

23 (v) In addition to any injunctive relief and any other damages allowable by this chapter,
24 if the manufacturer is discontinuing the product line or fails to prove that there was good cause
25 for the termination, cancellation, or nonrenewal, or if the manufacturer fails to prove that the
26 manufacturer acted in good faith, then the manufacturer shall pay the new motor vehicle dealer
27 fair and reasonable compensation for the value of the dealership as an ongoing business.

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

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

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

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

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

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

20 (D) To be entitled to facilities assistance from the manufacturer as described above, the
21 dealer shall have the obligation to mitigate damages by listing the dealership facilities for lease or
22 sublease with a licensed real estate agent within thirty (30) days after the effective date of the
23 termination of the franchise and thereafter be reasonably cooperating with such real estate agent
24 in the performance of the agent's duties and responsibilities. If the dealer is able to lease or
25 sublease the dealership facilities on terms that are consistent with local zoning requirements to
26 preserve the right to sell motor vehicles from the dealership facilities and the terms of the dealer's
27 lease, the dealer shall be obligated to pay the manufacturer the net revenue received from such
28 mitigation, but only following receipt of facilities assistance payments pursuant to this chapter,
29 and only up to the total amount of facilities assistance payments that the dealer has received.

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

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

1 (2) To represent and sell as a new motor vehicle any motor vehicle ~~which~~ that is a used
2 motor vehicle.

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

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

6 **31-5.1-6. Warranty agreement.** -- (a) Every manufacturer shall properly fulfill any
7 warranty agreement and adequately and fairly compensate each of its motor vehicle dealers for
8 labor and parts. In no event shall that compensation fail to include reasonable compensation for
9 diagnostic work, as well as repair service and labor. All claims made by motor vehicle dealers for
10 labor and parts shall be paid in accord with the provisions of subsection (b) of this section. Any
11 delay in payment after approval or disapproval that is caused by conditions beyond the reasonable
12 control of the manufacturer shall not constitute a violation of this section. Reimbursement for
13 warranty repairs or diagnostic work shall be at the dealer retail rate in effect at the time the
14 warranty repair or diagnostic work is performed.

15 (b) A claim filed under this section by a dealer with a manufacturer or distributor shall
16 be:

17 (1) In the manner and form prescribed by the manufacturer or distributor; and

18 (2) (i) Approved or disapproved within (30) days of receipt.

19 (ii) A claim not approved or disapproved within thirty (30) days of receipt shall be
20 deemed approved.

21 (iii) Payment of or credit issued on a claim filed under this section shall be made within
22 thirty (30) days of approval.

23 (3) (i) If a claim filed under this section is shown by the manufacturer or distributor to be
24 false or unsubstantiated, the manufacturer or distributor may charge back the claim within twelve
25 (12) months from the date the claim was paid or credit issued.

26 (ii) A manufacturer or distributor shall not charge back a claim based solely on a motor
27 vehicle dealer's incidental failure to comply with a specific claim processing requirement, such as
28 a clerical error or other administrative technicality that does not put into question the legitimacy
29 of the claim after the motor vehicle dealer properly resubmits the claim in accordance with the
30 manufacturer's or distributor's submission guidelines.

31 (iii) A dealer shall have no less than sixty (60) days from the date of notification by a
32 manufacturer or distributor of a charge back to the dealer to resubmit a claim for payment or
33 compensation if the claim was denied for a dealer's incidental failure as set forth in subsection
34 (3)(ii) of this section, whether the chargeback was a direct or an indirect transaction.

1 ~~(iv)~~(iv) This subdivision does not limit the right of a manufacturer or distributor to charge
2 back for any claim that is proven to be fraudulent.

3 **31-5.1-21. Promotional activities.** -- (a) Upon filing of a claim, a manufacturer or
4 distributor shall compensate a dealer for any incentive or reimbursement program sponsored by
5 the manufacturer or distributor, under the terms of which the dealer is eligible for compensation.

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

7 (i) In the manner and form prescribed by the manufacturer or distributor; and

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

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

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

13 (c)(1) If a claim filed under this section is shown by the manufacturer or distributor to be
14 false or unsubstantiated, the manufacturer or distributor may charge back the claim within one
15 year from the date the claim was paid or credit issued or one year from the end of a manufacturer
16 program that does not exceed one year in length, whichever is later.

17 (i) A manufacturer or distributor shall not charge back a claim based solely on a motor
18 vehicle dealer's incidental failure to comply with a specific claim processing requirement, such as
19 a clerical error or other administrative technicality that does not put into question the legitimacy
20 of the claim after the motor vehicle dealer properly resubmits the claim in accordance with the
21 manufacturer's or distributor's submission guidelines.

22 (ii) A dealer shall have no less than sixty (60) days from the date of notification by a
23 manufacturer or distributor of a charge back to the dealer to resubmit a claim for payment or
24 compensation if the claim was denied for a dealer's incidental failure as set forth in subsection
25 (c)(1)(ii) whether the chargeback was a direct or an indirect transaction.

26 (2) This paragraph does not limit the right of a manufacturer or distributor to charge back
27 for any claim that is proven fraudulent.

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

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LC004761/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 make it a violation for a motor vehicle manufacturer or representative to
2 prevent any motor vehicle dealer from charging a consumer any fee allowed under law. It would
3 also regulate the manner in which a manufacturer or distributor would be allowed to charge back
4 a claim.

5 This act would take effect upon passage.

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LC004761/SUB A
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