

1 HB347
2 117960-3
3 By Representative Johnson
4 RFD: Commerce
5 First Read: 19-JAN-10

1 ENGROSSED

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4 A BILL

5 TO BE ENTITLED

6 AN ACT

7

8 To amend Sections 8-20-3, 8-20-4, 8-20-5, and
9 8-20-7, Code of Alabama 1975, relating to the Motor Vehicle
10 Franchise Act; to add to the definition of "new vehicle" in
11 franchise law; to add additional acts constituting unfair and
12 deceptive trade practices; to alter the buy back requirements
13 upon termination; to require repurchase of certain motor
14 vehicles, parts inventory, special tools, equipment, and signs
15 upon termination; to require the manufacturer to pay for
16 certain upgrades or alterations upon termination; to require
17 payment to a dealer for the value of the franchise on
18 cessation of a line make; to provide further for audits,
19 vehicle exports, termination assistance on elimination of
20 certain lines, and industry reorganization; to provide for
21 application of the franchise law to certain agreements between
22 a dealer and manufacturer; and to prohibit a manufacturer from
23 engaging in unreasonable actions.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Sections 8-20-3, 8-20-4, 8-20-5, and
26 8-20-7, Code of Alabama 1975, are amended to read as follows:

1 "§8-20-3.

2 "For the purpose of this chapter, the following
3 terms shall have the meanings respectively ascribed to them in
4 this section, except where the context clearly indicates a
5 different meaning:

6 "(1) COERCE. The failure to act in good faith in
7 performing or complying with any term or provision of the
8 franchise or dealer agreement, except that recommendation,
9 persuasion, urging, or argument shall not be deemed to
10 constitute a lack of good faith.

11 "~~(1)~~ (2) DEALER AGREEMENT or FRANCHISE. The written
12 contract between any new motor vehicle manufacturer and any
13 new motor vehicle dealer which purports to fix the legal
14 rights and liabilities of the parties to such agreement or
15 contract, and pursuant to which the dealer purchases and
16 resells the franchise product or leases or rents the
17 dealership premises.

18 "~~(2)~~ (3) DISTRIBUTOR or WHOLESALER. A person,
19 whether a resident or a nonresident, other than a
20 manufacturer, who sells or distributes motor vehicles to motor
21 vehicle dealers or who maintains distributor representatives
22 within the state.

23 "~~(3)~~ (4) DISTRIBUTOR BRANCH. A branch office
24 maintained by a distributor or wholesaler.

25 "~~(4)~~ (5) DISTRIBUTOR REPRESENTATIVE. A
26 representative employed by a distributor or wholesaler for the

1 purpose of making or promoting the sale of the distributor's
2 or wholesaler's new motor vehicles to motor vehicle dealers or
3 for supervising or contracting the motor vehicle dealers or
4 prospective motor vehicle dealers.

5 "~~(5)~~ (6) FACTORY BRANCH. A branch office maintained
6 by a manufacturer in order to direct and supervise the
7 representatives of the manufacturer.

8 "~~(6)~~ (7) FACTORY REPRESENTATIVE. A person employed
9 by a manufacturer for the purpose of making or promoting the
10 sale of the manufacturer's new motor vehicles to motor vehicle
11 dealers or distributors or for supervising or contacting the
12 motor vehicle dealers or prospective motor vehicle dealers.

13 "~~(7)~~ (8) GOOD FAITH. Honesty in fact and the
14 observation of reasonable commercial standards of fair dealing
15 in the trade as is defined and interpreted in paragraph (1) (b)
16 of Section 7-2-103.

17 "(9) LINE MAKE. A collection of models, series, or
18 groups of motor vehicles manufactured by or for a particular
19 manufacturer, distributor, or importer offered for sale,
20 lease, or distribution pursuant to a common brand name or
21 mark; provided however:

22 "1. Multiple brand names or marks may constitute a
23 single line make, but only when included in a common dealer
24 agreement and the manufacturer, distributor, or importer
25 offers such vehicles bearing the multiple names or marks

1 together only, and not separately, to its authorized dealers;
2 and

3 "2. Motor vehicles bearing a common brand name or
4 mark may constitute separate line makes when pertaining to
5 motor vehicles subject to separate dealer agreements or when
6 such vehicles are intended for different types of use.

7 ~~"(8)~~ (10) MANUFACTURER. Any person engaged in the
8 manufacturing or assembling of new motor vehicles as a regular
9 business or any person who is controlled by the manufacturer.

10 ~~"(9)~~ (11) MOTOR VEHICLE. Every vehicle intended
11 primarily for use and operation on the public highways which
12 is self-propelled.

13 ~~"(10)~~ (12) MOTOR VEHICLE DEALER. A person operating
14 under a dealer agreement from a manufacturer or distributor
15 and who is engaged regularly in the business of buying,
16 selling, or exchanging motor vehicles in this state and who
17 has in this state an established place of business.

18 "(13) NET COST. The price the dealer pays for new
19 motor vehicles, supplies, parts, equipment, signs,
20 furnishings, and special tools, including the freight costs to
21 the dealer's location, minus any applicable discounts obtained
22 by the dealer.

23 ~~"(11)~~ (14) NEW MOTOR VEHICLE. A vehicle which has
24 been sold to a new motor vehicle dealer and which has not been
25 used for other than demonstration purposes and on which the
26 original title has not been issued from the new motor vehicle

1 dealer. A new motor vehicle shall also mean an engine,
2 transmission, or rear axle manufactured for installation in a
3 vehicle having as its primary purpose the transport of a
4 person or persons or property on a public highway and having a
5 gross vehicle weight rating of more than 16,000 pounds,
6 whether or not attached to a vehicle chassis.

7 "~~(12)~~ (15) PERSON. An individual, firm, partnership,
8 association, joint stock company, corporation, or other legal
9 entity or a combination of legal entities.

10 "~~(13)~~ (16) RELEVANT MARKET AREA. The area within a
11 radius of 20 miles around an existing dealer or the area of
12 responsibility defined in the franchise, whichever is greater;
13 except that, where a manufacturer is seeking to establish an
14 additional new motor vehicle dealer and there are one or more
15 existing new motor vehicle dealers of the same line make
16 within a 10 mile radius of the proposed dealer site, the
17 "relevant market area" shall in all instances be the area
18 within a radius of 10 miles around an existing dealer.

19 "§8-20-4.

20 "Notwithstanding the terms, provisions, or
21 conditions of any dealer agreement or franchise or the terms
22 or provisions of any waiver, prior to the termination,
23 cancellation, or nonrenewal of any dealer agreement or
24 franchise, the following acts or conduct shall constitute
25 unfair and deceptive trade practices:

1 "(1) For any manufacturer, factory branch, factory
2 representative, distributor, or wholesaler, distributor
3 branch, or distributor representative to coerce or attempt to
4 coerce any motor vehicle dealer to do any of the following:

5 "a. To accept, buy or order any motor vehicle or
6 vehicles, appliances, equipment, parts, or accessories
7 therefor, or any other commodity or commodities or service or
8 services which such motor vehicle dealer has not voluntarily
9 ordered or requested except items required by applicable
10 local, state or federal law; or to require a motor vehicle
11 dealer to accept, buy, order or purchase such items in order
12 to obtain any motor vehicle or vehicles or any other commodity
13 or commodities which have been ordered or requested by such
14 motor vehicle dealer~~7~~.

15 "b. To order or accept delivery of any motor vehicle
16 with special features, appliances, accessories, or equipment
17 not included in the list price of said motor vehicles as
18 publicly advertised by the manufacturer thereof, except items
19 required by applicable law~~7~~.

20 "c. To enter into any agreement with such
21 manufacturer, factory branch, factory representative,
22 distributor, or wholesaler, distributor branch or distributor
23 representative, to do any other act prejudicial to said
24 dealer, the effect of which is to reduce the motor vehicle
25 dealer's allocation of motor vehicles or cancel or fail to
26 renew any franchise or any dealer agreement existing between

1 the parties other than as hereinafter provided; provided,
2 however, that this subsection is not intended to preclude the
3 manufacturer or distributor from insisting on compliance with
4 the reasonable terms or provisions of the franchise, and
5 notice in good faith to any motor vehicle dealer of said
6 dealer's violation of any reasonable terms or provisions of
7 such franchise or dealer agreement or of any law or regulation
8 applicable to the conduct of a motor vehicle dealer shall not
9 constitute a violation of this chapter7.

10 "d. To participate monetarily in an advertising
11 campaign or contest, or to purchase any promotional materials,
12 training materials, showroom or other display decorations or
13 materials at the expense of the new motor vehicle dealer. This
14 paragraph is not intended to modify any reasonable and
15 uniformly applied provision of the franchise which requires
16 the new motor vehicle dealer to advertise and promote the sale
17 of vehicles and does not apply to campaigns, contests,
18 advertising and other promotional programs in which the new
19 motor vehicle dealer voluntarily elects to participate7.

20 "e. To refrain from participation in the management
21 of, investment in, or the acquisition of any other line of new
22 motor vehicle or related products; provided that the new motor
23 vehicle dealer maintains a reasonable line of credit for each
24 make or line of new motor vehicle, and that the new motor
25 vehicle dealer remains in substantial compliance with the

1 terms and conditions of the franchise ~~and with any reasonable~~
2 ~~facilities requirements of the manufacturer,~~.

3 "f. To change the location of the new motor vehicle
4 dealership or, during the course of the agreement, to make any
5 substantial alterations to the dealership premises when to do
6 so would be unreasonable, ~~or.~~

7 "g. To establish or maintain exclusive sales
8 ~~facilities, personnel~~ or sales display space for a new motor
9 vehicle line make ~~make or line, if such requirement is not~~
10 reasonable if such exclusive sales facilities or sales display
11 space are unreasonable and are not otherwise justified by
12 reasonable business considerations. The burden of proving that
13 reasonable business considerations justify exclusive sales
14 facilities or sales display space is on the manufacturer and
15 must be met by clear and convincing evidence. Provided,
16 however, a manufacturer or distributor may not coerce, attempt
17 to coerce, or require a motor vehicle dealer to establish or
18 maintain exclusive personnel or exclusive service, parts, or
19 administrative facilities for a line make.

20 "h. To adhere to performance standards that are not
21 fair, reasonable, and equitable or that are not applied
22 uniformly to other similarly situated dealers. A performance
23 standard, sales objective, or program for measuring dealership
24 performance that may have a material effect on a dealer,
25 including the dealer's right to payment under any incentive or

1 reimbursement program shall be fair, reasonable, equitable,
2 and based on accurate information.

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

6 "j. To offer to sell or sell any extended service
7 contract or extended maintenance plan offered, sold, backed
8 by, or sponsored by the manufacturer or to sell, assign, or
9 transfer any retail installment sales contract or lease
10 obtained by the dealer in connection with the sale or lease of
11 a new motor vehicle manufactured by the manufacturer to a
12 specified finance company, class of finance companies, leasing
13 company, or class of leasing companies, or to any other
14 specified persons.

15 "(2) For any manufacturer, factory branch, factory
16 representative, distributor, or wholesaler, distributor
17 branch, distributor representative, or motor vehicle dealer to
18 engage in any action with respect to a franchise which is
19 arbitrary, ~~in bad faith or~~ unconscionable, or unreasonable or
20 is not in good faith and which causes damage to any of the
21 parties.

22 "(3) For any manufacturer, factory branch, factory
23 representative, distributor, or wholesaler, distributor branch
24 or distributor representative to do any of the following:

25 "a. To adopt, change, establish, or implement a plan
26 or system for the allocation and distribution of new or used

1 motor vehicles to motor vehicle dealers which is arbitrary,
2 capricious, or unreasonably discriminatory or to modify an
3 existing plan so as to cause the same to be arbitrary,
4 capricious, or unreasonably discriminatory⁷.

5 "b. To fail or refuse to advise or disclose to any
6 motor vehicle dealer having a franchise or dealer agreement,
7 upon written request therefor, the basis upon which new motor
8 vehicles of the same line make are allocated or distributed to
9 motor vehicle dealers in the state and the basis upon which
10 the current allocation or distribution is being made or will
11 be made to such motor vehicle dealer⁷.

12 "c. To refuse to deliver to a motor vehicle dealer
13 in reasonable quantities and within a reasonable time after
14 receipt of the motor vehicle dealer's order any such motor
15 vehicles as are covered by a franchise or dealer agreement and
16 specifically publicly advertised in the state by such
17 manufacturer, factory branch, factory representative,
18 distributor, or wholesaler, distributor branch, or distributor
19 representative to be available for immediate delivery;
20 provided, however, that the failure to deliver any motor
21 vehicle shall not be considered a violation of this chapter if
22 such failure is due to an act of God, a work stoppage or delay
23 due to a strike or labor difficulty, a shortage of materials,
24 lack of available manufacturing capacity, a freight embargo or
25 other cause over which the manufacturer, factory branch,
26 factory representative, distributor, or wholesaler,

1 distributor branch, or distributor representative shall have
2 no control7.

3 "d. To cancel or terminate the franchise or dealer
4 agreement of a motor vehicle dealer other than as hereinafter
5 provided7.

6 "e. To fail or refuse to extend the franchise or
7 dealer agreement of a motor vehicle dealer upon its expiration
8 other than as hereinafter provided7.

9 "f. To offer a renewal, replacement or succeeding
10 franchise or dealer agreement containing terms and provisions
11 the effect of which is to substantially change or modify the
12 sales and service obligations or capital requirements of the
13 motor vehicle dealer other than as hereinafter provided7.

14 "g. To offer to sell or lease, or to sell or lease,
15 any new motor vehicle to any motor vehicle dealer at a lower
16 actual price therefor than the actual price offered to any
17 other motor vehicle dealer for the same model vehicle
18 similarly equipped or to utilize any device including, but not
19 limited to, sales promotion plans or programs which result in
20 such lesser actual price and which are not offered to dealers
21 of vehicles of the same line make; provided, however, that the
22 provisions of this paragraph shall not apply to sale to a
23 motor vehicle dealer for resale to any unit of the United
24 States government, the state or any of its political
25 subdivisions7.

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

12 "i. To prevent or attempt to prevent by contract or
13 otherwise any motor vehicle dealer from changing the executive
14 management control of the motor vehicle dealer unless such
15 change of executive management control will result in
16 executive management control by a person or persons who are
17 not of good moral character or who do not meet the
18 manufacturer's or wholesaler's or distributor's existing and
19 reasonable capital standards and, with consideration given to
20 the volume of sales and service of the new motor vehicle
21 dealer, uniformly applied minimum business experience
22 standards in the market area; provided, however, that where
23 the manufacturer, or distributor, or wholesaler rejects a
24 proposed change in executive management control, the
25 manufacturer, or distributor, or wholesaler shall give written
26 notice of his reasons to the motor vehicle dealer within 45

1 days of notice to the manufacturer, or wholesaler, or
2 distributor by the motor vehicle dealer of the proposed change
3 accompanied by information reflecting the identity, business
4 experience and affiliations, and source of investment funds of
5 the proposed new management⁷.

6 "j. To prevent or attempt to prevent by contract or
7 otherwise any motor vehicle dealer from establishing or
8 changing the capital structure of his dealership or the means
9 by or through which he finances the operation thereof;
10 provided the dealer meets any reasonable capital standards
11 agreed to between the motor vehicle dealer and the
12 manufacturer, distributor, or wholesaler, who may require that
13 the sources, method and manner by which the motor vehicle
14 dealer finances or intends to finance its operation, equipment
15 or facilities be fully disclosed⁷.

16 "k. To refuse to give effect to or prevent or
17 attempt to prevent by contract or otherwise any motor vehicle
18 dealer or any officer, partner or stockholder of any motor
19 vehicle dealer from selling or transferring any part of the
20 interest of any of them to any other person unless such sale
21 or transfer is to a transferee who would not otherwise qualify
22 for a new motor vehicle dealer's license issued by the State
23 of Alabama or a political subdivision thereof or unless such
24 sale or transfer is to a person who is not of good moral
25 character or who does not meet the manufacturer's or
26 wholesaler's or distributor's existing and reasonable capital

1 standards and, with consideration given to the volume of sales
2 and service of the dealership, uniformly applied minimum
3 business experience standards in the market area; provided,
4 however, that where such a rejection of a transfer is made the
5 manufacturer or distributor or wholesaler shall give written
6 notice of his reasons to the motor vehicle dealer within 60
7 days of notice to the manufacturer or wholesaler or
8 distributor by the dealer of the proposed transfer accompanied
9 by information reflecting the identity of the new owner or
10 owners, their business experience and affiliations and the pro
11 forma balance sheet and source of investment funds of the
12 proposed new dealership. A manufacturer or distributor may
13 exercise a contractual right of first refusal with respect to
14 the sale or transfer of the interest of the dealer only if
15 each of the following requirements are met:

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

25 "2. The manufacturer or distributor notifies the
26 dealer in writing within 60 days after receipt of the

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

13 "3. The exercise of the right of first refusal
14 provides to the dealer the same compensation as, or greater
15 compensation than, the dealer had negotiated to receive from
16 the proposed buyer or transferee.

17 "4. The manufacturer or distributor agrees to pay
18 the reasonable expenses, including reasonable attorneys' and
19 accountants' fees that do not exceed the usual, customary, and
20 reasonable fees charged for similar work done for other
21 clients incurred by the proposed buyer or transferee before
22 the manufacturer's or distributor's exercise of its right of
23 first refusal in negotiating and implementing the contract for
24 the sale or transfer. The proposed buyer or transferee shall
25 provide to the manufacturer or distributor a written
26 itemization of the expenses incurred within 30 days of the

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

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

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

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

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

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

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

1 "m. To prospectively assent to a release,
2 assignment, novation, agreement, waiver, or estoppel (i) which
3 would relieve any person from any liability or obligation
4 under this chapter, (ii) which would ~~or to~~ require any
5 controversy between a new motor vehicle dealer and a
6 manufacturer to be referred to any person other than the duly
7 constituted courts of this state or the United States, if the
8 referral would be binding on the new motor vehicle dealer, (iii) which would limit the entitlement to recover damages
9 under this act or other Alabama law, (iv) which specifies the
10 jurisdiction or venues in which disputes arising with respect
11 to the franchise shall or shall not be submitted for
12 resolution or otherwise prohibits a dealer from bringing an
13 action in the courts of Alabama, or (v) which would waive the
14 right to trial by jury.
15

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

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

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

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

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

1 considered a price increase or price decrease. Price changes
2 caused by either: (i) the addition to a motor vehicle of
3 required or optional equipment pursuant to state or federal
4 law; (ii) revaluation of the United States dollar, in the case
5 of foreign-made vehicles or components; or (iii) an increase
6 in transportation charges due to increased rates imposed by
7 common or contract carriers, shall not be subject to the
8 provisions of this paragraph7.

9 "q. To offer any refunds or other types of
10 inducements to any person for the purchase of new motor
11 vehicles of a certain line make to be sold to the state or any
12 political subdivision thereof without making the same offer to
13 all other new motor vehicle dealers in the same line make
14 within the state7.

15 "r. To release to any outside party, except under
16 subpoena, or as otherwise required by law or in an
17 administrative, judicial, or arbitration proceeding, any
18 business, financial, or personal information which may be from
19 time to time provided by the dealer to the manufacturer,
20 without the express written consent of the dealer7.

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

1 "1. The manufacturer or distributor is owning or
2 operating a new motor vehicle dealership or a warranty repair
3 facility for a temporary period of not more than 24 months, as
4 long as the new motor vehicle dealership or warranty repair
5 center is for sale at a reasonable price and on reasonable
6 terms and conditions; or

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

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

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

4 "5. A manufacturer of recreational vehicles which as
5 of December 31, 1999, owns, operates, or controls a facility
6 in this state for performance of motor vehicle warranty repair
7 or service work on recreational vehicles manufactured by that
8 manufacturer.

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

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

20 "u. To fail to pay or otherwise compensate its new
21 motor vehicle dealers for sales incentives, service
22 incentives, rebates, or other forms of incentive compensation
23 earned by the dealer as a consequence of incentive programs of
24 the manufacturer. The manufacturer shall have the right to
25 audit any such incentive payments made to the dealer and to
26 charge back the dealer for any fraudulent claims for incentive

1 payments made to the dealer for a period not to exceed ~~the~~
2 ~~current and the immediately preceding calendar year from~~
3 ~~payment of a claim~~ 12 months from the date the claim was paid.

4 A manufacturer shall not disapprove claims for which the
5 dealer has received preauthorization from the manufacturer or
6 its representative nor shall the manufacturer unreasonably
7 disapprove a claim solely based on the dealer's incidental
8 failure to comply with a specific claim processing requirement
9 that results only in a clerical error or administrative error;
10 rather a claim denial must be based upon a material defect and
11 deviation from the reasonable written claim submission
12 requirements of the manufacturer. A dealer may submit amended
13 claims for sales incentives, service incentives, rebates, or
14 other forms of incentive compensation for a period not to
15 exceed 12 months from the date the original claim was paid or
16 disapproved.

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

1 line make of motor vehicles. The failure to deliver any such
2 new motor vehicle shall not be considered a violation of this
3 section if the failure is due to a lack of manufacturing
4 capacity or to a strike or labor difficulty, a shortage of
5 materials, a freight embargo, or any other cause over which
6 the manufacturer has no control.

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

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

22 "y. To condition the sale, transfer, relocation, or
23 renewal of a franchise or dealer agreement or to condition
24 sales, services, parts, or finance incentives upon site
25 control or an agreement to renovate or make substantial
26 improvements to a facility; provided, however, that voluntary

1 and non-coerced acceptance of such conditions by the dealer in
2 writing shall not constitute a violation.

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

11 "§8-20-5.

12 "(a) Notwithstanding the terms, provisions, or
13 conditions of any agreement or franchise or notwithstanding
14 the terms or provisions of any waiver, no manufacturer shall
15 cancel, terminate, modify, fail to renew, or refuse to
16 continue any franchise relationship with a licensed new motor
17 vehicle dealer unless the manufacturer has:

18 "(1) Satisfied the notice requirement of this
19 section~~7~~.

20 "(2) Acted in good faith as defined in this
21 chapter~~7~~.

22 "(3) Has good cause for the cancellation,
23 termination, modification, nonrenewal, or noncontinuance.

24 "(b) Notwithstanding the terms, provisions or
25 conditions of any agreement or franchise or the terms or
26 provisions of any waiver, good cause shall exist for the

1 purposes of a termination, cancellation, modification,
2 nonrenewal, or noncontinuance when:

3 "(1) There is a failure by the new motor vehicle
4 dealer to comply with a provision of the franchise which
5 provision is both reasonable and of material significance to
6 the franchise relationship, provided that the manufacturer
7 first acquired actual or constructive knowledge of such
8 failure not more than 180 days prior to the date on which
9 notification is given by the manufacturer pursuant to the
10 requirements of this section~~7~~.

11 "(2) If the failure by the new motor vehicle dealer
12 to comply with a provision of the franchise relates to the
13 performance of the dealer in sales or service, then good cause
14 shall be defined as the failure of the dealer to substantially
15 comply with the reasonable performance provisions of the
16 franchise if:

17 "a. The new motor vehicle dealer was apprised by the
18 manufacturer in writing of such failure~~7~~~~and~~.

19 "1. Said notification stated that notice was
20 provided of failure of performance pursuant to this chapter;
21 and

22 "2. The new motor vehicle dealer was afforded a
23 reasonable opportunity, for a period of not less than six
24 months, to exert good faith efforts to carry out such
25 provisions~~7~~~~and~~.

1 "3. The new motor vehicle dealer did not demonstrate
2 substantial compliance with the manufacturer's performance
3 standards during such period and that the failure to
4 demonstrate such compliance was not due to factors which were
5 beyond the control of such dealer.

6 "b. Such failure thereafter continued within the
7 period which began not more than 180 days before the date
8 notification of termination, cancellation, modification, or
9 nonrenewal was given pursuant to this section, ~~and.~~

10 "(c) The manufacturer shall have the burden of proof
11 for showing that it has acted in good faith, that the notice
12 requirements have been complied with, and that there was good
13 cause for the franchise termination, cancellation,
14 modification, nonrenewal, or noncontinuance.

15 "(d) If a dealer brings an action in a court of
16 competent jurisdiction to challenge the cancellation,
17 termination, or nonrenewal of a franchise or dealer agreement
18 by a manufacturer under this section, such franchise or dealer
19 agreement shall remain in full force and effect and such
20 dealer shall retain all rights and remedies pursuant to the
21 terms and conditions of such franchise or dealer agreement,
22 including, but not limited to, the right to sell or transfer
23 the dealer's ownership interest, until a final determination
24 by a court of competent jurisdiction, including appeal, unless
25 extended by the court for good cause. This subsection shall
26 not apply to a cancellation, termination, or nonrenewal of a

1 franchise or dealer agreement based upon any of the reasons
2 set forth in subsection (e) (2) below.

3 ~~"(d)~~ (e) Notwithstanding the terms, provisions or
4 conditions of any agreement or franchise or the terms or
5 provisions of any waiver, prior to the termination,
6 cancellation, modification, or nonrenewal of any franchise or
7 dealer agreement, the manufacturer shall furnish notification
8 of such termination, cancellation, modification, or nonrenewal
9 to the new motor vehicle dealer as follows:

10 "(1) In the manner described in subsection (e) ~~and~~.

11 "(2) Not less than 90 days prior to the effective
12 date of such termination, cancellation, modification, or
13 nonrenewal or not less than 30 days prior to the effective
14 date of such termination, cancellation, or nonrenewal with
15 respect to any of the following:

16 "a. Filing of any petition by or against the new
17 motor vehicle dealer under any bankruptcy or receivership
18 law~~.~~

19 "b. Willful or intentional misrepresentation made by
20 the new motor vehicle dealer with the express intent to
21 defraud the manufacturer or distributor~~.~~

22 "c. Failure of the new motor vehicle dealer to
23 conduct its customary sales and service operations during its
24 customary business hours for seven consecutive business days~~.~~

1 "d. Final conviction (including appeal) of the new
2 motor vehicle dealer, principal owner or principal executive
3 manager of any felony.

4 "~~(e)~~ (f) Notification under this section shall be in
5 writing; shall be by certified mail or personally delivered to
6 the new motor vehicle dealer; and shall contain:

7 "(1) A statement of intention to terminate the
8 franchise, cancel the franchise, modify the franchise or not
9 to renew the franchise;~~and.~~

10 "(2) A statement of the reasons for the termination,
11 cancellation, modification, or nonrenewal;~~and.~~

12 "(3) The date on which such termination,
13 cancellation, modification, or nonrenewal takes effect.

14 "~~(f)~~ (g) Upon the termination, cancellation, or
15 nonrenewal by the manufacturer of any franchise or dealer
16 agreement for good cause, the new motor vehicle dealer shall
17 be paid fair and reasonable compensation by the manufacturer
18 for the:

19 "(1) ~~New motor vehicle inventory of the current and~~
20 ~~previous model year which has been acquired from the~~
21 ~~manufacturer~~ acquired from the manufacturer, or from other
22 dealers of the same line make in the ordinary course of
23 business, within two years prior to the date of notice of the
24 termination, cancellation, or nonrenewal by the manufacturer.
25 ~~Any new and unused~~ All new motor vehicle ~~repurchased by the~~

1 ~~manufacturer~~ vehicles shall be repurchased by the manufacturer
2 at the net cost to the dealer~~7~~.

3 "(2) Supplies and parts acquired by the new motor
4 vehicle dealer from the manufacturer, ~~or~~ its approved sources,
5 or from other dealers in the ordinary course of business,
6 within seven years prior to the effective date of the
7 termination, cancellation, or nonrenewal~~7~~. Supplies and parts
8 shall be repurchased by the manufacturer at the net cost to
9 the dealer without any restocking fees or other fees.

10 "(3) Equipment, signs, ~~and~~ furnishings acquired by
11 the new motor vehicle dealer from the manufacturer or its
12 approved sources. The dealer shall be paid either the fair
13 market value of the equipment, signs, and furnishings as of
14 the date of termination or the value of the equipment, signs,
15 and furnishings based on a six-year straight line schedule of
16 depreciation, whichever is greater.

17 "(4) Special tools~~7~~ and automotive service equipment
18 that were required and designated as special tools or
19 equipment by the manufacturer. The dealer shall be paid either
20 the fair market value of the special tools and automotive
21 service equipment as of the date of termination or the value
22 of the special tools and automotive service equipment based on
23 a six-year straight line schedule of depreciation, whichever
24 is greater.

25 "(5) The net cost of any upgrades or alterations
26 made by the dealer to the dealership facilities which were

1 made within two years prior to the effective date of
2 termination.

3 "~~(5)~~ (6) Dealership facilities, if the facilities
4 were required to be purchased or constructed as a precondition
5 to obtaining the franchise or to its renewal by the
6 manufacturer. The manufacturer shall use its best efforts to
7 locate a purchaser who will offer to purchase the facilities
8 at a reasonable price. If the manufacturer does not locate a
9 purchaser within a reasonable time, the manufacturer will pay
10 the dealer an amount equivalent to the reasonable rental value
11 of such facilities for three years during which time the
12 manufacturer shall be entitled to possession of said
13 facilities. If the facilities were leased from a lessor other
14 than the manufacturer and the ~~lease was~~ facilities were
15 required as a precondition to obtaining the franchise or to
16 its renewal by the manufacturer, then the manufacturer shall
17 use its best efforts to locate a lessee who will offer to
18 lease the premises for a reasonable term at a reasonable rent.
19 If the manufacturer does not locate a lessee within a
20 reasonable time, the manufacturer shall pay such rent for
21 three years or the remainder of the term of the lease,
22 whichever is less and the manufacturer shall have the option
23 to succeed to the rights of the dealer under the lease. If the
24 dealership facility is used for more than one line make, the
25 rental payment by the manufacturer shall be prorated for each

1 line make based on the floor space allocated to each line
2 make.

3 ~~"(g)~~ (h) Upon the termination, cancellation, or
4 nonrenewal by the manufacturer of any franchise without good
5 cause, the new motor vehicle dealer shall be paid fair and
6 reasonable compensation by the manufacturer for the ~~personal~~
7 ~~property items~~ described in subdivisions ~~(f)(1) through (f)(4)~~
8 (g)(1) through (g)(6) and for the dealership facilities, if
9 the facilities were required to be purchased or constructed as
10 a precondition to obtain the franchise or to its renewal by
11 the manufacturer. If the facilities were leased and the lease
12 was required as a precondition to obtaining the franchise or
13 to its renewal by the manufacturer, then the manufacturer
14 shall be liable for payment of the rent for the remainder of
15 the term of the lease during which time the manufacturer shall
16 be entitled to possession of said facilities. If the
17 dealership facility is used for more than one line make, the
18 rental payment by the manufacturer shall be prorated based on
19 the floor space allocated to each line make. The manufacturer
20 shall also pay the dealer fair and reasonable compensation for
21 the value of the dealership within six months after the date
22 of termination, cancellation, or nonrenewal.

23 ~~"(h)~~ (i) Upon the termination, cancellation, or
24 nonrenewal by the manufacturer of any franchise as a result of
25 willful or intentional misrepresentations made by the new
26 motor vehicle dealer with the express intent to defraud the

1 manufacturer or distributor or upon the termination,
2 cancellation, or nonrenewal by the motor vehicle dealer, the
3 new motor vehicle dealer shall be paid fair and reasonable
4 compensation by the manufacturer for the ~~personal property~~
5 items described in subdivisions ~~(f)(1) through (f)(4)~~ (g)(1)
6 through (g)(6).

7 "(j)(1) Upon the termination, cancellation, or
8 nonrenewal by the manufacturer occurring as a result of the
9 cessation of a line make or as a result of the manufacturer's
10 selling or otherwise transferring some or all of the assets
11 essential to the manufacture or distribution of the line make,
12 the new motor vehicle dealer shall be paid fair and reasonable
13 compensation by the manufacturer for the items described in
14 subdivisions (g)(1) through (g)(6). The manufacturer shall
15 also compensate the dealer in an amount equal to the greater
16 of: (1) the actual pecuniary loss that the dealer suffered as
17 a result of the termination, cancellation, or nonrenewal or
18 (2) the fair market value of the franchise determined as of
19 (i) the date the manufacturer announces the action that
20 results in termination, cancellation, or renewal, (ii) the
21 date the action that resulted in the termination,
22 cancellation, or nonrenewal first became general knowledge, or
23 (3) the day 12 months prior to the date on which the notice of
24 termination, cancellation, or renewal is issued, whichever is
25 greater.

1 "(2) If, as a result of the circumstances described
2 above, an entity other than the original manufacturer of a
3 line make becomes the manufacturer of the line make and
4 intends to distribute motor vehicles of that line make in
5 Alabama, the entity shall honor the franchise agreements of
6 the original manufacturer and its dealers or offer those
7 dealers a new franchise agreement for the line make on
8 substantially similar terms and conditions. A dealer which
9 elects to remain a dealer with the new entity or which enters
10 into a new franchise agreement with this entity shall not be
11 entitled to the compensation set forth in subdivision (1)
12 above.

13 "~~(i)~~ (k) The fair and reasonable compensation to the
14 dealer shall be paid by the manufacturer within 90 days after
15 tender by the dealer of the items in subdivisions ~~(f)(1)~~
16 ~~through (f)(4)~~ (g)(1) through (g)(4) at the dealership
17 premises, provided the new motor vehicle dealer has clear
18 title to the inventory and other items and is in a position to
19 convey that title to the manufacturer.

20 "~~(j)~~ (l) The terms and provisions of subsections ~~(f)~~
21 ~~through (i)~~ (g) through (k) of this section shall not apply
22 upon the termination, cancellation, or nonrenewal of a
23 franchise by a motor home or motorcycle dealer.

24 "§8-20-7.

25 "(a) Every manufacturer, distributor, or wholesaler,
26 factory branch, factory representative, distributor branch, or

1 distributor representative shall specify in writing to each of
2 its motor vehicle dealers the dealer's obligation for warranty
3 service on its products, shall compensate the motor vehicle
4 dealer for warranty service required of the dealer by the
5 manufacturer, distributor, or wholesaler, factory branch,
6 factory representative, distributor branch, or distributor
7 representative and shall provide the dealer the schedule of
8 compensation to be paid such dealer for parts, work and
9 service in connection with warranty services, and the time
10 allowance for the performance of such work and service.

11 "(b) In no event shall such schedule of compensation
12 fail to include reasonable compensation for diagnostic work,
13 service, labor, and parts. Time allowances for the diagnosis
14 and performance of warranty work and service shall be
15 reasonable and adequate for the work to be performed. In the
16 determination of what constitutes reasonable compensation
17 under this section, the principal factors to be given
18 consideration shall be the prevailing wage rates being paid by
19 the dealer, in the community in which the dealer is doing
20 business, and in no event shall such compensation of a dealer
21 for warranty services including labor and parts, be less than
22 the rates or prices charged by such dealer for like service to
23 retail customers for nonwarranty service, repairs and parts,
24 provided that such prices and rates are not unreasonable. This
25 subsection does not apply to compensation for parts, systems,
26 fixtures, appliances, furnishings, accessories, and features

1 of a motor home that are designed, used and maintained
2 primarily for non-vehicular residential purposes, or parts
3 related to motorcycle repairs.

4 "(c) It is a violation of this section for any
5 manufacturer, distributor, or wholesaler, factory branch,
6 factory representative, distributor branch or distributor
7 representative to fail to perform any warranty obligations
8 under the motor vehicle manufacturer's warranty, or to fail to
9 include in written notices of factory recalls to dealers the
10 expected date by which necessary parts and equipment will be
11 available to dealers for the correction of such defects, or to
12 fail to compensate any of the motor vehicle dealers for
13 repairs effected by such recall.

14 "(d) All claims made by new motor vehicle dealers
15 pursuant to this section for such labor and parts shall be
16 paid within 30 days following their approval; provided,
17 however, that the manufacturer retains the right to audit such
18 claims and to charge back the dealer for any fraudulent claims
19 for a period not to exceed ~~the current and the immediately~~
20 ~~preceding calendar year following payment~~ 12 months from the
21 date the claim was paid. All such claims shall be either
22 approved or disapproved within 30 days after their receipt on
23 forms and in the manner specified by the manufacturer, and any
24 claim not specifically disapproved in writing within 30 days
25 after the receipt shall be construed to be approved and
26 payment must follow within 30 days. A manufacturer shall not

1 disapprove claims for which the dealer has received
2 preauthorization from the manufacturer or its representative
3 nor shall the manufacturer unreasonably disapprove a claim
4 solely based on the dealer's incidental failure to comply with
5 a specific claim processing requirement that results only in a
6 clerical error or administrative error; rather a claim denial
7 must be based upon a material defect and deviation from the
8 reasonable written claim submission requirements of the
9 manufacturer. A dealer may submit amended claims for labor and
10 parts for a period not to exceed 12 months from the date the
11 original claim was paid or disapproved."

12 Section 2. Every dealer agreement entered into under
13 the provisions of this act shall impose on the parties the
14 obligation to act in good faith and to deal fairly.

15 Section 3. The provisions of this chapter shall
16 apply to all franchise or dealer agreements in force and
17 effect on the effective date of this amendatory act and to all
18 franchise or dealer agreements, amendments, and renewals to
19 dealer agreements made after the effective date of this
20 amendatory act. The provisions of the Motor Vehicle Franchise
21 Act and this amendatory act shall supersede and control all
22 provisions of any franchise or dealer agreement inconsistent
23 with this act or the Motor Vehicle Franchise Act. The
24 provisions of this amendatory act and the Motor Vehicle
25 Franchise Act shall not be modified or superseded by a choice
26 of law clause in any franchise or dealer agreement, waiver, or

1 other written instrument. These provisions shall apply to all
2 written agreements between a manufacturer and dealer
3 including, but not limited to, the franchise offering, the
4 franchise agreement, sales of goods, services or advertising,
5 leases or deeds of trust of real or personal property,
6 promises to pay, security interests, pledges, insurance
7 contracts, advertising contracts, construction or installation
8 contracts, servicing contracts, and other agreements between a
9 dealer and a manufacturer.

10 Section 4. The provisions of this act are severable.
11 If any part of this act is declared invalid or
12 unconstitutional, that declaration shall not affect the part
13 which remains.

14 Section 5. This act shall become effective
15 immediately following its passage and approval by the
16 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Commerce 19-JAN-10

Read for the second time and placed
on the calendar with 1 substitute
and 11-FEB-10

Read for the third time and passed
as amended 17-FEB-10

Yeas 96, Nays 0, Abstains 0

Greg Pappas
Clerk