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2 118816-4
3 By Representative Johnson
4 RFD: Commerce
5 First Read: 19-JAN-10

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ENROLLED, An Act,

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§8-20-3.

"For the purpose of this chapter, the following terms shall have the meanings respectively ascribed to them in

1 this section, except where the context clearly indicates a
2 different meaning:

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

8 ~~"(1)~~ (2) DEALER AGREEMENT or FRANCHISE. The written
9 contract between any new motor vehicle manufacturer and any
10 new motor vehicle dealer which purports to fix the legal
11 rights and liabilities of the parties to such agreement or
12 contract, and pursuant to which the dealer purchases and
13 resells the franchise product or leases or rents the
14 dealership premises.

15 ~~"(2)~~ (3) DISTRIBUTOR or WHOLESALER. A person,
16 whether a resident or a nonresident, other than a
17 manufacturer, who sells or distributes motor vehicles to motor
18 vehicle dealers or who maintains distributor representatives
19 within the state.

20 ~~"(3)~~ (4) DISTRIBUTOR BRANCH. A branch office
21 maintained by a distributor or wholesaler.

22 ~~"(4)~~ (5) DISTRIBUTOR REPRESENTATIVE. A
23 representative employed by a distributor or wholesaler for the
24 purpose of making or promoting the sale of the distributor's
25 or wholesaler's new motor vehicles to motor vehicle dealers or

1 for supervising or contracting the motor vehicle dealers or
 2 prospective motor vehicle dealers.

3 "~~(5)~~ (6) FACTORY BRANCH. A branch office maintained
 4 by a manufacturer in order to direct and supervise the
 5 representatives of the manufacturer.

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

11 "~~(7)~~ (8) GOOD FAITH. Honesty in fact and the
 12 observation of reasonable commercial standards of fair dealing
 13 in the trade as is defined and interpreted in paragraph (1) (b)
 14 of Section 7-2-103.

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

20 "1. Multiple brand names or marks may constitute a
 21 single line make, but only when included in a common dealer
 22 agreement and the manufacturer, distributor, or importer
 23 offers such vehicles bearing the multiple names or marks
 24 together only, and not separately, to its authorized dealers;
 25 and

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

5 "~~(8)~~ (10) MANUFACTURER. Any person engaged in the
6 manufacturing or assembling of new motor vehicles as a regular
7 business or any person who is controlled by the manufacturer.

8 "~~(9)~~ (11) MOTOR VEHICLE. Every vehicle intended
9 primarily for use and operation on the public highways which
10 is self-propelled.

11 "~~(10)~~ (12) MOTOR VEHICLE DEALER. A person operating
12 under a dealer agreement from a manufacturer or distributor
13 and who is engaged regularly in the business of buying,
14 selling, or exchanging motor vehicles in this state and who
15 has in this state an established place of business.

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

21 "~~(11)~~ (14) NEW MOTOR VEHICLE. A vehicle which has
22 been sold to a new motor vehicle dealer and which has not been
23 used for other than demonstration purposes and on which the
24 original title has not been issued from the new motor vehicle
25 dealer. A new motor vehicle shall also mean an engine,

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

6 "~~(12)~~ (15) PERSON. An individual, firm, partnership,
7 association, joint stock company, corporation, or other legal
8 entity or a combination of legal entities.

9 "~~(13)~~ (16) RELEVANT MARKET AREA. The area within a
10 radius of 20 miles around an existing dealer or the area of
11 responsibility defined in the franchise, whichever is greater;
12 except that, where a manufacturer is seeking to establish an
13 additional new motor vehicle dealer and there are one or more
14 existing new motor vehicle dealers of the same line make
15 within a 10 mile radius of the proposed dealer site, the
16 "relevant market area" shall in all instances be the area
17 within a radius of 10 miles around an existing dealer.

18 "§8-20-4.

19 "Notwithstanding the terms, provisions, or
20 conditions of any dealer agreement or franchise or the terms
21 or provisions of any waiver, prior to the termination,
22 cancellation, or nonrenewal of any dealer agreement or
23 franchise, the following acts or conduct shall constitute
24 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;

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;

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

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

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

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

1 vehicle dealer remains in substantial compliance with the
2 terms and conditions of the franchise ~~and with any reasonable~~
3 ~~facilities requirements of the manufacturer,~~.

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

8 "g. To establish or maintain exclusive sales
9 ~~facilities, personnel~~ or sales display space for a new motor
10 vehicle line make ~~make or line, if such requirement is not~~
11 reasonable unless such exclusive sales facilities or sales
12 display space are reasonable and are otherwise justified by
13 reasonable business considerations. The burden of proving that
14 reasonable business considerations justify exclusive sales
15 facilities or sales display space is on the manufacturer.
16 Provided, however, a manufacturer or distributor may not
17 coerce, attempt to coerce, or require a motor vehicle dealer
18 to establish or maintain exclusive personnel or exclusive
19 service, parts, or 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, unreasonable, or is
20 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:

1 "a. To adopt, change, establish, or implement a plan
2 or system for the allocation and distribution of new or used
3 motor vehicles to motor vehicle dealers which is arbitrary,
4 capricious, or unreasonably discriminatory or to modify an
5 existing plan so as to cause the same to be arbitrary,
6 capricious, or unreasonably discriminatory~~7.~~

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

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

1 lack of available manufacturing capacity, a freight embargo or
2 other cause over which the manufacturer, factory branch,
3 factory representative, distributor, or wholesaler,
4 distributor branch, or distributor representative shall have
5 no control7.

6 "d. To cancel or terminate the franchise or dealer
7 agreement of a motor vehicle dealer other than as hereinafter
8 provided7.

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

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

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

1 motor vehicle dealer for resale to any unit of the United
2 States government, the state or any of its political
3 subdivisions7.

4 "h. To offer to sell or lease, or to sell or lease,
5 any new motor vehicle to any person, except a wholesaler's or
6 distributor's or manufacturer's employees, at a lower actual
7 price therefor than the actual price offered and charged to a
8 motor vehicle dealer for the same model vehicle similarly
9 equipped or to utilize any device which results in such lesser
10 actual price and which are not offered to dealers of vehicles
11 of the same line make; provided, however, that the provisions
12 of this paragraph shall not apply to sales to a motor vehicle
13 dealer for resale to any unit of the United States government,
14 the state or any of its political subdivisions7.

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

1 the manufacturer, or distributor, or wholesaler rejects a
2 proposed change in executive management control, the
3 manufacturer, or distributor, or wholesaler shall give written
4 notice of his reasons to the motor vehicle dealer within 45
5 days of notice to the manufacturer, or wholesaler, or
6 distributor by the motor vehicle dealer of the proposed change
7 accompanied by information reflecting the identity, business
8 experience and affiliations, and source of investment funds of
9 the proposed new management~~7.~~

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

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

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

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

1 subparagraph, a "family member" means the spouse of an owner
2 of the dealership, the child, grandchild, brother, sister, or
3 parent of an owner, or a spouse of one of those family
4 members.

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

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

23 "4. The manufacturer or distributor agrees to pay
24 the reasonable expenses, including reasonable attorneys' and
25 accountants' fees that do not exceed the usual, customary, and

1 reasonable fees charged for similar work done for other
2 clients incurred by the proposed buyer or transferee before
3 the manufacturer's or distributor's exercise of its right of
4 first refusal in negotiating and implementing the contract for
5 the sale or transfer. The proposed buyer or transferee shall
6 provide to the manufacturer or distributor a written
7 itemization of the expenses incurred within 30 days of the
8 receipt by the proposed buyer or transferee of a written
9 request from the manufacturer or distributor for an accounting
10 of the expenses. The manufacturer or distributor shall make
11 payment of these expenses within 30 days of exercising the
12 right of first refusal.

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

1 distributor branch, or distributor representative which
2 intends to enter into an additional franchise shall, at least
3 60 days prior to granting such franchise, give written notice
4 of its intention to do so to each motor vehicle dealer of the
5 same line make within the relevant market area. Such notice
6 shall state the date on or after which such proposed franchise
7 shall be granted or entered into. Prior to the date set forth
8 in said notice on or after which such franchise will be
9 entered into, any such motor vehicle dealer may petition a
10 court of competent jurisdiction to determine whether such
11 appointment or proposed appointment is unreasonable in which
12 action the manufacturer, wholesaler, or distributor shall have
13 the burden of proof that such action is not unreasonable. No
14 bond shall be required as a precondition to entry of an
15 injunction enjoining appointment of an additional franchise.
16 Such petition shall be entitled to a speedy trial. In
17 determining whether such proposed appointment is unreasonable,
18 the court shall consider all pertinent circumstances. These
19 may include but are not limited to:

20 "1. Whether the establishment of such additional
21 franchise is warranted by economic and marketing conditions
22 including anticipated future changes;

23 "2. The past, present, and anticipated retail sales
24 and service business transacted by the objecting motor vehicle
25 dealer or dealers and other motor vehicle dealers of the same

1 line make with a place of business in the relevant market
 2 area;

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

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

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

24 "n. To prevent or refuse to give effect to the
 25 succession to the ownership or management control of a

1 dealership upon the death or incapacity of a motor vehicle
2 dealer to any legatee or devisee under the will of a dealer or
3 to an heir under the laws of descent and distribution of this
4 state unless the successor is a person who is not of good
5 moral character or who does not meet the manufacturer's or
6 distributor's or wholesaler's existing and reasonable capital
7 standards and, with consideration given to the volume of the
8 sales and service of the dealership, uniformly applied minimum
9 business experience standards in the market area; provided,
10 however, that where such a rejection of succession is made,
11 the manufacturer or distributor or wholesaler shall give
12 written notice of his reasons to the proposed successor within
13 60 days of notice to the manufacturer or wholesaler or
14 distributor by the proposed successor of his intent to succeed
15 to the ownership or management of the dealership accompanied
16 by information reflecting the identity of the new owner or
17 owners, their business experience and affiliation and the pro
18 forma balance sheet and source of investment funds of the
19 proposed new dealership. This section does not preclude the
20 owner of a new motor vehicle dealer from designating any
21 person as his successor by written instrument filed with the
22 manufacturer or distributor and, in the event there is a
23 conflict between such written instrument and the provisions of
24 this section, the written instrument shall govern.

1 "o. To fail to indemnify and hold harmless its motor
2 vehicle dealers against any losses, including, but not limited
3 to, court costs and reasonable attorneys' fees, or damages
4 arising out of complaints, claims, or lawsuits, including, but
5 not limited to, strict liability, negligence,
6 misrepresentation, warranty (express or implied), or
7 rescission of the sale where the complaint, claim or lawsuit
8 relates to (i) the manufacture, assembly or design of new
9 motor vehicles, parts or accessories; (ii) a defect in any
10 forms furnished to the dealer or in the written instructions
11 for the completion of such forms by the manufacturer, an
12 affiliate of the manufacturer, or person controlled by the
13 manufacturer used in connection with the sale, lease, or
14 financing of a vehicle and associated products, unless the
15 dealer improperly completes the forms or makes
16 misrepresentations contrary either to the terms of the forms
17 or the written instructions for their completion; or (iii)
18 other functions by the manufacturer, beyond the control of the
19 dealer, including, without limitation, the selection by the
20 manufacturer of parts or components for the vehicle, or any
21 damages to merchandise occurring in transit to the dealer
22 where the carrier is designated by the manufacturer⁷.

23 "p. To increase prices of new motor vehicles which
24 the new motor vehicle dealer had ordered for retail consumers
25 prior to the dealer's receipt of the written official price

1 increase notification. A sales contract signed by a retail
2 consumer shall constitute evidence of each such order;
3 provided that the vehicle is in fact delivered to that
4 customer. In the event of manufacturer price reductions or
5 cash rebates, the amount of any such reduction or rebate
6 received by a dealer shall be passed on to the retail consumer
7 by the dealer if the retail price was negotiated on the basis
8 of the previous higher price to the dealer. Price reductions
9 shall apply to all vehicles in the dealer's inventory which
10 were subject to the price reduction. Price differences
11 applicable to new model or series motor vehicles at the time
12 of the introduction of new models or series shall not be
13 considered a price increase or price decrease. Price changes
14 caused by either: (i) the addition to a motor vehicle of
15 required or optional equipment pursuant to state or federal
16 law; (ii) revaluation of the United States dollar, in the case
17 of foreign-made vehicles or components; or (iii) an increase
18 in transportation charges due to increased rates imposed by
19 common or contract carriers, shall not be subject to the
20 provisions of this paragraph⁷.

21 "q. To offer any refunds or other types of
22 inducements to any person for the purchase of new motor
23 vehicles of a certain line make to be sold to the state or any
24 political subdivision thereof without making the same offer to

1 all other new motor vehicle dealers in the same line make
2 within the state7.

3 "r. To release to any outside party, except under
4 subpoena, or as otherwise required by law or in an
5 administrative, judicial, or arbitration proceeding, any
6 business, financial, or personal information which may be from
7 time to time provided by the dealer to the manufacturer,
8 without the express written consent of the dealer7.

9 "s. To own an interest in a new motor vehicle
10 dealership, to operate or control a dealership, to make direct
11 sales or leases of new motor vehicles to the public in
12 Alabama, or to own, operate, or control a facility for
13 performance of motor vehicle warranty or repair service work,
14 except as follows:

15 "1. The manufacturer or distributor is owning or
16 operating a new motor vehicle dealership or a warranty repair
17 facility for a temporary period of not more than 24 months, as
18 long as the new motor vehicle dealership or warranty repair
19 center is for sale at a reasonable price and on reasonable
20 terms and conditions; or

21 "2. The manufacturer's or distributor's
22 participation is in a bona fide relationship with an
23 independent person (i) who is required to make significant
24 investment in the new motor vehicle dealership or warranty
25 repair center subject to loss, (ii) and operates the

1 dealership or warranty repair center and may reasonably be
2 expected to acquire full ownership of the dealership or
3 warranty repair center within a reasonable time and under
4 reasonable terms and conditions.

5 "3. The manufacturer or distributor is selling or
6 leasing new motor vehicles in Alabama to its qualified
7 vendors, not-for-profit organizations, fleets, or the federal,
8 state, or local government if sold or leased and delivered
9 through new motor vehicle dealers in this state. The
10 manufacturer or distributor is selling or leasing new motor
11 vehicles in Alabama to its employees and employees' families
12 if delivered through new motor vehicle dealers in this state.
13 The manufacturer or distributor is implementing a program to
14 sell or lease or offer to sell or lease new motor vehicles
15 through new motor vehicle dealers in this state.

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

19 "5. A manufacturer of recreational vehicles which as
20 of December 31, 1999, owns, operates, or controls a facility
21 in this state for performance of motor vehicle warranty repair
22 or service work on recreational vehicles manufactured by that
23 manufacturer.

24 "6. The manufacturer or distributor is owning,
25 operating, or controlling an entity primarily engaged in the

1 business of renting passenger and commercial motor vehicles
2 and industrial and construction equipment, as well as
3 activities incidental to said businesses, including warranty
4 and repair work on vehicles that it owns, previously owned, or
5 takes in trade.

6 "t. To make any material change in any franchise
7 agreement without giving the dealer written notice by
8 certified mail of such change at least 60 days prior to the
9 effective date of such change.

10 "u. To fail to pay or otherwise compensate its new
11 motor vehicle dealers for sales incentives, service
12 incentives, rebates, or other forms of incentive compensation
13 earned by the dealer as a consequence of incentive programs of
14 the manufacturer. The manufacturer shall have the right to
15 audit any such incentive payments made to the dealer and to
16 charge back the dealer for any fraudulent claims for incentive
17 payments made to the dealer for a period not to exceed ~~the~~
18 ~~current and the immediately preceding calendar year from~~
19 ~~payment of a claim~~ 12 months from the date the claim was paid.

20 A manufacturer shall not disapprove claims for which the
21 dealer has received preauthorization from the manufacturer or
22 its representative nor shall the manufacturer unreasonably
23 disapprove a claim solely based on the dealer's incidental
24 failure to comply with a specific claim processing requirement
25 that results only in a clerical error or administrative error;

1 rather a claim denial must be based upon a material defect and
2 deviation from the reasonable written claim submission
3 requirements of the manufacturer. In the event of neglect,
4 oversight, or mistake by the dealer, a dealer may submit an
5 amended claim, or may submit a claim not submitted within the
6 time required by the manufacturer, for sales incentives,
7 service incentives, rebates, or other forms of incentive
8 compensation up to 120 days from the date on which such claim
9 was first submitted or could have been submitted.

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

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

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

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

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

9 "§8-20-5.

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

16 "(1) Satisfied the notice requirement of this
17 section~~7~~.

18 "(2) Acted in good faith as defined in this
19 chapter~~7~~.

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

22 "(b) Notwithstanding the terms, provisions or
23 conditions of any agreement or franchise or the terms or
24 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

1 not apply to a cancellation, termination, or nonrenewal of a
2 franchise or dealer agreement based upon any of the reasons
3 set forth in subsection (e) (2) below.

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

11 "(1) In the manner described in subsection ~~(e)~~ (f) ~~7~~
12 and.

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

18 "a. Filing of any petition by or against the new
19 motor vehicle dealer under any bankruptcy or receivership
20 law~~7.~~

21 "b. Willful or intentional misrepresentation made by
22 the new motor vehicle dealer with the express intent to
23 defraud the manufacturer or distributor~~7.~~

1 "c. Failure of the new motor vehicle dealer to
2 conduct its customary sales and service operations during its
3 customary business hours for seven consecutive business days~~7.~~

4 "d. Final conviction (including appeal) of the new
5 motor vehicle dealer, principal owner or principal executive
6 manager of any felony.

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

10 "(1) A statement of intention to terminate the
11 franchise, cancel the franchise, modify the franchise or not
12 to renew the franchise~~7~~and.

13 "(2) A statement of the reasons for the termination,
14 cancellation, modification, or nonrenewal~~7~~and.

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

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

22 "(1) New motor vehicle inventory of the current and
23 previous model year which has been acquired from the
24 manufacturer. Any new and unused motor vehicle repurchased by

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

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

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

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

1 "(5) The net cost of any upgrades or alterations
2 made by the dealer to the dealership facilities which were
3 recommended in writing by the manufacturer and made within two
4 years prior to the effective date of termination.

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

1 dealership facility is used for more than one line make, the
2 rental payment by the manufacturer shall be prorated for each
3 line make based on the floor space allocated to each line
4 make.

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

1 "~~(h)~~ (i) Upon the termination, cancellation, or
2 nonrenewal by the manufacturer of any franchise as a result of
3 willful or intentional misrepresentations made by the new
4 motor vehicle dealer with the express intent to defraud the
5 manufacturer or distributor or upon the termination,
6 cancellation, or nonrenewal by the motor vehicle dealer, the
7 new motor vehicle dealer shall be paid fair and reasonable
8 compensation by the manufacturer for the ~~personal property~~
9 items described in subdivisions ~~(f)(1) through (f)(4)~~ (g)(1)
10 through (g)(6).

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

1 cancellation, or nonrenewal first became general knowledge, or
2 (3) the day 12 months prior to the date on which the notice of
3 termination, cancellation, or renewal is issued, whichever is
4 greater.

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

17 "(3) The provisions of this subdivision shall not
18 apply in the event of a termination or cessation of a line
19 make by a recreational vehicle manufacturer.

20 "~~(i)~~ ~~(k)~~ The fair and reasonable compensation to the
21 dealer shall be paid by the manufacturer within 90 days after
22 tender by the dealer of the items in subdivisions ~~(f)~~~~(1)~~
23 through ~~(f)~~~~(4)~~ ~~(g)~~ (1) through ~~(g)~~ (4) at the dealership
24 premises, provided the new motor vehicle dealer has clear

1 title to the inventory and other items and is in a position to
2 convey that title to the manufacturer.

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

7 "§8-20-7.

8 "(a) Every manufacturer, distributor, or wholesaler,
9 factory branch, factory representative, distributor branch, or
10 distributor representative shall specify in writing to each of
11 its motor vehicle dealers the dealer's obligation for warranty
12 service on its products, shall compensate the motor vehicle
13 dealer for warranty service required of the dealer by the
14 manufacturer, distributor, or wholesaler, factory branch,
15 factory representative, distributor branch, or distributor
16 representative and shall provide the dealer the schedule of
17 compensation to be paid such dealer for parts, work and
18 service in connection with warranty services, and the time
19 allowance for the performance of such work and service.

20 "(b) In no event shall such schedule of compensation
21 fail to include reasonable compensation for diagnostic work,
22 service, labor, and parts. Time allowances for the diagnosis
23 and performance of warranty work and service shall be
24 reasonable and adequate for the work to be performed. In the
25 determination of what constitutes reasonable compensation

1 under this section, the principal factors to be given
2 consideration shall be the prevailing wage rates being paid by
3 the dealer, in the community in which the dealer is doing
4 business, and in no event shall such compensation of a dealer
5 for warranty services including labor and parts, be less than
6 the rates or prices charged by such dealer for like service to
7 retail customers for nonwarranty service, repairs and parts,
8 provided that such prices and rates are not unreasonable. This
9 subsection does not apply to compensation for parts, systems,
10 fixtures, appliances, furnishings, accessories, and features
11 of a motor home that are designed, used and maintained
12 primarily for non-vehicular residential purposes, or parts
13 related to motorcycle repairs.

14 "(c) It is a violation of this section for any
15 manufacturer, distributor, or wholesaler, factory branch,
16 factory representative, distributor branch or distributor
17 representative to fail to perform any warranty obligations
18 under the motor vehicle manufacturer's warranty, or to fail to
19 include in written notices of factory recalls to dealers the
20 expected date by which necessary parts and equipment will be
21 available to dealers for the correction of such defects, or to
22 fail to compensate any of the motor vehicle dealers for
23 repairs effected by such recall.

24 "(d) All claims made by new motor vehicle dealers
25 pursuant to this section for such labor and parts shall be

1 paid within 30 days following their approval; provided,
2 however, that the manufacturer retains the right to audit such
3 claims and to charge back the dealer for any fraudulent claims
4 for a period not to exceed ~~the current and the immediately~~
5 ~~preceding calendar year following payment~~ 12 months from the
6 date the claim was paid. All such claims shall be either
7 approved or disapproved within 30 days after their receipt on
8 forms and in the manner specified by the manufacturer, and any
9 claim not specifically disapproved in writing within 30 days
10 after the receipt shall be construed to be approved and
11 payment must follow within 30 days. A manufacturer shall not
12 disapprove claims for which the dealer has received
13 preauthorization from the manufacturer or its representative
14 nor shall the manufacturer unreasonably disapprove a claim
15 solely based on the dealer's incidental failure to comply with
16 a specific claim processing requirement that results only in a
17 clerical error or administrative error; rather a claim denial
18 must be based upon a material defect and deviation from the
19 reasonable written claim submission requirements of the
20 manufacturer. In the event of neglect, oversight, or mistake
21 by the dealer, a dealer may submit an amended claim, or may
22 submit a claim not submitted within the time required by the
23 manufacturer, for labor and parts up to 120 days from the date
24 on which such claim was first submitted or could have been
25 submitted."

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

4 Section 3. The provisions of this chapter shall
5 apply to all franchise or dealer agreements in force and
6 effect on the effective date of this amendatory act and to all
7 franchise or dealer agreements, amendments, and renewals to
8 dealer agreements made after the effective date of this
9 amendatory act. The provisions of the Motor Vehicle Franchise
10 Act and this amendatory act shall supersede and control all
11 provisions of any franchise or dealer agreement inconsistent
12 with this act or the Motor Vehicle Franchise Act. The
13 provisions of this amendatory act and the Motor Vehicle
14 Franchise Act shall not be modified or superseded by a choice
15 of law clause in any franchise or dealer agreement, waiver, or
16 other written instrument. These provisions shall apply to all
17 written agreements between a manufacturer and dealer
18 including, but not limited to, the franchise offering, the
19 franchise agreement, sales of goods, services or advertising,
20 leases or deeds of trust of real or personal property,
21 promises to pay, security interests, pledges, insurance
22 contracts, advertising contracts, construction or installation
23 contracts, servicing contracts, and other agreements between a
24 dealer and a manufacturer.

1 Section 4. The provisions of this act are severable.
2 If any part of this act is declared invalid or
3 unconstitutional, that declaration shall not affect the part
4 which remains.

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

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 17-FEB-10, as amended.

Greg Pappas
Clerk

Senate	<hr/>	25-FEB-10	Amended and Passed
House	<hr/>	02-MAR-10	Concurred in Senate Amendment