

1 SB267
2 115964-1
3 By Senator Mitchell
4 RFD: Governmental Affairs
5 First Read: 19-JAN-10

2
3
4
5
6
7
8 SYNOPSIS: This bill would amend the Motor Vehicle
9 Franchise Act; would conform the definition of "new
10 vehicle" in franchise law to the definition in
11 title law; would alter the buy back requirement;
12 would redefine net repurchase price to include
13 transportation charges; would require repurchase of
14 certain parts inventory, special tools, equipment,
15 and signs; would provide further for the operation
16 of more than one franchise at one facility; would
17 provide for the payment on leases of computers or
18 software; would require the manufacturer to pay for
19 certain upgrades or alterations; would require
20 payment for good will; would alter the "reasonable
21 facilities requirement"; would provide further for
22 audits, vehicle exports, termination assistance on
23 elimination of certain lines, and industry
24 reorganization; and would prohibit a manufacturer
25 from engaging in unreasonable actions.

26
27 A BILL

1 TO BE ENTITLED

2 AN ACT

3
4 To amend Sections 8-20-3, 8-20-4, 8-20-5, and
5 8-20-7, Code of Alabama 1975, relating to the Motor Vehicle
6 Franchise Act; to conform the definition of "new vehicle" in
7 franchise law to the definition in title law; to alter the buy
8 back requirement; to redefine net repurchase price to include
9 transportation charges; to require repurchase of certain parts
10 inventory, special tools, equipment, and signs; to provide
11 further for the operation of more than one franchise at one
12 facility; to provide for the payment on leases of computers or
13 software; to require the manufacturer to pay for certain
14 upgrades or alterations; to require payment for good will; to
15 alter the "reasonable facilities requirement"; to provide
16 further for audits, vehicle exports, termination assistance on
17 elimination of certain lines, and industry reorganization; and
18 to prohibit a manufacturer from engaging in unreasonable
19 actions.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Sections 8-20-3, 8-20-4, 8-20-5, and
22 8-20-7, Code of Alabama 1975, are amended to read as follows:

23 "§8-20-3.

24 "For the purpose of this chapter, the following
25 terms shall have the meanings respectively ascribed to them in
26 this section, except where the context clearly indicates a
27 different meaning:

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

6 "~~(1)~~ (2) DEALER AGREEMENT or FRANCHISE. The written
7 contract between any new motor vehicle manufacturer and any
8 new motor vehicle dealer which purports to fix the legal
9 rights and liabilities of the parties to such agreement or
10 contract, and pursuant to which the dealer purchases and
11 resells the franchise product or leases or rents the
12 dealership premises.

13 "~~(2)~~ (3) DISTRIBUTOR or WHOLESALER. A person,
14 whether a resident or a nonresident, other than a
15 manufacturer, who sells or distributes motor vehicles to motor
16 vehicle dealers or who maintains distributor representatives
17 within the state.

18 "~~(3)~~ (4) DISTRIBUTOR BRANCH. A branch office
19 maintained by a distributor or wholesaler.

20 "~~(4)~~ (5) DISTRIBUTOR REPRESENTATIVE. A
21 representative employed by a distributor or wholesaler for the
22 purpose of making or promoting the sale of the distributor's
23 or wholesaler's new motor vehicles to motor vehicle dealers or
24 for supervising or contracting the motor vehicle dealers or
25 prospective motor vehicle dealers.

1 "~~(5)~~ (6) FACTORY BRANCH. A branch office maintained
2 by a manufacturer in order to direct and supervise the
3 representatives of the manufacturer.

4 "~~(6)~~ (7) FACTORY REPRESENTATIVE. A person employed
5 by a manufacturer for the purpose of making or promoting the
6 sale of the manufacturer's new motor vehicles to motor vehicle
7 dealers or distributors or for supervising or contacting the
8 motor vehicle dealers or prospective motor vehicle dealers.

9 "~~(7)~~ (8) GOOD FAITH. Honesty in fact and the
10 observation of reasonable commercial standards of fair dealing
11 in the trade as is defined and interpreted in paragraph (1) (b)
12 of Section 7-2-103.

13 "(9) LINE MAKE. A group or series of motor vehicles
14 that have the same brand identification or brand name based
15 upon the manufacturer's trademark, trade name, or logo.

16 "~~(8)~~ (10) MANUFACTURER. Any person engaged in the
17 manufacturing or assembling of new motor vehicles as a regular
18 business or any person who is controlled by the manufacturer.

19 "~~(9)~~ (11) MOTOR VEHICLE. Every vehicle intended
20 primarily for use and operation on the public highways which
21 is self-propelled.

22 "~~(10)~~ (12) MOTOR VEHICLE DEALER. A person operating
23 under a dealer agreement from a manufacturer or distributor
24 and who is engaged regularly in the business of buying,
25 selling, or exchanging motor vehicles in this state and who
26 has in this state an established place of business.

1 "(13) NET COST. The price the dealer pays for new
2 motor vehicles, supplies, parts, equipment, signs,
3 furnishings, and special tools, including the freight costs to
4 the dealer's location, minus any applicable discounts obtained
5 by the dealer.

6 "~~(11)~~ (14) NEW MOTOR VEHICLE. A vehicle which has
7 been sold to a new motor vehicle dealer and which has not been
8 used for other than demonstration purposes and on which the
9 original title has not been issued from the new motor vehicle
10 dealer. A motor vehicle than has never been the subject of a
11 first sale for use and includes, among others, vehicles
12 maintained in a dealer's inventory, vehicles provided by the
13 manufacturer or dealer for use by participants in charity,
14 sporting, or other special events, vehicles used for driver's
15 education, and vehicles delivered to customers that were
16 subsequently returned to the dealer without a certificate of
17 title being issued on the vehicle.

18 "~~(12)~~ (15) PERSON. An individual, firm, partnership,
19 association, joint stock company, corporation, or other legal
20 entity or a combination of legal entities.

21 "~~(13)~~ (16) RELEVANT MARKET AREA. The area within a
22 radius of 20 miles around an existing dealer or the area of
23 responsibility defined in the franchise, whichever is greater;
24 except that, where a manufacturer is seeking to establish an
25 additional new motor vehicle dealer and there are one or more
26 existing new motor vehicle dealers of the same line make
27 within a 10 mile radius of the proposed dealer site, the

1 "relevant market area" shall in all instances be the area
2 within a radius of 10 miles around an existing dealer.

3 "§8-20-4.

4 "Notwithstanding the terms, provisions, or
5 conditions of any dealer agreement or franchise or the terms
6 or provisions of any waiver, prior to the termination,
7 cancellation, or nonrenewal of any dealer agreement or
8 franchise, the following acts or conduct shall constitute
9 unfair and deceptive trade practices:

10 "(1) For any manufacturer, factory branch, factory
11 representative, distributor, or wholesaler, distributor
12 branch, or distributor representative to coerce, ~~or~~ attempt to
13 coerce, require, or compel any motor vehicle dealer:

14 "a. To accept, buy or order any motor vehicle or
15 vehicles, appliances, equipment, parts, or accessories
16 therefor, or any other commodity or commodities or service or
17 services which such motor vehicle dealer has not voluntarily
18 ordered or requested except items required by applicable
19 local, state or federal law; or to require a motor vehicle
20 dealer to accept, buy, order or purchase such items in order
21 to obtain any motor vehicle or vehicles or any other commodity
22 or commodities which have been ordered or requested by such
23 motor vehicle dealer;

24 "b. To order or accept delivery of any motor vehicle
25 with special features, appliances, accessories, or equipment
26 not included in the list price of said motor vehicles as

1 publicly advertised by the manufacturer thereof, except items
2 required by applicable law;

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

19 "d. To participate monetarily in an advertising
20 campaign or contest, or to purchase any promotional materials,
21 training materials, showroom or other display decorations or
22 materials at the expense of the new motor vehicle dealer. This
23 paragraph is not intended to modify any reasonable and
24 uniformly applied provision of the franchise which requires
25 the new motor vehicle dealer to advertise and promote the sale
26 of vehicles and does not apply to campaigns, contests,

1 advertising and other promotional programs in which the new
2 motor vehicle dealer voluntarily elects to participate;

3 "e. To refrain from participation in the management
4 of, investment in, or the acquisition of any other line of new
5 motor vehicle or related products; provided that the new motor
6 vehicle dealer maintains a reasonable line of credit for each
7 make or line of new motor vehicle, and that the new motor
8 vehicle dealer remains in substantial compliance with the
9 terms and conditions of the franchise and with any reasonable
10 facilities requirements of the manufacturer, provided further,
11 however, "reasonable facilities requirements" shall not
12 include a requirement that a motor vehicle dealer establish or
13 maintain exclusive facilities, personnel, or display space;

14 "f. To change the location of the new motor vehicle
15 dealership or, during the course of the agreement, to make any
16 substantial alterations to the dealership premises when to do
17 so would be unreasonable; or

18 "g. To establish or maintain exclusive facilities,
19 personnel or display space for a new motor vehicle ~~make or~~
20 ~~line, if such requirement is not reasonable.~~ line make;

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

1 including such factors as the demographic characteristics of
2 the population in the dealer's assigned market area, the motor
3 vehicle preferences of consumers in that area, and the
4 geographic characteristics that affect motor vehicle shopping
5 patterns in the dealer's assigned area;

6 "i. To knowingly make, either directly or through
7 any agent or employee, any material statement which is false
8 or misleading, to conceal any material facts which induce a
9 dealer to enter into any agreement or franchise, or to take
10 any action which is materially prejudicial to the dealer or
11 the dealer's business;

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

21 "(2) For any manufacturer, factory branch, factory
22 representative, distributor, or wholesaler, distributor
23 branch, distributor representative, or motor vehicle dealer to
24 engage in any action with respect to a franchise which is
25 arbitrary, ~~in bad faith or unconscionable, or unreasonable or~~
26 is not in good faith and which causes damage to any of the
27 parties.

1 "(3) For any manufacturer, factory branch, factory
2 representative, distributor, or wholesaler, distributor branch
3 or distributor representative:

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

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

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

1 due to a strike or labor difficulty, a shortage of materials,
2 lack of available manufacturing capacity, a freight embargo or
3 other cause over which the manufacturer, factory branch,
4 factory representative, distributor, or wholesaler,
5 distributor branch, or distributor representative shall have
6 no control;

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

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

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

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

1 States government, the state or any of its political
2 subdivisions;

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

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

1 notice of his reasons to the motor vehicle dealer within 45
2 days of notice to the manufacturer, or wholesaler, or
3 distributor by the motor vehicle dealer of the proposed change
4 accompanied by information reflecting the identity, business
5 experience and affiliations, and source of investment funds of
6 the proposed new management;

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

17 "k. To refuse to give effect to or prevent or
18 attempt to prevent by contract or otherwise any motor vehicle
19 dealer or any officer, partner or stockholder of any motor
20 vehicle dealer from selling or transferring any part of the
21 interest of any of them to any other person unless such sale
22 or transfer is to a transferee who would not otherwise qualify
23 for a new motor vehicle dealer's license issued by the State
24 of Alabama or a political subdivision thereof or unless such
25 sale or transfer is to a person who is not of good moral
26 character or who does not meet the manufacturer's or
27 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
27 completed application forms and related information generally

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

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

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

1 of the expenses. The manufacturer or distributor shall make
2 payment of these expenses within 30 days of exercising the
3 right of first refusal.

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

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

9 "1. Whether the establishment of such additional
10 franchise is warranted by economic and marketing conditions
11 including anticipated future changes;

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

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

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

23 "m. To prospectively assent to a release,
24 assignment, novation, agreement, waiver, or estoppel (i) which
25 would relieve any person from any liability or obligation
26 under this chapter, (ii) which would ~~or to~~ require any
27 controversy between a new motor vehicle dealer and a

1 manufacturer to be referred to any person other than the duly
2 constituted courts of this state or the United States, if the
3 referral would be binding on the new motor vehicle dealer,
4 (iii) which would limit the entitlement to recover damages
5 under this act or other Alabama law, (iv) which specifies the
6 jurisdiction or venues in which disputes arising with respect
7 to the franchise shall or shall not be submitted for
8 resolution or otherwise prohibits a dealer from bringing an
9 action in the courts of Alabama, or (v) which would waive the
10 right to trial by jury. Any provision or agreement purporting
11 to do any of the above is void and unenforceable to the extent
12 of the waiver or release. Nothing in this act shall be
13 construed to limit or prohibit good faith settlements of
14 disputes voluntarily entered into between the parties;

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

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

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

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

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

1 of foreign-made vehicles or components; or (iii) an increase
2 in transportation charges due to increased rates imposed by
3 common or contract carriers, shall not be subject to the
4 provisions of this paragraph;

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

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

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

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

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

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

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

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

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

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

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

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

15 "u. To fail to pay or otherwise compensate its new
16 motor vehicle dealers for sales incentives, service
17 incentives, rebates, or other forms of incentive compensation
18 earned by the dealer as a consequence of incentive programs of
19 the manufacturer. The manufacturer shall have the right to
20 audit any such incentive payments made to the dealer and to
21 charge back the dealer for any fraudulent claims for incentive
22 payments made to the dealer for a period not to exceed ~~the~~
23 ~~current and the immediately preceding calendar year from~~
24 ~~payment of a claim~~ 12 months from the date the claim was
25 submitted. A manufacturer shall not disapprove claims for
26 which the dealer has received preauthorization from the
27 manufacturer or its representative nor shall the manufacturer

1 unreasonably disapprove a claim solely based on the dealer's
2 incidental failure to comply with a specific claim processing
3 requirement that results only in a clerical error or
4 administrative error; rather a claim denial must be based upon
5 a material defect and deviation from the reasonable written
6 claim submission requirements of the manufacturer.

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

23 "x. To prohibit a motor vehicle dealer from changing
24 the location of the new motor vehicle dealership to another
25 location within the dealer's assigned area of responsibility
26 if the refusal to approve the relocation is not reasonable

1 under the circumstances including consideration of economic
2 conditions.

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

13 "z. To condition the sale, transfer, relocation, or
14 renewal of a franchise or dealer agreement or to condition
15 sales, services, parts, or finance incentives upon site
16 control or an agreement to renovate or make improvements to a
17 facility. Provided, however, that voluntary acceptance of such
18 conditions by the dealer shall not constitute a violation.

19 "aa. To assign or change a dealer's area of
20 responsibility under the franchise or dealer agreement
21 arbitrarily or without due regard to the present or projected
22 future pattern of motor vehicle sales and registrations within
23 the dealer's market area and without first having provided the
24 dealer with written notice of the change in the dealer's area
25 of responsibility and a detailed description of the change and
26 reasons therefor.

27 "§8-20-5.

1 "(a) Notwithstanding the terms, provisions, or
2 conditions of any agreement or franchise or notwithstanding
3 the terms or provisions of any waiver, no manufacturer shall
4 cancel, terminate, modify, fail to renew, or refuse to
5 continue any franchise relationship with a licensed new motor
6 vehicle dealer unless the manufacturer has:

7 "(1) Satisfied the notice requirement of this
8 section;

9 "(2) Acted in good faith as defined in this chapter;

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

12 "(b) Notwithstanding the terms, provisions or
13 conditions of any agreement or franchise or the terms or
14 provisions of any waiver, good cause shall exist for the
15 purposes of a termination, cancellation, modification,
16 nonrenewal, or noncontinuance when:

17 "(1) There is a failure by the new motor vehicle
18 dealer to comply with a provision of the franchise which
19 provision is both reasonable and of material significance to
20 the franchise relationship, provided that the manufacturer
21 first acquired actual or constructive knowledge of such
22 failure not more than 180 days prior to the date on which
23 notification is given by the manufacturer pursuant to the
24 requirements of this section;

25 "(2) If the failure by the new motor vehicle dealer
26 to comply with a provision of the franchise relates to the
27 performance of the dealer in sales or service, then good cause

1 shall be defined as the failure of the dealer to substantially
2 comply with the reasonable performance provisions of the
3 franchise if:

4 "a. The new motor vehicle dealer was apprised by the
5 manufacturer in writing of such failure; and

6 "1. Said notification stated that notice was
7 provided of failure of performance pursuant to this chapter;
8 and

9 "2. The new motor vehicle dealer was afforded a
10 reasonable opportunity, for a period of not less than six
11 months, to exert good faith efforts to carry out such
12 provisions; and

13 "3. The new motor vehicle dealer did not demonstrate
14 substantial compliance with the manufacturer's performance
15 standards during such period and that the failure to
16 demonstrate such compliance was not due to factors which were
17 beyond the control of such dealer.

18 "b. Such failure thereafter continued within the
19 period which began not more than 180 days before the date
20 notification of termination, cancellation, modification, or
21 nonrenewal was given pursuant to this section; and

22 "(c) The manufacturer shall have the burden of proof
23 for showing that it has acted in good faith, that the notice
24 requirements have been complied with, and that there was good
25 cause for the franchise termination, cancellation,
26 modification, nonrenewal, or noncontinuance.

1 "(d) If a dealer brings an action in a court of
2 competent jurisdiction to challenge the cancellation,
3 termination, or nonrenewal of a franchise or dealer agreement
4 by a manufacturer under this section, such franchise or dealer
5 agreement shall remain in full force and effect and such
6 dealer shall retain all rights and remedies pursuant to the
7 terms and conditions of such franchise or dealer agreement,
8 including, but not limited to, the right to sell or transfer
9 the dealer's ownership interest, for a period of six months
10 following a final determination by a court of competent
11 jurisdiction, unless extended by the court for good cause.
12 This subsection shall not apply to a cancellation,
13 termination, or nonrenewal of a franchise or dealer agreement
14 based upon any of the reasons set forth in subsection (e)(2)
15 below.

16 "~~(d)~~ (e) Notwithstanding the terms, provisions or
17 conditions of any agreement or franchise or the terms or
18 provisions of any waiver, prior to the termination,
19 cancellation, modification, or nonrenewal of any franchise or
20 dealer agreement, the manufacturer shall furnish notification
21 of such termination, cancellation, modification, or nonrenewal
22 to the new motor vehicle dealer as follows:

23 "(1) In the manner described in subsection (e); and

24 "(2) Not less than 90 days prior to the effective
25 date of such termination, cancellation, modification, or
26 nonrenewal or not less than 30 days prior to the effective

1 date of such termination, cancellation, or nonrenewal with
2 respect to any of the following:

3 "a. Filing of any petition by or against the new
4 motor vehicle dealer under any bankruptcy or receivership law;

5 "b. Willful or intentional misrepresentation made by
6 the new motor vehicle dealer with the express intent to
7 defraud the manufacturer or distributor;

8 "c. Failure of the new motor vehicle dealer to
9 conduct its customary sales and service operations during its
10 customary business hours for seven consecutive business days;

11 "d. Final conviction (including appeal) of the new
12 motor vehicle dealer, principal owner or principal executive
13 manager of any felony.

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

17 "(1) A statement of intention to terminate the
18 franchise, cancel the franchise, modify the franchise or not
19 to renew the franchise; and

20 "(2) A statement of the reasons for the termination,
21 cancellation, modification, or nonrenewal; and

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

24 "~~(f)~~ (g) Upon the termination, cancellation, or
25 nonrenewal by the manufacturer of any franchise or dealer
26 agreement for good cause, the new motor vehicle dealer shall

1 be paid fair and reasonable compensation by the manufacturer
2 for the:

3 "(1) New motor vehicle inventory of the current and
4 previous model year which has been acquired from the
5 manufacturer acquired from the manufacturer, or from other
6 dealers in the ordinary course of business, within three years
7 prior to the date of notice of the termination, cancellation,
8 or nonrenewal by the manufacturer. Any new and unused All new
9 motor vehicle repurchased by the manufacturer vehicles shall
10 be repurchased by the manufacturer at the net cost to the
11 dealer and the manufacturer shall also pay to the dealer any
12 floor plan costs from the effective date of the termination to
13 the date that the vehicles are removed from the dealership or
14 the date the floor plan finance company is paid, whichever
15 occurs last;

16 "(2) Supplies and parts acquired by the new motor
17 vehicle dealer from the manufacturer, or its approved sources,
18 or from other dealers in the ordinary course of business,
19 within seven years prior to the effective date of the
20 termination, cancellation, or nonrenewal. Supplies and parts
21 shall be repurchased by the manufacturer at the net cost to
22 the dealer without any restocking fees or other fees;

23 "(3) Equipment, signs and furnishings acquired by
24 the new motor vehicle dealer from the manufacturer or its
25 approved sources. The dealer shall be paid its net cost for
26 the equipment, signs, and furnishings;

1 "(4) Special tools and automotive service equipment
2 that were recommended and designated as special tools or
3 equipment by the manufacturer. The dealer shall be paid its
4 net cost for the special tools and automotive service
5 equipment;

6 "(5) The amount remaining to be paid on any leases
7 of computer hardware or software that is used to manage and
8 report data to the manufacturer for financial reporting
9 requirements and the amount remaining to be paid on any
10 manufacturer's required equipment leases, including, but not
11 limited to, computer hardware and software leases;

12 "(6) The net cost of any upgrades or alterations
13 made by the dealer to the dealership facilities which were
14 made within two years prior to the effective date of
15 termination;

16 "~~(5)~~ (7) Dealership facilities, if the facilities
17 were required to be purchased or constructed as a precondition
18 to obtaining the franchise or to its renewal by the
19 manufacturer. The manufacturer shall use its best efforts to
20 locate a purchaser who will offer to purchase the facilities
21 at a reasonable price. If the manufacturer does not locate a
22 purchaser within a reasonable time, the manufacturer will pay
23 the dealer an amount equivalent to the reasonable rental value
24 of such facilities for three years during which time the
25 manufacturer shall be entitled to possession of said
26 facilities. If the facilities were leased from a lessor other
27 than the manufacturer and the ~~lease was~~ facilities were

1 required as a precondition to obtaining the franchise or to
2 its renewal by the manufacturer, then the manufacturer shall
3 use its best efforts to locate a lessee who will offer to
4 lease the premises for a reasonable term at a reasonable rent.
5 If the manufacturer does not locate a lessee within a
6 reasonable time, the manufacturer shall pay such rent for
7 three years or the remainder of the term of the lease,
8 whichever is less and the manufacturer shall have the option
9 to succeed to the rights of the dealer under the lease. If the
10 dealership facility is used for more than one line make, the
11 rental payment by the manufacturer shall be prorated for each
12 line make based upon total sales volume for the previous 12
13 months prior to termination.

14 "~~(g)~~ (h) Upon the termination, cancellation, or
15 nonrenewal by the manufacturer of any franchise without good
16 cause, the new motor vehicle dealer shall be paid fair and
17 reasonable compensation by the manufacturer for the ~~personal~~
18 ~~property items~~ described in subdivisions ~~(f)(1) through (f)(4)~~
19 (g)(1) through (g)(6) and for the dealership facilities, if
20 the facilities were required to be purchased or constructed as
21 a precondition to obtain the franchise or to its renewal by
22 the manufacturer. If the facilities were leased and the lease
23 was required as a precondition to obtaining the franchise or
24 to its renewal by the manufacturer, then the manufacturer
25 shall be liable for payment of the rent for the remainder of
26 the term of the lease during which time the manufacturer shall
27 be entitled to possession of said facilities. 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 upon total sales volume for the previous 12
4 months prior to termination. The manufacturer shall also pay
5 the dealer fair and reasonable compensation for the value of
6 the dealership within six months after the date of
7 termination, cancellation, or nonrenewal.

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

18 "(j) Upon the termination, cancellation, or
19 nonrenewal by the manufacturer occurring as a result of the
20 cessation of a line make or as a result of the manufacturer's
21 selling or otherwise transferring some or all of the assets
22 essential to the manufacture or distribution of the line make,
23 the new motor vehicle dealer shall be paid fair and reasonable
24 compensation by the manufacturer for the items described in
25 subdivisions (g)(1) through (g)(7). The manufacturer shall
26 also compensate the dealer in an amount equal to the greater
27 of: (1) the actual pecuniary loss that the dealer suffered as

1 a result of the termination, cancellation, or nonrenewal or
2 (2) the fair market value of the franchise determined as of
3 (i) the date the manufacturer announces the action that
4 results in termination, cancellation, or renewal, (ii) the
5 date the action that resulted in the termination,
6 cancellation, or nonrenewal first became general knowledge, or
7 (3) the day 12 months prior to the date on which the notice of
8 termination, cancellation, or renewal is issued, whichever is
9 greater. If, as a result of the circumstances described above,
10 an entity other than the original manufacturer of a line make
11 becomes the manufacturer of the line make and intends to
12 distribute motor vehicles of that line make in Alabama, the
13 entity shall honor the franchise agreements of the original
14 manufacturer and its dealers or offer those dealers a new
15 franchise agreement for the line make on substantially similar
16 terms and conditions.

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

24 ~~"(j) (1)~~ The terms and provisions of subsections ~~(f)~~
25 ~~through (i)~~ (a) through (k) of this section shall not apply
26 upon the termination, cancellation, or nonrenewal of a
27 franchise by a motor home or motorcycle dealer.

1 "§8-20-7.

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

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

1 subsection does not apply to compensation for parts, systems,
2 fixtures, appliances, furnishings, accessories, and features
3 of a motor home that are designed, used and maintained
4 primarily for non-vehicular residential purposes, or parts
5 related to motorcycle repairs.

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

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

1 payment must follow within 30 days. A manufacturer shall not
2 disapprove claims for which the dealer has received
3 preauthorization from the manufacturer or its representative
4 nor shall the manufacturer unreasonably disapprove a claim
5 solely based on the dealer's incidental failure to comply with
6 a specific claim processing requirement that results only in a
7 clerical error or administrative error; rather a claim denial
8 must be based upon a material defect and deviation from the
9 reasonable written claim submission requirements of the
10 manufacturer."

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

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

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

8 Section 4. This act shall become effective
9 immediately following its passage and approval by the
10 Governor, or its otherwise becoming law.