

1 SB157
2 189596-1
3 By Senators Scofield and Ward
4 RFD: Judiciary
5 First Read: 11-JAN-18

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8 SYNOPSIS: Under existing law, the Motor Vehicle
9 Franchise Act regulates the business relationship
10 between motor vehicle manufacturers and wholesalers
11 and new motor vehicle dealers. The act defines
12 unfair and deceptive trade practices to include a
13 manufacturer or wholesaler coercing or attempting
14 to coerce a new motor vehicle dealer to change its
15 location or alter its dealership premises when to
16 do so would be unreasonable.

17 This act would further define conditions
18 which would be unreasonable under this provision.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT

23
24 Relating to the Motor Vehicle Franchise Act; to
25 amend Section 8-20-4 of the Code of Alabama 1975, to further
26 define unfair and deceptive trade practices when a motor
27 vehicle manufacturer or wholesaler or similar entity coerces

1 or attempts to coerce a new motor vehicle dealer to change its
2 location or alter its dealership premises when to do so would
3 be unreasonable.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Section 8-20-4 of the Code of Alabama
6 1975, is amended to read as follows:

7 "§8-20-4.

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

14 "(1) For any manufacturer, factory branch, factory
15 representative, distributor, or wholesaler, distributor
16 branch, or distributor representative to coerce or attempt to
17 coerce any motor vehicle dealer to do any of the following:

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

1 "b. To order or accept delivery of any motor vehicle
2 with special features, appliances, accessories, or equipment
3 not included in the list price of the motor vehicles as
4 publicly advertised by the manufacturer thereof, except items
5 required by applicable law.

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

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

1 the new motor vehicle dealer to advertise and promote the sale
2 of vehicles and does not apply to campaigns, contests,
3 advertising, and other promotional programs in which the new
4 motor vehicle dealer voluntarily elects to participate.

5 "e. To refrain from participation in the management
6 of, investment in, or the acquisition of any other line of new
7 motor vehicle or related products; provided that the new motor
8 vehicle dealer maintains a reasonable line of credit for each
9 make or line of new motor vehicle, and that the new motor
10 vehicle dealer remains in substantial compliance with the
11 terms and conditions of the franchise.

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

16 "1. For the purposes of this paragraph, both of the
17 following would be unreasonable:

18 "(i) To require the construction of or substantial
19 alteration to a facility or premises if the facility or
20 premises was constructed or substantially altered within the
21 prior 10 years and that construction or alteration, which
22 includes signs and image elements, was approved by the
23 manufacturer, factory branch, factory representative,
24 distributor, or wholesaler, distributor branch, or distributor
25 representative.

26 "(ii) To require the use of a vendor of goods or
27 services selected by the manufacturer, factory branch, factory

1 representative, distributor, or wholesaler, distributor
2 branch, or distributor representative for construction or
3 substantial alterations if the dealer selects an alternative
4 vendor or goods and services that are substantially of the
5 same quality and kind.

6 "2. This paragraph does not apply to construction or
7 alterations necessary to comply with a health or safety law,
8 to comply with technology requirements necessary to sell or
9 service a vehicle that the dealer is authorized to sell and
10 service, or routine facility maintenance.

11 "3. This paragraph is not intended to prohibit a
12 manufacturer, factory branch, factory representative,
13 distributor, or wholesaler, distributor branch, or distributor
14 representative from continuing a facility improvement program
15 that is in effect as of the effective date of the act adding
16 this subparagraph with more than one new vehicle dealer in the
17 state or providing payments to assist a new vehicle dealer in
18 making agreed upon facility improvements, construction, or
19 substantial alterations, including signage or an image
20 element.

21 "g. To establish or maintain exclusive sales
22 facilities or sales display space for a new motor vehicle line
23 make unless such exclusive sales facilities or sales display
24 space are reasonable and are otherwise justified by reasonable
25 business considerations. The burden of proving that reasonable
26 business considerations justify exclusive sales facilities or
27 sales display space is on the manufacturer. Provided, however,

1 a manufacturer or distributor may not coerce, attempt to
2 coerce, or require a motor vehicle dealer to establish or
3 maintain exclusive personnel or exclusive service, parts, or
4 administrative facilities for a line make.

5 "h. To adhere to performance standards that are not
6 fair, reasonable, and equitable or that are not applied
7 uniformly to other similarly situated dealers. A performance
8 standard, sales objective, or program for measuring dealership
9 performance that may have a material effect on a dealer,
10 including the dealer's right to payment under any incentive or
11 reimbursement program shall be fair, reasonable, equitable,
12 and based on accurate information.

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

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

25 "(2) For any manufacturer, factory branch, factory
26 representative, distributor, or wholesaler, distributor
27 branch, distributor representative, or motor vehicle dealer to

1 engage in any action with respect to a franchise which is
2 arbitrary, unconscionable, unreasonable, or is not in good
3 faith and which causes damage to any of the parties.

4 "(3) For any manufacturer, factory branch, factory
5 representative, distributor, or wholesaler, distributor
6 branch, or distributor representative to do any of the
7 following:

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

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

21 "c. To refuse to deliver to a motor vehicle dealer
22 in reasonable quantities and within a reasonable time after
23 receipt of the motor vehicle dealer's order any such motor
24 vehicles as are covered by a franchise or dealer agreement and
25 specifically publicly advertised in the state by such
26 manufacturer, factory branch, factory representative,
27 distributor, or wholesaler, distributor branch, or distributor

1 representative to be available for immediate delivery;
2 provided, however, that the failure to deliver any motor
3 vehicle shall not be considered a violation of this chapter if
4 such failure is due to an act of God, a work stoppage or delay
5 due to a strike or labor difficulty, a shortage of materials,
6 lack of available manufacturing capacity, a freight embargo,
7 or other cause over which the manufacturer, factory branch,
8 factory representative, distributor, or wholesaler,
9 distributor branch, or distributor representative shall have
10 no control.

11 "d. To cancel or terminate the franchise or dealer
12 agreement of a motor vehicle dealer other than as hereinafter
13 provided.

14 "e. To fail or refuse to extend the franchise or
15 dealer agreement of a motor vehicle dealer upon its expiration
16 other than as hereinafter provided.

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

22 "g. To offer to sell or lease, or to sell or lease,
23 any new motor vehicle to any motor vehicle dealer at a lower
24 actual price therefor than the actual price offered to any
25 other motor vehicle dealer for the same model vehicle
26 similarly equipped or to utilize any device including, but not
27 limited to, sales promotion plans or programs which result in

1 such lesser actual price and which are not offered to dealers
2 of vehicles of the same line make; provided, however, that the
3 provisions of this paragraph shall not apply to sale to a
4 motor vehicle dealer for resale to any unit of the United
5 States government, the state, or any of its political
6 subdivisions.

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

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

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

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

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

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

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

1 parent of an owner, or a spouse of one of those family
2 members.

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

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

21 "4. The manufacturer or distributor agrees to pay
22 the reasonable expenses, including reasonable attorneys' and
23 accountants' fees that do not exceed the usual, customary, and
24 reasonable fees charged for similar work done for other
25 clients incurred by the proposed buyer or transferee before
26 the manufacturer's or distributor's exercise of its right of
27 first refusal in negotiating and implementing the contract for

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

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

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

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

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

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

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

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

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

15 "o. To fail to indemnify and hold harmless its motor
16 vehicle dealers against any losses, including, but not limited
17 to, court costs and reasonable attorneys' fees, or damages
18 arising out of complaints, claims, or lawsuits, including, but
19 not limited to, strict liability, negligence,
20 misrepresentation, warranty (express or implied), or
21 rescission of the sale where the complaint, claim, or lawsuit
22 relates to 1. the manufacture, assembly, or design of new
23 motor vehicles, parts, or accessories; 2. a defect in any
24 forms furnished to the dealer or in the written instructions
25 for the completion of such forms by the manufacturer, an
26 affiliate of the manufacturer, or person controlled by the
27 manufacturer used in connection with the sale, lease, or

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

10 "p. To increase prices of new motor vehicles which
11 the new motor vehicle dealer had ordered for retail consumers
12 prior to the dealer's receipt of the written official price
13 increase notification. A sales contract signed by a retail
14 consumer shall constitute evidence of each such order;
15 provided that the vehicle is in fact delivered to that
16 customer. In the event of manufacturer price reductions or
17 cash rebates, the amount of any such reduction or rebate
18 received by a dealer shall be passed on to the retail consumer
19 by the dealer if the retail price was negotiated on the basis
20 of the previous higher price to the dealer. Price reductions
21 shall apply to all vehicles in the dealer's inventory which
22 were subject to the price reduction. Price differences
23 applicable to new model or series motor vehicles at the time
24 of the introduction of new models or series shall not be
25 considered a price increase or price decrease. Price changes
26 caused by either: 1. the addition to a motor vehicle of
27 required or optional equipment pursuant to state or federal

1 law; 2. revaluation of the United States dollar, in the case
2 of foreign-made vehicles or components; or 3. an increase in
3 transportation charges due to increased rates imposed by
4 common or contract carriers, shall not be subject to the
5 provisions of this paragraph.

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

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

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

24 "1. The manufacturer or distributor is owning or
25 operating a new motor vehicle dealership or a warranty repair
26 facility for a temporary period of not more than 24 months, as
27 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 the businesses, including warranty
9 and repair work on vehicles that it owns, previously owned, or
10 takes in trade.

11 "7. A manufacturer or distributor that meets all of
12 the following requirements:

13 "(i) Manufactures or distributes engines for
14 installation in a vehicle having as its primary purpose the
15 transport of a person or persons or property on a public
16 highway and having a gross vehicle weight rating of more than
17 16,000 pounds, provided that the manufacturer does not
18 otherwise manufacture motor vehicles as defined in Section
19 8-20-3.

20 "(ii) Owned, operated, or controlled a new motor
21 vehicle dealership or a warranty repair facility in this state
22 prior to January 1, 2016.

23 "(iii) Does not own or operate more than three new
24 motor vehicle dealership or warranty repair facilities in this
25 state.

26 "(iv) Does not regularly provide motor vehicle
27 warranty or repair service work in this state to noncommercial

1 single-family passenger motor vehicles having a gross vehicle
2 weight rating of less than 16,000 pounds unless the repair is
3 not reasonably available at a motor vehicle dealer that sells
4 new motor vehicles with a gross vehicle weight rating of less
5 than 16,000 pounds or at the request of such motor vehicle
6 dealer.

7 "(v) Avoids any acts or practices the effect of
8 which may be to lessen or eliminate competition that provided
9 to dealers on materially equal terms access to all support for
10 completing repairs, including, but not limited to, parts and
11 assembles, training, and technical service bulletins and other
12 information concerning repairs that the manufacturer provides
13 to facilities owned, operated, or controlled by the
14 manufacturer.

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

19 "u. To fail to pay or otherwise compensate its new
20 motor vehicle dealers for sales incentives, service
21 incentives, rebates, or other forms of incentive compensation
22 earned by the dealer as a consequence of incentive programs of
23 the manufacturer. The manufacturer shall have the right to
24 audit any such incentive payments made to the dealer and to
25 charge back the dealer for any fraudulent claims for incentive
26 payments made to the dealer for a period not to exceed 12
27 months from the date the claim was paid. A manufacturer shall

1 not disapprove claims for which the dealer has received
2 preauthorization from the manufacturer or its representative
3 nor shall the manufacturer unreasonably disapprove a claim
4 solely based on the dealer's incidental failure to comply with
5 a specific claim processing requirement that results only in a
6 clerical error or administrative error; rather a claim denial
7 must be based upon a material defect and deviation from the
8 reasonable written claim submission requirements of the
9 manufacturer. In the event of neglect, oversight, or mistake
10 by the dealer, a dealer may submit an amended claim, or may
11 submit a claim not submitted within the time required by the
12 manufacturer, for sales incentives, service incentives,
13 rebates, or other forms of incentive compensation up to 120
14 days from the date on which such claim was first submitted or
15 could have been submitted.

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

1 section if the failure is due to a lack of manufacturing
2 capacity or to a strike or labor difficulty, a shortage of
3 materials, a freight embargo, or any other cause over which
4 the manufacturer has no control.

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

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

20 "y. To condition the sale, transfer, relocation, or
21 renewal of a franchise or dealer agreement or to condition
22 sales, service, parts, or finance incentives upon site control
23 or an agreement to renovate or make substantial improvements
24 to a facility; provided, however, that voluntary and
25 non-coerced acceptance of such conditions by the dealer in
26 writing, including, but not limited to, a written agreement

1 for which the dealer has accepted separate and valuable
2 consideration, shall not constitute a violation.

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

11 Section 2. This act shall become effective
12 immediately following its passage and approval by the
13 Governor, or its otherwise becoming law.