

FIRST REGULAR SESSION

HOUSE BILL NO. 738

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KOLKMEYER.

1549H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 407.825 and 407.826, RSMo, and to enact in lieu thereof two new sections relating to motor vehicle franchise practices.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 407.825 and 407.826, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 407.825 and 407.826, to read as follows:

407.825. Notwithstanding the terms of any franchise agreement to the contrary, the performance, whether by act or omission, by a motor vehicle franchisor, whether directly or indirectly through an agent, employee, affiliate, common entity, or representative, or through an entity controlled by a franchisor, of any or all of the following acts enumerated in this section are hereby defined as unlawful practices, the remedies for which are set forth in section 407.835:

(1) To engage in any conduct which is capricious or not in good faith or unconscionable and which causes damage to a motor vehicle franchisee or to the public; provided, that good faith conduct engaged in by motor vehicle franchisors as sellers of new motor vehicles or parts or as holders of security interest therein, in pursuit of rights or remedies accorded to sellers of goods or to holders of security interests pursuant to the provisions of chapter 400, uniform commercial code, shall not constitute unfair practices pursuant to sections 407.810 to 407.835;

(2) To coerce, attempt to coerce, require or attempt to require any motor vehicle franchisee to accept delivery of any new motor vehicle or vehicles, equipment, tools, parts or accessories therefor, or any other commodity or commodities which such motor vehicle franchisee has not ordered after such motor vehicle franchisee has rejected such commodity or commodities, or which is not required by law or the franchise agreement. It shall not be deemed a violation of this section for a motor vehicle franchisor to require a motor vehicle franchisee to

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 have an inventory of parts, tools, and equipment reasonably necessary to service the motor
19 vehicles sold by a motor vehicle franchisor; or new motor vehicles reasonably necessary to meet
20 the demands of dealers or the public or to display to the public the full line of a motor vehicle
21 franchisor's product line;

22 (3) To withhold, reduce, delay, or refuse to deliver in reasonable quantities and within
23 a reasonable time after receipt of orders for new motor vehicles, such motor vehicles as are so
24 ordered and as are covered by such franchise and as are specifically publicly advertised by such
25 motor vehicle franchisor to be available for immediate delivery; provided, however, the failure
26 to deliver any motor vehicle shall not be considered a violation of sections 407.810 to 407.835
27 if such failure is due to an act of God, work stoppage, or delay due to a strike or labor difficulty,
28 shortage of products or materials, freight delays, embargo or other causes of which such motor
29 vehicle franchisor shall have no control;

30 (4) To coerce, attempt to coerce, require or attempt to require any motor vehicle
31 franchisee to enter into any agreement with such motor vehicle franchisor or its agent, employee,
32 affiliate, or representative, or a person controlled by the franchisor or to do any other act
33 prejudicial to such motor vehicle franchisee;

34 (5) To terminate, cancel, refuse to continue, or refuse to renew any franchise without
35 good cause, unless such new motor vehicle franchisee, without good cause, substantially defaults
36 in the performance of such franchisee's reasonable, lawful, and material obligations under such
37 franchisee's franchise. In determining whether good cause exists, the administrative hearing
38 commission shall take into consideration all relevant circumstances, including, but not limited
39 to, the following factors:

40 (a) The amount of business transacted by the franchisee;

41 (b) The investments necessarily made and obligations incurred by the franchisee,
42 including but not limited to goodwill, in the performance of its duties under the franchise
43 agreement, together with the duration and permanency of such investments and obligations;

44 (c) The potential for harm and inconvenience to consumers as a result of disruption of
45 the business of the franchisee;

46 (d) The franchisee's failure to provide adequate service facilities, equipment, parts, and
47 qualified service personnel;

48 (e) The franchisee's failure to perform warranty work on behalf of the manufacturer,
49 subject to reimbursement by the manufacturer;

50 (f) The franchisee's failure to substantially comply, in good faith, with requirements of
51 the franchise that are determined to be reasonable, lawful, and material;

52 (g) The franchisor's failure to honor its requirements under the franchise;

53 (h) The potential harm to the area that the franchisee serves;

54 (i) The demographic and geographic characteristics of the area the franchisee serves; and

55 (j) The harm to the franchisor;

56 (6) To prevent by contract or otherwise, any motor vehicle franchisee from changing the
57 capital structure of the franchisee's franchise or the means by or through which the franchisee
58 finances the operation of the franchisee's franchise, provided the motor vehicle franchisee at all
59 times meets any reasonable capital standards agreed to between the motor vehicle franchisee and
60 the motor vehicle franchisor and grants to the motor vehicle franchisor a purchase money
61 security interest in the new motor vehicles, new parts and accessories purchased from the motor
62 vehicle franchisor;

63 (7) (a) To prevent, by contract or otherwise, any sale or transfer of a franchisee's
64 franchise or interest or management thereof; provided, if the franchise specifically permits the
65 franchisor to approve or disapprove any such proposed sale or transfer, a franchisor shall only
66 be allowed to disapprove a proposed sale or transfer if the interest being sold or transferred when
67 added to any other interest owned by the transferee constitutes fifty percent or more of the
68 ownership interest in the franchise and if the proposed transferee fails to satisfy any standards
69 of the franchisor which are in fact normally relied upon by the franchisor prior to its entering into
70 a franchise, and which relate to the qualification, capitalization, integrity or character of the
71 proposed transferee and which are reasonable. A franchisee or proposed franchisee may request,
72 at any time, that the franchisor provide a copy of the standards which are normally relied upon
73 by the franchisor to evaluate a proposed sale or transfer and a proposed transferee;

74 (b) The franchisee and the prospective franchisee shall cooperate with the franchisor in
75 providing information relating to the prospective transferee's qualifications, capitalization,
76 integrity and character;

77 (c) In the event of a proposed sale or transfer of a franchise, the franchisor shall be
78 permitted to exercise a right of first refusal to acquire the franchisee's assets or ownership if:

79 a. The franchise agreement permits the franchisor to exercise a right of first refusal to
80 acquire the franchisee's assets or ownership in the event of a proposed sale or transfer;

81 b. Such sale or transfer is conditioned upon the franchisor or franchisee entering a
82 franchise agreement with the proposed transferee;

83 c. The exercise of the right of first refusal shall result in the franchisee and the
84 franchisee's owners receiving the same or greater consideration and the same terms and
85 conditions as contracted to receive in connection with the proposed sale or transfer;

86 d. The sale or transfer does not involve the sale or transfer to an immediate member or
87 members of the family of one or more franchisee owners, defined as a spouse, child, grandchild,
88 spouse of a child or grandchild, brother, sister or parent of the franchisee owner, or to the
89 qualified manager, defined as an individual who has been employed by the franchisee for at least

90 two years and who otherwise qualifies as a franchisee operator, or a partnership or corporation
91 controlled by such persons; and

92 e. The franchisor agrees to pay the reasonable expenses, including attorney's fees which
93 do not exceed the usual, customary and reasonable fees charged for similar work done for other
94 clients, incurred by the proposed transferee prior to the franchisor's exercise of its right of first
95 refusal in negotiating and implementing the contract for the proposed sale or transfer of the
96 franchise or the franchisee's assets. Notwithstanding the foregoing, no payment of such expenses
97 and attorney's fees shall be required if the franchisee has not submitted or caused to be submitted
98 an accounting of those expenses within fourteen days of the franchisee's receipt of the
99 franchisor's written request for such an accounting. Such accounting may be requested by a
100 franchisor before exercising its right of first refusal;

101 (d) For determining whether good cause exists for the purposes of this subdivision, the
102 administrative hearing commission shall take into consideration all relevant circumstances,
103 including, but not limited to, the following factors:

104 a. Whether the franchise agreement specifically permits the franchisor to approve or
105 disapprove any proposed sale or transfer;

106 b. Whether the interest to be sold or transferred when added to any other interest owned
107 by the proposed transferee constitutes fifty percent or more of the ownership interest in the
108 franchise;

109 c. Whether the proposed transferee fails to satisfy the standards of the franchisor which
110 are in fact normally relied upon by the franchisor prior to its entering into a franchise, and which
111 related to the qualification, capitalization, integrity or character of the proposed transferee and
112 which are lawful and reasonable;

113 d. The amount of business transacted by the franchisee;

114 e. The investments and obligations incurred by the franchisee, including but not limited
115 to goodwill, in the performance of its duties under the franchise agreement, together with the
116 duration and permanency of such investments and obligations;

117 f. The investments and obligations that the proposed transferee is prepared to make in
118 the business;

119 g. The potential for harm and inconvenience to consumers as a result of the franchisor's
120 decision;

121 h. The franchisor's failure to honor its requirements under the franchise;

122 i. The potential harm to the area that the franchisee serves;

123 j. The ability or willingness of the franchisee to continue in the business if the proposed
124 transfer is not permitted;

125 k. The demographic and geographic characteristics of the area the franchisee serves; and

126 1. The harm to the franchisor;

127 (8) To prevent by contract or otherwise any motor vehicle franchisee from changing the
128 executive management of the motor vehicle franchisee's business, unless the motor vehicle
129 franchisor demonstrates that such change in executive management will be detrimental to the
130 distribution of the motor vehicle franchisor's motor vehicles;

131 (9) To impose unreasonable standards of performance upon a motor vehicle franchisee
132 or to require, attempt to require, coerce or attempt to coerce a franchisee to adhere to
133 performance standards that are not applied uniformly to other similarly situated franchisees;

134 (10) To require, attempt to require, coerce, or attempt to coerce a motor vehicle
135 franchisee at the time of entering into a franchise or any other arrangement to assent to a release,
136 assignment, novation, waiver or estoppel which would relieve any person from liability imposed
137 by sections 407.810 to 407.835;

138 (11) To prohibit directly or indirectly the right of free association among motor vehicle
139 franchisees for any lawful purpose;

140 (12) To provide any term or condition in any lease or other agreement ancillary or
141 collateral to a franchise, including, but not limited to, any agreement with a common entity or
142 any person required by the franchisor or controlled by or affiliated with the franchisor, which
143 term or condition directly or indirectly violates the provisions of sections 407.810 to 407.835;

144 (13) Upon any termination, cancellation, refusal to continue, or refusal to renew any
145 franchise or any discontinuation of any line-make or parts or products related to such line-make,
146 failing to pay reasonable compensation to a franchisee as follows:

147 (a) The franchisee's net acquisition cost for any new, undamaged and unsold vehicle in
148 the franchisee's inventory of either the current model year or one year-prior model year purchased
149 from the franchisor or another franchisee of the same line-make in the ordinary course of
150 business prior to receipt of a notice of termination or nonrenewal, provided the vehicle has less
151 than seven hundred fifty miles registered on the odometer, including mileage incurred in delivery
152 from the franchisor or in transporting the vehicle between dealers for sale;

153 (b) The franchisee's cost of each new, unused, undamaged and unsold part or accessory
154 if the part or accessory is in the current parts catalog, less applicable allowances. In the case of
155 sheet metal, a comparable substitute for the original package may be used. Reconditioned or
156 core parts shall be valued at their core value, the price listed in the current parts catalog or the
157 amount paid for expedited return of core parts, whichever is higher. If the part or accessory was
158 purchased by the franchisee from an outgoing authorized franchisee, the franchisor shall
159 purchase the part or accessory for the price in the current parts catalog. In the case of parts or
160 accessories which no longer appear in the current parts catalog, the franchisor shall purchase the

161 parts or accessories for the price in the last version of the parts catalog in which the part or
162 accessory appeared;

163 (c) The fair market value of each undamaged sign owned by the franchisee which bears
164 a trademark or trade name used or claimed by the franchisor if the sign was purchased from, or
165 purchased at the request of, the franchisor. During the first seven years after its purchase, the fair
166 market value of each sign shall be the franchisee's costs of purchasing the sign, less depreciation,
167 using straight-line depreciation and a seven-year life of the asset;

168 (d) The fair market value of all equipment, tools, data processing programs and
169 equipment and automotive service equipment owned by the franchisee which were recommended
170 in writing and designated as equipment, tools, data processing programs and equipment, and
171 automotive service equipment and purchased from, or purchased at the request of, the franchisor,
172 if the equipment, tools, programs and equipment are in usable and good condition, except for
173 reasonable wear and tear. During the first seven years after their purchase, the fair market value
174 of each item of equipment, tools, and automotive service equipment shall be the franchisee's
175 costs of purchasing the item, less depreciation, using straight-line depreciation and a seven-year
176 life of the asset. During the first three years after its purchase, the fair market value of each item
177 of required data processing programs and equipment shall be the franchisee's cost of purchasing
178 the item, less depreciation, using straight-line depreciation and a three-year life of the asset;

179 (e) In addition to the costs referenced in paragraphs (a) to (d) of this subdivision, the
180 franchisor shall pay the franchisee an additional five percent for handling, packing, storing and
181 loading of any property subject to repurchase pursuant to this section, and the franchisor shall
182 pay the shipper for shipping the property subject to repurchase from the location of the franchisee
183 to the location directed by the franchisor;

184 (f) The amount remaining to be paid on any equipment or service contracts required by
185 or leased from the franchisor or a subsidiary or company affiliated with or controlled or
186 recommended by the franchisor. However, if the franchise agreement is voluntarily terminated
187 by the franchisee, without coercion by the franchisor, then:

188 a. If the amount remaining to be paid on any equipment or service contract is owed to
189 the franchisor, the franchisor shall cancel the obligation rather than paying the amount to the
190 franchisee; and

191 b. If the amount remaining to be paid on any equipment or service contract is owed to
192 a subsidiary or a company affiliated with or controlled or recommended by the franchisor, the
193 franchisor may pay such amount to the subsidiary or the company affiliated with or controlled
194 by the franchisor, but if the franchisor does not pay such amount to the subsidiary or the
195 company affiliated with or controlled by the franchisor, such amount may be paid to the
196 franchisee by the subsidiary or company affiliated with or controlled by the franchisor;

197 (g) If the dealer leases the dealership facilities, then the franchisor shall be liable for
198 twelve months' payment of the gross rent or the remainder of the term of the lease, whichever
199 is less. If the dealership facilities are not leased, then the franchisor shall be liable for the
200 equivalent of twelve months' payment of gross rent. This paragraph shall not apply when the
201 termination, cancellation, or nonrenewed line was under good cause related to a conviction and
202 imprisonment for a felony involving moral turpitude that is substantially related to the
203 qualifications, function, or duties of a franchisee as well as fraud and voluntary terminations of
204 a franchise. Gross rent is the monthly rent plus the monthly cost of insurance and taxes. Such
205 reasonable rent shall be paid only to the extent that the dealership premises are recognized in the
206 franchise and only if they are used solely for performance in accordance with the franchise and
207 not substantially in excess of those facilities recommended by the manufacturer or distributor.
208 If the facility is used for the operations of more than one franchise, the gross rent compensation
209 shall be adjusted based on the planning volume and facility requirements of the manufacturers,
210 distributors, or branch or division thereof;

211 (h) The franchisor shall pay to the franchisee the amount remaining to be paid on any
212 leases of computer hardware or software that is used to manage and report data to the
213 manufacturer or distributor for financial reporting requirements and the amount remaining to be
214 paid on any manufacturer or distributor required equipment leases, service contracts, and sign
215 leases. The franchisor's obligation shall not exceed one year on any such lease. However, if the
216 franchise agreement is voluntarily terminated by the franchisee, without coercion by the
217 franchisor, then:

218 a. If the amount remaining to be paid is owed to the franchisor, the franchisor shall
219 cancel the obligation rather than paying the amount to the franchisee; and

220 b. If the amount remaining to be paid is owed to a subsidiary or a company affiliated
221 with or controlled or recommended by the franchisor, the franchisor may pay such amount to the
222 subsidiary or the company affiliated with or controlled by the franchisor, subject to the limit of
223 the franchisor's one-year obligation, but if the franchisor does not pay such amount to the
224 subsidiary or the company affiliated with or controlled by the franchisor, such amount may be
225 paid to the franchisee by the subsidiary or company affiliated with or controlled by the
226 franchisor, subject to the limit of the franchisor's one-year obligation;

227 (i) In addition to the other payments set forth in this section, if a termination,
228 cancellation, or nonrenewal is premised upon the franchisor discontinuing the sale in this state
229 of a line-make that was the subject of the franchise, then the franchisor shall also be liable to the
230 franchisee for an amount at least equivalent to the fair market value of the franchisee's goodwill
231 for the discontinued line-makes of the motor vehicle franchise on the date immediately preceding
232 the date the franchisor announces the action which results in termination, cancellation, or

233 nonrenewal, whichever amount is higher. At the franchisee's option, the franchisor may avoid
234 paying fair market value of the motor vehicle franchise to the franchisee under this paragraph if
235 the franchisor, or another motor vehicle franchisor under an agreement with the franchisor, offers
236 the franchisee a replacement motor vehicle franchise with terms substantially similar to that
237 offered to other same line-make dealers;

238 (j) The franchisor shall pay the franchisee all amounts incurred by the franchisee to
239 upgrade its facilities that were required by the franchisor within twelve months prior to receipt
240 of a notice of termination or nonrenewal; however, a franchisee shall not receive any benefits
241 under this subdivision if it was terminated for the grounds set forth in subdivision (1) of
242 subsection 4 of section 407.822. However, if the franchise agreement is voluntarily terminated
243 by the franchisee, without coercion by the franchisor, and for a reason other than the death or
244 incapacitation of the dealer principal, then the franchisor shall have no obligation under this
245 paragraph; and

246 (k) The franchisor shall pay the franchisee the amounts specified in this subdivision
247 along with any other amounts that may be due to the franchisee under the franchise agreement
248 within sixty days after the tender of the property subject to the franchisee providing evidence of
249 good and clear title upon return of the property to the franchisor. The franchisor shall remove
250 the property within sixty days after the tender of the property from the franchisee's property.
251 Unless previous arrangements have been made and agreed upon, the franchisee is under no
252 obligation to provide insurance for the property left after sixty days;

253 (l) This subdivision shall not apply to a termination, cancellation or nonrenewal due to
254 a sale of the assets or stock of the motor vehicle dealership;

255 (14) To prevent or refuse to honor the succession to a franchise or franchises by any legal
256 heir or devisee under the will of a franchisee, under any written instrument filed with the
257 franchisor designating any person as the person's successor franchisee, or pursuant to the laws
258 of descent and distribution of this state; provided:

259 (a) Any designated family member of a deceased or incapacitated franchisee shall
260 become the succeeding franchisee of such deceased or incapacitated franchisee if such designated
261 family member gives the franchisor written notice of such family member's intention to succeed
262 to the franchise or franchises within one hundred twenty days after the death or incapacity of the
263 franchisee, and agrees to be bound by all of the lawful terms and conditions of the current
264 franchise agreement, and the designated family member meets the current lawful and reasonable
265 criteria generally applied by the franchisor in qualifying franchisees. In order for the franchisor
266 to claim that any such reasonable criteria are generally applied by the franchisor in qualifying
267 franchisees, it shall have previously provided a copy to the proposed successor franchisee within
268 ten days after receiving the proposed successor franchisee's notice. A franchisee may request,

269 at any time, that the franchisor provide a copy of such criteria generally applied by the franchisor
270 in qualifying franchisees;

271 (b) The franchisor may request from a designated family member such personal and
272 financial data as is reasonably necessary to determine whether the existing franchise agreement
273 should be honored. The designated family member shall supply the personal and financial data
274 promptly upon the request;

275 (c) If the designated family member does not meet the reasonable and lawful criteria
276 generally applied by the franchisor in qualifying franchisees, the discontinuance of the current
277 franchise agreement shall take effect not less than ninety days after the date the franchisor serves
278 the required notice on the designated family member pursuant to subsection 4 of section 407.822;

279 (d) The provisions of this subdivision shall not preclude a franchisee from designating
280 any person as the person's successor by written instrument filed with the franchisor, and if such
281 an instrument is filed, it alone shall determine the succession rights to the management and
282 operation of the franchise; and

283 (e) For determining whether good cause exists, the administrative hearing commission
284 shall take into consideration all circumstances, including, but not limited to, the following
285 factors:

286 a. Whether the franchise agreement specifically permits the franchisor to approve or
287 disapprove any successor;

288 b. Whether the proposed successor substantially fails to satisfy the material standards
289 of the franchisor which are in fact normally relied upon by the franchisor prior to the successor
290 entering into a franchise, and which relate to the proposed management or ownership of the
291 franchise operation or to the qualification, capitalization, integrity or character of the proposed
292 successor and which are lawful and reasonable;

293 c. The amount of the business transacted by the franchisee;

294 d. The investments in and the obligations incurred by the franchisee, including but not
295 limited to goodwill in the performance of its duties under the franchise agreement, together with
296 the duration and permanency of such investments and obligations;

297 e. The investments and obligations that the proposed successor franchisee is prepared
298 to make in the business;

299 f. The potential for harm and inconvenience to consumers as a result of the franchisor's
300 decision;

301 g. The franchisor's failure to honor its requirements under the franchise;

302 h. The potential harm and injury to the public welfare in the area that the franchisee
303 serves;

304 i. The ability or willingness of the franchisee to continue in the business if the proposed
305 transfer is not permitted;

306 j. The demographic and geographic characteristics of the area the franchisee serves; and

307 k. The harm to the franchisor;

308 (15) To coerce, attempt to coerce, require, or attempt to require a franchisee under any
309 condition affecting or related to a franchise agreement, to waive, limit or disclaim a right that the
310 franchisee may have pursuant to the provisions of sections 407.810 to 407.835. Any contracts
311 or agreements which contain such provisions shall be deemed against the public policy of the
312 state of Missouri and are void and unenforceable. Nothing in this section shall prohibit voluntary
313 settlement agreements that specifically identify the provisions of sections 407.810 to 407.835
314 that the franchisee is waiving, limiting, or disclaiming;

315 (16) To initiate any act enumerated in this section on grounds that it has advised a
316 franchisee of its intention to discontinue representation at the time of a franchisee change or
317 require any franchisee to enter into a site control agreement as a condition to initiating any act
318 enumerated in this section. Such condition shall not be construed to nullify an existing site
319 control agreement for a franchisee's property;

320 (17) To require, attempt to require, coerce, or attempt to coerce any franchisee in this
321 state to refrain from, or to terminate, cancel, or refuse to continue any franchise based upon
322 participation by the franchisee in the management of, investment in or the acquisition of a
323 franchise for the sale of any other line of new vehicle or related products in the same or separate
324 facilities as those of the franchisor. This subdivision does not apply unless the franchisee
325 maintains a reasonable line of credit for each make or line of new vehicle, the franchisee remains
326 in compliance with the franchise and any reasonable facilities requirements of the franchisor, and
327 no change is made in the principal management of the franchisee. The reasonable facilities
328 requirement shall not include any requirement that a franchisee establish or maintain exclusive
329 facilities, personnel, or display space, when such requirements would not otherwise be justified
330 by reasonable business considerations. Before the addition of a line-make to the dealership
331 facilities the franchisee shall first request consent of the franchisor, if required by the franchise
332 agreement. Any decision of the franchisor with regard to dualing of two or more franchises shall
333 be granted or denied within sixty days of a written request from the franchisee. The franchisor's
334 failure to respond timely to a dualing request shall be deemed to be approval of the franchisee's
335 request;

336 (18) To fail or refuse to offer to sell to all franchisees for a line-make reasonable
337 quantities of every motor vehicle sold or offered for sale to any franchisee of that line-make;
338 however, the failure to deliver any such motor vehicle shall not be considered a violation of this
339 section if the failure is due to a cause over which the franchisor has no control. A franchisor may

340 impose reasonable requirements on the franchisee including, but not limited to, the purchase of
341 reasonable quantities of advertising materials, the purchase of special tools required to properly
342 service a motor vehicle, the undertaking of sales person or service person training related to the
343 motor vehicle, the meeting of reasonable display and facility requirements as a condition of
344 receiving a motor vehicle, or other reasonable requirements; provided, that if a franchisor
345 requires a franchisee to purchase essential service tools with a purchase price in the aggregate
346 of more than seventy-five hundred dollars in order to receive a particular model of new motor
347 vehicle, the franchisor shall upon written request provide such franchisee with a good faith
348 estimate in writing of the number of vehicles of that particular model that the franchisee will be
349 allocated during that model year in which the tools are required to be purchased;

350 (19) To directly or indirectly condition the awarding of a franchise to a prospective
351 franchisee, the addition of a line-make or franchise to an existing franchisee, the renewal of a
352 franchise of an existing franchisee, the approval of the relocation of an existing franchisee's
353 facility, or the approval of the sale or transfer of the ownership of a franchise on the willingness
354 of a franchisee, proposed franchisee, or owner of an interest in the dealership facility to enter into
355 a site control agreement or exclusive use agreement. For purposes of this subdivision, the terms
356 "site control agreement" and "exclusive use agreement" include any agreement that has the effect
357 of either requiring that the franchisee establish or maintain exclusive dealership facilities or
358 restricting the ability of the franchisee, or the ability of the franchisee's lessor in the event the
359 dealership facility is being leased, to transfer, sell, lease, or change the use of the dealership
360 premises, whether by sublease, lease, collateral pledge of lease, right of first refusal to purchase
361 or lease, option to purchase, option to lease, or other similar agreement, regardless of the parties
362 to such agreement. Any provision contained in any agreement entered into on or after August
363 28, 2010, that is inconsistent with the provisions of this subdivision shall be voidable at the
364 election of the affected franchisee, prospective franchisee, or owner of an interest in the
365 dealership facility, provided this subdivision shall not apply to a voluntary agreement where
366 separate, adequate, and reasonable consideration have been offered and accepted;

367 (20) Except for the grounds listed in subdivision (1) of subsection 4 of section 407.822,
368 prior to the issuance of any notice of intent to terminate a franchise agreement under the MVFP
369 act for unsatisfactory sales or service performance, the franchisor shall provide the franchisee
370 with no less than one hundred twenty days written notice of the specific asserted grounds for
371 termination. Thereafter, the franchisee shall have one hundred twenty days to cure the asserted
372 grounds for termination, provided the grounds are both reasonable and of material significance
373 to the franchise relationship. If the franchisee fails to cure the asserted grounds for termination
374 by the end of the cure period, then the franchisor may give the sixty-day notice required by
375 subsection 4 of section 407.822 if it intends to terminate the franchise;

376 (21) To require, attempt to require, coerce, or attempt to coerce a franchisee, by franchise
377 agreement or otherwise, or as a condition to the renewal or continuation of a franchise
378 agreement, to:

379 (a) Exclude from the use of the franchisee's facilities a line-make for which the
380 franchisee has a franchise agreement to utilize the facilities; or

381 (b) Materially change the franchisee's facilities or method of conducting business if the
382 change would impose substantial or unreasonable financial hardship on the business of the
383 franchisee;

384 (22) To fail to perform or cause to be performed any written warranties made with
385 respect to any motor vehicle or parts thereof;

386 (23) To withhold, reduce, or delay unreasonably or without just cause services contracted
387 for by franchisees;

388 (24) To coerce, attempt to coerce, require, or attempt to require any franchisee to provide
389 installment financing with a specified financial institution;

390 (25) To require, attempt to require, coerce, or attempt to coerce any franchisee to close
391 or change the location of the franchisee, or to make any substantial alterations to the franchise
392 premises or facilities when doing so would be unreasonable under the current market and
393 economic conditions. Prior to suggesting the need for any such action, the franchisor shall
394 provide the franchisee with a written good faith estimate of the minimum number of the models
395 of new motor vehicles that the franchisor will supply to the franchisee during a reasonable time
396 period, not less than three years, so the franchisee may determine if it is a sufficient supply of
397 motor vehicles so as to justify such changes, in light of the current market and reasonably
398 foreseeable projected and economic conditions. A franchisor or its common entity or an entity
399 controlled by or affiliated with the franchisor may not take or threaten to take any action that is
400 unfair or adverse to a franchisee who does not enter into an agreement with the franchisor under
401 this subdivision. This subdivision does not affect any contract between a franchisor and any of
402 its franchisees regarding relocation, expansion, improvement, remodeling, renovation, or
403 alteration which exists on August 28, 2010;

404 (26) To authorize or permit a person to perform warranty service repairs on motor
405 vehicles unless the person is a franchisee with whom the manufacturer has entered into a
406 franchise agreement for the sale and service of the manufacturer's motor vehicles unless:

407 (a) For emergency repairs when a franchisee is not available ~~[or]~~ ;

408 (b) For repairs pursuant to a fleet contract as long as all parts and labor to perform the
409 repairs are less than one thousand five hundred dollars at retail per repaired vehicle; or

410 (c) For repairs performed by a facility pursuant to subsection 2 of section 407.826;

411 (27) To discriminate between or refuse to offer to its same line-make franchisees all
412 models manufactured for that line-make based upon unreasonable sales and service standards;

413 (28) To fail to make practically available any incentive, rebate, bonus, or other similar
414 benefit to a franchisee that is offered to another franchisee of the same line-make within this
415 state;

416 (29) To condition a franchise agreement on improvements to a facility unless reasonably
417 required by the technology of a motor vehicle being sold at the facility;

418 (30) To condition the sale, transfer, relocation, or renewal of a franchise agreement, or
419 to condition sales, services, parts, or finance incentives, upon site control or an agreement to
420 renovate or make improvements to a facility; except that voluntary acceptance of such conditions
421 by the franchisee shall not constitute a violation;

422 (31) Failing to offer to all of its franchisees of the same line-make any consumer rebates,
423 dealer incentives, price or interest rate reduction, or finance terms that the franchisor offers or
424 advertises, or allows its franchisees of the same line-make to offer or advertise;

425 (32) Offering rebates, cash incentives, or other promotional items for the sale of a
426 vehicle by its franchisees unless: the same rebate, cash incentive, or promotion is offered to all
427 of its franchisees of the same line-make; and any rebate, cash incentive, or promotion that is
428 based on the sale of an individual vehicle is not increased for meeting a performance standard;

429 (33) Unreasonably discriminating among its franchisees in any program that provides
430 assistance to its franchisees, including internet listings, sales leads, warranty policy adjustments,
431 marketing programs, and dealer recognition programs;

432 (34) To fail to include in any franchise with a franchisee the following language: "If any
433 provision herein contravenes the laws or regulations of any state or other jurisdiction wherein
434 this agreement is to be performed, or denies access to the procedures, forums, or remedies
435 provided for by such laws or regulations, such provision shall be deemed to be modified to
436 conform to such laws or regulations, and all other terms and provisions shall remain in full
437 force," or words to that effect;

438 (35) To withhold, reduce, or delay unreasonably or without just cause delivery of motor
439 vehicle parts and accessories, commodities, or moneys due franchisees;

440 (36) To use or consider the performance of a franchisee relating to the sale of the
441 franchisor's vehicles or the franchisee's ability to satisfy any minimum sales or market share
442 quota or responsibility relating to the sale of the new vehicles in determining:

443 (a) The franchisee's eligibility to purchase program, certified, or other used motor
444 vehicles from the franchisor;

445 (b) The volume, type, or model of program, certified, or other used motor vehicles that
446 a franchisee is eligible to purchase from the franchisor;

447 (c) The price of any program, certified, or other used motor vehicle that the franchisee
448 purchased from the franchisor; or

449 (d) The availability or amount of any discount, credit, rebate, or sales incentive that the
450 franchisee is eligible to receive from the franchisor, for the purpose of any program, certified,
451 or other used motor vehicle offered for sale by the franchisor;

452 (37) To refuse to allocate, sell, or deliver motor vehicles; to charge back or withhold
453 payments or other things of value for which the franchisee is otherwise eligible under a sales
454 promotion, program, or contest; to prevent a franchisee from participating in any promotion,
455 program, or contest; or to take or threaten to take any adverse action against a franchisee,
456 including charge-backs, reducing vehicle allocations, or terminating or threatening to terminate
457 a franchise because the franchisee sold or leased a motor vehicle to a customer who exported the
458 vehicle to a foreign country or who resold the vehicle, unless the franchisor proves that the
459 franchisee knew or reasonably should have known that the customer intended to export or resell
460 the motor vehicle. There is a rebuttable presumption that the franchisee neither knew nor
461 reasonably should have known of its customer's intent to export or resell the vehicle if the
462 vehicle is titled or registered in any state in this country. A franchisor may not take any action
463 against a franchisee, including reducing its allocations or supply of motor vehicles to the
464 franchisee, or charging back a franchisee for an incentive payment previously paid, unless the
465 franchisor first meets in person, by telephone, or video conference with an officer or other
466 designated employee of the franchisee. At such meeting, the franchisor shall provide a detailed
467 explanation, with supporting documentation, as to the basis for its claim that the franchisee knew
468 or reasonably should have known of the customer's intent to export or resell the motor vehicle.
469 Thereafter, the franchisee shall have a reasonable period, commensurate with the number of
470 motor vehicles at issue, but not less than fifteen days, to respond to the franchisor's claims. If,
471 following the franchisee's response and completion of all internal dispute resolution processes
472 provided through the franchisor, the dispute remains unresolved, the franchisee may file a
473 complaint with the administrative hearing commission within thirty days after receipt of a written
474 notice from the franchisor that it still intends to take adverse action against the franchisee with
475 respect to the motor vehicles still at issue. If a complaint is timely filed, the administrative
476 hearing commission shall notify the franchisor of the filing of the complaint, and the franchisor
477 shall not take any action adverse to the franchisee until the administrative hearing commission
478 renders a final determination, which is not subject to further appeal, that the franchisor's
479 proposed action is in compliance with the provisions of this subdivision. In any hearing under
480 this subdivision, the franchisor has the burden of proof on all issues raised by this subdivision;

481 (38) To require a franchisee to provide its customer lists or service files to the franchisor,
482 unless necessary for the sale and delivery of a new motor vehicle to a consumer, to validate and

483 pay consumer or dealer incentives, for reasonable marketing purposes or for the submission to
484 the franchisor for any services supplied by the franchisee for any claim for warranty parts or
485 repairs. Nothing in this section shall limit the franchisor's ability to require or use customer
486 information to satisfy any safety or recall notice obligation;

487 (39) To mandate the use by the franchisee, or condition access to any services offered
488 by the franchisor on the franchisee's use, or condition the acceptance of an order of any product
489 or service offered by the franchisor on the franchisee's use, or condition the acceptance of any
490 claim for payment from the franchisee on the franchisee's use, or condition the franchisee's
491 participation in any program offered by the franchisor, a common entity or an entity controlled
492 by the franchisor on the franchisee's use of any form, equipment, part, tool, furniture, fixture,
493 data processing program or equipment, automotive service equipment, or sign from the
494 franchisor, a vendor recommended by the franchisor, a common entity or an entity controlled by
495 the franchisor if the franchisee is able to obtain the identical or reasonably equivalent product
496 from another vendor;

497 (40) Establishing any performance standard or program for measuring franchisee
498 performance that may have a material impact on a franchisee that is not fair, reasonable, and
499 equitable, or applying any such standard or program to a franchisee in a manner that is not fair,
500 reasonable, and equitable. Within ten days of a request of a franchisee, a franchisor shall
501 disclose in writing to the franchisee a description of how a performance standard or program is
502 designed and all relevant information used in the application of the performance standard or
503 program to that franchisee unless the information is available to the franchisee on the franchisor's
504 website;

505 (41) Establishing or implementing a plan or system for the allocation, scheduling, or
506 delivery of new motor vehicles, parts, or accessories to its franchisees that is not fair, reasonable,
507 and equitable or modifying an existing plan or system so as to cause the plan or system to be
508 unreasonable, unfair, or inequitable. Within ten days of any request of a franchisee, the
509 franchisor shall disclose in writing to the franchisee the method and mode of distribution of that
510 line-make among the franchisor's franchisees of the same line-make within the same metro area
511 for franchisees located in a metropolitan area and within the county and contiguous counties of
512 any franchisee not located in a metropolitan area; and

513 (42) To violate any other provision of the MVFP act that adversely impacts a franchisee.

407.826. 1. (1) A franchisor shall be prohibited from owning or operating a new motor
2 vehicle dealership in this state. It is not a violation of this section for a franchisor to own or
3 operate a new motor vehicle dealership:

4 (a) For a temporary period of not more than twenty-four months if the dealership is for
5 sale at a reasonable price and on reasonable terms and conditions to an independent qualified

6 buyer. On showing by a franchisor of good cause, the time limit set forth above may be extended
7 for an additional period of up to twelve months; or

8 (b) In a bona fide relationship with an independent person (i) who is required to make
9 a significant investment in the new motor vehicle dealership subject to loss and (ii) operates the
10 dealership and can reasonably expect to acquire full ownership of the dealership within a
11 reasonable time and under reasonable terms and conditions.

12 (2) Nothing in this section shall be deemed to prohibit a franchisor from owning a
13 minority interest in an entity that owns motor vehicle dealerships of the same line-make
14 manufactured and franchised by the factory, provided that all of the following conditions are met
15 at the time of acquisition and continue to be met during the time the entity maintains ownership:

16 (a) The interest owned by the factory in said entity shall not exceed forty-five percent
17 of the total ownership;

18 (b) Any dealership in which the entity owns an interest shall be no less than nine miles
19 of any unaffiliated new motor vehicle dealership trading in the same line-make of vehicle;

20 (c) All of the licensed dealerships for the sale of such factory's new motor vehicle in the
21 state trade exclusively in the factory's line-make;

22 (d) During any period in which the entity has such ownership interest, the factory shall
23 have no more than four franchise agreements governing such line-make with dealers licensed to
24 do business in this state;

25 (e) All the factory's franchise agreements confer rights on the franchisee of the line-make
26 to develop and operate, within a defined geographic territory or area, as many dealership
27 facilities as the franchisee and factory shall agree are appropriate;

28 (f) At the time the entity first acquires an ownership interest, not fewer than seventy-five
29 percent of the franchisees of the line-make within this state own and operate two or more
30 dealership facilities in the geographic territory or area covered by the franchise agreement with
31 the factory;

32 (g) As of January 1, 2001, there were no more than ten dealerships of such line-make
33 licensed as a new motor vehicle dealer in this state; and

34 (h) Prior to August 28, 2001, the factory has been continuously engaged, at least since
35 July 1, 1998, in the retail sale of motor vehicles of its own line-make through direct or indirect
36 ownership of dealerships in at least five states.

37 2. A franchisor shall not sell new motor vehicles directly to any retail consumer except
38 through a franchisee for the line-make that includes the new motor vehicle unless such consumer
39 is an employee of the franchisor, or is a not-for-profit organization or an agency of the federal,
40 state or local governments. This subsection shall not preclude a franchisor from providing
41 information to consumers for the purpose of marketing or facilitating the sale of a new motor

42 vehicle or from establishing programs to sell or offer to sell new motor vehicles through
43 participating franchisees. **This subsection shall not apply to a franchisor that does not**
44 **manufacture, distribute, or sell motor vehicles as defined under section 301.010 but that**
45 **does manufacture engines for any such motor vehicle with a gross vehicle rating of more**
46 **than sixteen thousand pounds that is registered for operation on the public highways of**
47 **this state under chapter 301, provided the franchisor:**

48 (a) **Is not otherwise a manufacturer of motor vehicles as defined under subsection**
49 **15 of section 407.815 or owned or controlled by such a manufacturer;**

50 (b) **Owned, operated, or controlled a facility in this state as of January 1, 2016, that**
51 **sold or provided warranty service to engines it manufactured;**

52 (c) **Does not own, operate, or control more than seven facilities in this state that sell**
53 **or provide warranty service for engines it manufactures; and**

54 (d) **Provides its franchisees or dealers with access to support for completing repairs**
55 **substantially equal to the support the manufacturer provides to facilities the manufacturer**
56 **owns, operates, or controls including, but not limited to, parts and assemblies, training and**
57 **technical bulletins, and information concerning installation and repairs of the**
58 **manufacturer's engines.**

59 3. The remedies and relief available pursuant to section 407.835 shall apply to this
60 section.

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