

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 354

100TH GENERAL ASSEMBLY

Reported from the Committee on Small Business and Industry, March 14, 2019, with recommendation that the Senate Committee Substitute do pass.

1832S.03C

ADRIANE D. CROUSE, Secretary.

AN ACT

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

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

Section A. Section 407.825, RSMo, is repealed and two new sections
2 enacted in lieu thereof, to be known as sections 407.824 and 407.825, to read as
3 follows:

407.824. 1. As used in this section, the following terms mean:

2 **(1) "Goods", the same meaning as is ascribed to such term under**
3 **section 400.2-105, except that such term shall not include moveable**
4 **displays, brochures, and promotional materials containing material**
5 **subject to the intellectual property rights of a manufacturer or**
6 **franchisor;**

7 **(2) "Substantial reimbursement", a reimbursement in an amount**
8 **equal to or greater than the cost of the savings that would result if the**
9 **franchisee were to utilize a vendor of the franchisee's own selection**
10 **instead of using the vendor identified by the manufacturer or**
11 **franchisor.**

12 **2. No manufacturer or franchisor shall coerce or otherwise**
13 **require any franchisee to construct improvements to facilities or install**
14 **new signs or other franchise or image elements that replace or**
15 **substantially alter improvements, signs, or franchise elements**
16 **completed within the last ten years that were required and approved**
17 **by the manufacturer or franchisee. For purposes of this subsection, the**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 term "substantially alter" shall not include routine maintenance that is
19 reasonably necessary to keep a franchisee's dealership facility in a safe
20 and attractive condition.

21 3. Unless the manufacturer or franchisor provides substantial
22 reimbursement for the goods or services, no manufacturer or franchisor
23 shall require a franchisee to purchase goods or services to make
24 improvements to the franchisee's facilities from a vendor selected,
25 identified, or designated by the manufacturer or franchisor by
26 agreement, program, incentive provision, bulletin, or otherwise,
27 without allowing or making available to the franchisee the option to
28 obtain goods or services of comparable grade, kind, quality, and overall
29 design and the same materials and characteristics from a vendor
30 chosen by the franchisee and approved by the manufacturer or
31 franchisor. Approval by a manufacturer or franchisor shall not be
32 unreasonably withheld. This subsection shall not be construed to
33 eliminate, impair, damage, or otherwise limit a manufacturer's or
34 franchisor's intellectual property rights in any way.

35 4. The ten-year period set forth in this section shall commence
36 for a franchisee, including such franchisee's successors and assigns, on
37 the date that the manufacturer or franchisor gave final written
38 approval of the facility, facility improvements, or installation of signs
39 or other franchise or image elements or on the date that the franchisee
40 receives a certificate of occupancy for the improved facility, whichever
41 is later.

42 5. Nothing in this section shall prohibit a manufacturer or
43 franchisor from requiring changes or updates to signs that contain the
44 manufacturer or franchisor's brand, logo, or other intellectual property
45 protected by federal intellectual property law more frequently than
46 every ten years, provided that the manufacturer or franchisor shall
47 offer the franchisee compensation for the sign or pay for the sign if
48 sign changes are required less than five years apart.

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

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

14 (2) To coerce, attempt to coerce, require or attempt to require any motor
15 vehicle franchisee to accept delivery of any new motor vehicle or vehicles,
16 equipment, tools, parts or accessories therefor, or any other commodity or
17 commodities which such motor vehicle franchisee has not ordered after such
18 motor vehicle franchisee has rejected such commodity or commodities, or which
19 is not required by law or the franchise agreement. It shall not be deemed a
20 violation of this section for a motor vehicle franchisor to require a motor vehicle
21 franchisee to have an inventory of parts, tools, and equipment reasonably
22 necessary to service the motor vehicles sold by a motor vehicle franchisor; or new
23 motor vehicles reasonably necessary to meet the demands of dealers or the public
24 or to display to the public the full line of a motor vehicle franchisor's product line;

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

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

39 (5) To terminate, cancel, refuse to continue, or refuse to renew any
40 franchise without good cause, unless such new motor vehicle franchisee, without
41 good cause, substantially defaults in the performance of such franchisee's
42 reasonable, lawful, and material obligations under such franchisee's franchise. In

43 determining whether good cause exists, the administrative hearing commission
44 shall take into consideration all relevant circumstances, including, but not limited
45 to, the following factors:

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

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

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

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

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

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

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

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

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

64 (j) The harm to the franchisor;

65 (6) To prevent by contract or otherwise, any motor vehicle franchisee from
66 changing the capital structure of the franchisee's franchise or the means by or
67 through which the franchisee finances the operation of the franchisee's franchise,
68 provided the motor vehicle franchisee at all times meets any reasonable capital
69 standards agreed to between the motor vehicle franchisee and the motor vehicle
70 franchisor and grants to the motor vehicle franchisor a purchase money security
71 interest in the new motor vehicles, new parts and accessories purchased from the
72 motor vehicle franchisor;

73 (7) (a) To prevent, by contract or otherwise, any sale or transfer of a
74 franchisee's franchise or interest or management thereof; provided, if the
75 franchise specifically permits the franchisor to approve or disapprove any such
76 proposed sale or transfer, a franchisor shall only be allowed to disapprove a
77 proposed sale or transfer if the interest being sold or transferred when added to
78 any other interest owned by the transferee constitutes fifty percent or more of the

79 ownership interest in the franchise and if the proposed transferee fails to satisfy
80 any standards of the franchisor which are in fact normally relied upon by the
81 franchisor prior to its entering into a franchise, and which relate to the
82 qualification, capitalization, integrity or character of the proposed transferee and
83 which are reasonable. A franchisee or proposed franchisee may request, at any
84 time, that the franchisor provide a copy of the standards which are normally
85 relied upon by the franchisor to evaluate a proposed sale or transfer and a
86 proposed transferee;

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

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

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

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

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

102 d. The sale or transfer does not involve the sale or transfer to an
103 immediate member or members of the family of one or more franchisee owners,
104 defined as a spouse, child, grandchild, spouse of a child or grandchild, brother,
105 sister or parent of the franchisee owner, or to the qualified manager, defined as
106 an individual who has been employed by the franchisee for at least two years and
107 who otherwise qualifies as a franchisee operator, or a partnership or corporation
108 controlled by such persons; and

109 e. The franchisor agrees to pay the reasonable expenses, including
110 attorney's fees which do not exceed the usual, customary and reasonable fees
111 charged for similar work done for other clients, incurred by the proposed
112 transferee prior to the franchisor's exercise of its right of first refusal in
113 negotiating and implementing the contract for the proposed sale or transfer of the
114 franchise or the franchisee's assets. Notwithstanding the foregoing, no payment

115 of such expenses and attorney's fees shall be required if the franchisee has not
116 submitted or caused to be submitted an accounting of those expenses within
117 fourteen days of the franchisee's receipt of the franchisor's written request for
118 such an accounting. Such accounting may be requested by a franchisor before
119 exercising its right of first refusal;

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

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

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

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

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

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

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

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

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

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

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

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

148 l. The harm to the franchisor;

149 (8) To prevent by contract or otherwise any motor vehicle franchisee from
150 changing the executive management of the motor vehicle franchisee's business,

151 unless the motor vehicle franchisor demonstrates that such change in executive
152 management will be detrimental to the distribution of the motor vehicle
153 franchisor's motor vehicles;

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

158 (10) To require, attempt to require, coerce, or attempt to coerce a motor
159 vehicle franchisee at the time of entering into a franchise or any other
160 arrangement to assent to a release, assignment, novation, waiver or estoppel
161 which would relieve any person from liability imposed by sections 407.810 to
162 407.835;

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

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

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

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

182 (b) The franchisee's cost of each new, unused, undamaged and unsold part
183 or accessory if the part or accessory is in the current parts catalog, less applicable
184 allowances. In the case of sheet metal, a comparable substitute for the original
185 package may be used. Reconditioned or core parts shall be valued at their core
186 value, the price listed in the current parts catalog or the amount paid for

187 expedited return of core parts, whichever is higher. If the part or accessory was
188 purchased by the franchisee from an outgoing authorized franchisee, the
189 franchisor shall purchase the part or accessory for the price in the current parts
190 catalog. In the case of parts or accessories which no longer appear in the current
191 parts catalog, the franchisor shall purchase the parts or accessories for the price
192 in the last version of the parts catalog in which the part or accessory appeared;

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

199 (d) The fair market value of all equipment, tools, data processing
200 programs and equipment and automotive service equipment owned by the
201 franchisee which were recommended in writing and designated as equipment,
202 tools, data processing programs and equipment, and automotive service
203 equipment and purchased from, or purchased at the request of, the franchisor, if
204 the equipment, tools, programs and equipment are in usable and good condition,
205 except for reasonable wear and tear. During the first seven years after their
206 purchase, the fair market value of each item of equipment, tools, and automotive
207 service equipment shall be the franchisee's costs of purchasing the item, less
208 depreciation, using straight-line depreciation and a seven-year life of the
209 asset. During the first three years after its purchase, the fair market value of
210 each item of required data processing programs and equipment shall be the
211 franchisee's cost of purchasing the item, less depreciation, using straight-line
212 depreciation and a three-year life of the asset;

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

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

223 by the franchisor, then:

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

227 b. If the amount remaining to be paid on any equipment or service
228 contract is owed to a subsidiary or a company affiliated with or controlled or
229 recommended by the franchisor, the franchisor may pay such amount to the
230 subsidiary or the company affiliated with or controlled by the franchisor, but if
231 the franchisor does not pay such amount to the subsidiary or the company
232 affiliated with or controlled by the franchisor, such amount may be paid to the
233 franchisee by the subsidiary or company affiliated with or controlled by the
234 franchisor;

235 (g) If the dealer leases the dealership facilities, then the franchisor shall
236 be liable for twelve months' payment of the gross rent or the remainder of the
237 term of the lease, whichever is less. If the dealership facilities are not leased,
238 then the franchisor shall be liable for the equivalent of twelve months' payment
239 of gross rent. This paragraph shall not apply when the termination, cancellation,
240 or nonrenewed line was under good cause related to a conviction and
241 imprisonment for a felony involving moral turpitude that is substantially related
242 to the qualifications, function, or duties of a franchisee as well as fraud and
243 voluntary terminations of a franchise. Gross rent is the monthly rent plus the
244 monthly cost of insurance and taxes. Such reasonable rent shall be paid only to
245 the extent that the dealership premises are recognized in the franchise and only
246 if they are used solely for performance in accordance with the franchise and not
247 substantially in excess of those facilities recommended by the manufacturer or
248 distributor. If the facility is used for the operations of more than one franchise,
249 the gross rent compensation shall be adjusted based on the planning volume and
250 facility requirements of the manufacturers, distributors, or branch or division
251 thereof;

252 (h) The franchisor shall pay to the franchisee the amount remaining to be
253 paid on any leases of computer hardware or software that is used to manage and
254 report data to the manufacturer or distributor for financial reporting
255 requirements and the amount remaining to be paid on any manufacturer or
256 distributor required equipment leases, service contracts, and sign leases. The
257 franchisor's obligation shall not exceed one year on any such lease. However, if
258 the franchise agreement is voluntarily terminated by the franchisee, without

259 coercion by the franchisor, then:

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

263 b. If the amount remaining to be paid is owed to a subsidiary or a
264 company affiliated with or controlled or recommended by the franchisor, the
265 franchisor may pay such amount to the subsidiary or the company affiliated with
266 or controlled by the franchisor, subject to the limit of the franchisor's one-year
267 obligation, but if the franchisor does not pay such amount to the subsidiary or the
268 company affiliated with or controlled by the franchisor, such amount may be paid
269 to the franchisee by the subsidiary or company affiliated with or controlled by the
270 franchisor, subject to the limit of the franchisor's one-year obligation;

271 (i) In addition to the other payments set forth in this section, if a
272 termination, cancellation, or nonrenewal is premised upon the franchisor
273 discontinuing the sale in this state of a line-make that was the subject of the
274 franchise, then the franchisor shall also be liable to the franchisee for an amount
275 at least equivalent to the fair market value of the franchisee's goodwill for the
276 discontinued line-makes of the motor vehicle franchise on the date immediately
277 preceding the date the franchisor announces the action which results in
278 termination, cancellation, or nonrenewal, whichever amount is higher. At the
279 franchisee's option, the franchisor may avoid paying fair market value of the
280 motor vehicle franchise to the franchisee under this paragraph if the franchisor,
281 or another motor vehicle franchisor under an agreement with the franchisor,
282 offers the franchisee a replacement motor vehicle franchise with terms
283 substantially similar to that offered to other same line-make dealers;

284 (j) The franchisor shall pay the franchisee all amounts incurred by the
285 franchisee to upgrade its facilities that were required by the franchisor within
286 twelve months prior to receipt of a notice of termination or nonrenewal; however,
287 a franchisee shall not receive any benefits under this subdivision if it was
288 terminated for the grounds set forth in subdivision (1) of subsection 4 of section
289 407.822. However, if the franchise agreement is voluntarily terminated by the
290 franchisee, without coercion by the franchisor, and for a reason other than the
291 death or incapacitation of the dealer principal, then the franchisor shall have no
292 obligation under this paragraph; [and]

293 (k) The franchisor shall pay the franchisee the amounts specified in this
294 subdivision along with any other amounts that may be due to the franchisee

295 under the franchise agreement within sixty days after the tender of the property
296 subject to the franchisee providing evidence of good and clear title upon return
297 of the property to the franchisor. The franchisor shall remove the property within
298 sixty days after the tender of the property from the franchisee's property. Unless
299 previous arrangements have been made and agreed upon, the franchisee is under
300 no obligation to provide insurance for the property left after sixty days;

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

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

308 (a) Any designated family member of a deceased or incapacitated
309 franchisee shall become the succeeding franchisee of such deceased or
310 incapacitated franchisee if such designated family member gives the franchisor
311 written notice of such family member's intention to succeed to the franchise or
312 franchises within one hundred twenty days after the death or incapacity of the
313 franchisee, and agrees to be bound by all of the lawful terms and conditions of the
314 current franchise agreement, and the designated family member meets the
315 current lawful and reasonable criteria generally applied by the franchisor in
316 qualifying franchisees. In order for the franchisor to claim that any such
317 reasonable criteria are generally applied by the franchisor in qualifying
318 franchisees, it shall have previously provided a copy to the proposed successor
319 franchisee within ten days after receiving the proposed successor franchisee's
320 notice. A franchisee may request, at any time, that the franchisor provide a copy
321 of such criteria generally applied by the franchisor in qualifying franchisees;

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

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

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

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

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

340 b. Whether the proposed successor substantially fails to satisfy the
341 material standards of the franchisor which are in fact normally relied upon by the
342 franchisor prior to the successor entering into a franchise, and which relate to the
343 proposed management or ownership of the franchise operation or to the
344 qualification, capitalization, integrity or character of the proposed successor and
345 which are lawful and reasonable;

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

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

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

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

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

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

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

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

362 k. The harm to the franchisor;

363 (15) To coerce, attempt to coerce, require, or attempt to require a
364 franchisee under any condition affecting or related to a franchise agreement, to
365 waive, limit or disclaim a right that the franchisee may have pursuant to the
366 provisions of sections 407.810 to 407.835. Any contracts or agreements which

367 contain such provisions shall be deemed against the public policy of the state of
368 Missouri and are void and unenforceable. Nothing in this section shall prohibit
369 voluntary settlement agreements that specifically identify the provisions of
370 sections 407.810 to 407.835 that the franchisee is waiving, limiting, or
371 disclaiming;

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

378 (17) To require, attempt to require, coerce, or attempt to coerce any
379 franchisee in this state to refrain from, or to terminate, cancel, or refuse to
380 continue any franchise based upon participation by the franchisee in the
381 management of, investment in or the acquisition of a franchise for the sale of any
382 other line of new vehicle or related products in the same or separate facilities as
383 those of the franchisor. This subdivision does not apply unless the franchisee
384 maintains a reasonable line of credit for each make or line of new vehicle, the
385 franchisee remains in compliance with the franchise and any reasonable facilities
386 requirements of the franchisor, and no change is made in the principal
387 management of the franchisee. The reasonable facilities requirement shall not
388 include any requirement that a franchisee establish or maintain exclusive
389 facilities, personnel, or display space, when such requirements would not
390 otherwise be justified by reasonable business considerations. Before the addition
391 of a line-make to the dealership facilities the franchisee shall first request
392 consent of the franchisor, if required by the franchise agreement. Any decision
393 of the franchisor with regard to dualing of two or more franchises shall be
394 granted or denied within sixty days of a written request from the franchisee. The
395 franchisor's failure to respond timely to a dualing request shall be deemed to be
396 approval of the franchisee's request;

397 (18) To fail or refuse to offer to sell to all franchisees for a line-make
398 reasonable quantities of every motor vehicle sold or offered for sale to any
399 franchisee of that line-make; however, the failure to deliver any such motor
400 vehicle shall not be considered a violation of this section if the failure is due to
401 a cause over which the franchisor has no control. A franchisor may impose
402 reasonable requirements on the franchisee including, but not limited to, the

403 purchase of reasonable quantities of advertising materials, the purchase of special
404 tools required to properly service a motor vehicle, the undertaking of sales person
405 or service person training related to the motor vehicle, the meeting of reasonable
406 display and facility requirements as a condition of receiving a motor vehicle, or
407 other reasonable requirements; provided, that if a franchisor requires a
408 franchisee to purchase essential service tools with a purchase price in the
409 aggregate of more than seventy-five hundred dollars in order to receive a
410 particular model of new motor vehicle, the franchisor shall upon written request
411 provide such franchisee with a good faith estimate in writing of the number of
412 vehicles of that particular model that the franchisee will be allocated during that
413 model year in which the tools are required to be purchased;

414 (19) To directly or indirectly condition the awarding of a franchise to a
415 prospective franchisee, the addition of a line-make or franchise to an existing
416 franchisee, the renewal of a franchise of an existing franchisee, the approval of
417 the relocation of an existing franchisee's facility, or the approval of the sale or
418 transfer of the ownership of a franchise on the willingness of a franchisee,
419 proposed franchisee, or owner of an interest in the dealership facility to enter into
420 a site control agreement or exclusive use agreement. For purposes of this
421 subdivision, the terms "site control agreement" and "exclusive use agreement"
422 include any agreement that has the effect of either requiring that the franchisee
423 establish or maintain exclusive dealership facilities or restricting the ability of
424 the franchisee, or the ability of the franchisee's lessor in the event the dealership
425 facility is being leased, to transfer, sell, lease, or change the use of the dealership
426 premises, whether by sublease, lease, collateral pledge of lease, right of first
427 refusal to purchase or lease, option to purchase, option to lease, or other similar
428 agreement, regardless of the parties to such agreement. Any provision contained
429 in any agreement entered into on or after August 28, 2010, that is inconsistent
430 with the provisions of this subdivision shall be voidable at the election of the
431 affected franchisee, prospective franchisee, or owner of an interest in the
432 dealership facility, provided this subdivision shall not apply to a voluntary
433 agreement where separate, adequate, and reasonable consideration have been
434 offered and accepted;

435 (20) Except for the grounds listed in subdivision (1) of subsection 4 of
436 section 407.822, prior to the issuance of any notice of intent to terminate a
437 franchise agreement under the MVFP act for unsatisfactory sales or service
438 performance, the franchisor shall provide the franchisee with no less than one

439 hundred twenty days written notice of the specific asserted grounds for
440 termination. Thereafter, the franchisee shall have one hundred twenty days to
441 cure the asserted grounds for termination, provided the grounds are both
442 reasonable and of material significance to the franchise relationship. If the
443 franchisee fails to cure the asserted grounds for termination by the end of the
444 cure period, then the franchisor may give the sixty-day notice required by
445 subsection 4 of section 407.822 if it intends to terminate the franchise;

446 (21) To require, attempt to require, coerce, or attempt to coerce a
447 franchisee, by franchise agreement or otherwise, or as a condition to the renewal
448 or continuation of a franchise agreement, to:

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

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

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

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

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

460 (25) To require, attempt to require, coerce, or attempt to coerce any
461 franchisee to close or change the location of the franchisee[, or to make any
462 substantial alterations to the franchise premises or facilities when doing so would
463 be unreasonable under the current market and economic conditions. Prior to
464 suggesting the need for any such action, the franchisor shall provide the
465 franchisee with a written good faith estimate of the minimum number of the
466 models of new motor vehicles that the franchisor will supply to the franchisee
467 during a reasonable time period, not less than three years, so the franchisee may
468 determine if it is a sufficient supply of motor vehicles so as to justify such
469 changes, in light of the current market and reasonably foreseeable projected and
470 economic conditions. A franchisor or its common entity or an entity controlled by
471 or affiliated with the franchisor may not take or threaten to take any action that
472 is unfair or adverse to a franchisee who does not enter into an agreement with
473 the franchisor under this subdivision. This subdivision does not affect any
474 contract between a franchisor and any of its franchisees regarding relocation,

475 expansion, improvement, remodeling, renovation, or alteration which exists on
476 August 28, 2010];

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

481 (a) For emergency repairs when a franchisee is not available;

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

485 (c) For repairs performed by a facility under subsection 2 of section
486 407.826;

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

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

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

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

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

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

510 (33) Unreasonably discriminating among its franchisees in any program

511 that provides assistance to its franchisees, including internet listings, sales leads,
512 warranty policy adjustments, marketing programs, and dealer recognition
513 programs;

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

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

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

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

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

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

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

538 (37) To refuse to allocate, sell, or deliver motor vehicles; to charge back
539 or withhold payments or other things of value for which the franchisee is
540 otherwise eligible under a sales promotion, program, or contest; to prevent a
541 franchisee from participating in any promotion, program, or contest; or to take or
542 threaten to take any adverse action against a franchisee, including charge-backs,
543 reducing vehicle allocations, or terminating or threatening to terminate a
544 franchise because the franchisee sold or leased a motor vehicle to a customer who
545 exported the vehicle to a foreign country or who resold the vehicle, unless the
546 franchisor proves that the franchisee knew or reasonably should have known that

547 the customer intended to export or resell the motor vehicle. There is a rebuttable
548 presumption that the franchisee neither knew nor reasonably should have known
549 of its customer's intent to export or resell the vehicle if the vehicle is titled or
550 registered in any state in this country. A franchisor may not take any action
551 against a franchisee, including reducing its allocations or supply of motor vehicles
552 to the franchisee, or charging back a franchisee for an incentive payment
553 previously paid, unless the franchisor first meets in person, by telephone, or video
554 conference with an officer or other designated employee of the franchisee. At
555 such meeting, the franchisor shall provide a detailed explanation, with supporting
556 documentation, as to the basis for its claim that the franchisee knew or
557 reasonably should have known of the customer's intent to export or resell the
558 motor vehicle. Thereafter, the franchisee shall have a reasonable period,
559 commensurate with the number of motor vehicles at issue, but not less than
560 fifteen days, to respond to the franchisor's claims. If, following the franchisee's
561 response and completion of all internal dispute resolution processes provided
562 through the franchisor, the dispute remains unresolved, the franchisee may file
563 a complaint with the administrative hearing commission within thirty days after
564 receipt of a written notice from the franchisor that it still intends to take adverse
565 action against the franchisee with respect to the motor vehicles still at issue. If
566 a complaint is timely filed, the administrative hearing commission shall notify
567 the franchisor of the filing of the complaint, and the franchisor shall not take any
568 action adverse to the franchisee until the administrative hearing commission
569 renders a final determination, which is not subject to further appeal, that the
570 franchisor's proposed action is in compliance with the provisions of this
571 subdivision. In any hearing under this subdivision, the franchisor has the burden
572 of proof on all issues raised by this subdivision;

573 (38) To require a franchisee to provide its customer lists or service files
574 to the franchisor, unless necessary for the sale and delivery of a new motor
575 vehicle to a consumer, to validate and pay consumer or dealer incentives, for
576 reasonable marketing purposes or for the submission to the franchisor for any
577 services supplied by the franchisee for any claim for warranty parts or
578 repairs. Nothing in this section shall limit the franchisor's ability to require or
579 use customer information to satisfy any safety or recall notice obligation;

580 (39) To mandate the use by the franchisee, or condition access to any
581 services offered by the franchisor on the franchisee's use, or condition the
582 acceptance of an order of any product or service offered by the franchisor on the

583 franchisee's use, or condition the acceptance of any claim for payment from the
584 franchisee on the franchisee's use, or condition the franchisee's participation in
585 any program offered by the franchisor, a common entity or an entity controlled
586 by the franchisor on the franchisee's use of any form, equipment, part, tool,
587 furniture, fixture, data processing program or equipment, automotive service
588 equipment, or sign from the franchisor, a vendor recommended by the franchisor,
589 a common entity or an entity controlled by the franchisor if the franchisee is able
590 to obtain the identical or reasonably equivalent product from another vendor;

591 (40) Establishing any performance standard or program for measuring
592 franchisee performance that may have a material impact on a franchisee that is
593 not fair, reasonable, and equitable, or applying any such standard or program to
594 a franchisee in a manner that is not fair, reasonable, and equitable. Within ten
595 days of a request of a franchisee, a franchisor shall disclose in writing to the
596 franchisee a description of how a performance standard or program is designed
597 and all relevant information used in the application of the performance standard
598 or program to that franchisee unless the information is available to the franchisee
599 on the franchisor's website;

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

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

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