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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES -- REGULATION OF BUSINESS
PRACTICES AMONG MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS AND
DEALERS

Introduced By: Representatives San Bento, O'Brien, Costantino, and Williams

Date Introduced: February 26, 2014

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 31-5.1-4, 31-5.1-6 and 31-5.1-21 of the General Laws in Chapter
2 31-5.1 entitled "Regulation of Business Practices Among Motor Vehicle Manufacturers,
3 Distributors, and Dealers" are hereby amended to read as follows:

4 **31-5.1-4. Violations.** -- (a) It shall be deemed a violation of this chapter for any
5 manufacturer or motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or
6 unconscionable and which causes damage to any of the parties involved or to the public.

7 (b) It shall be deemed a violation of this chapter for a manufacturer, or officer, agent, or
8 other representative of a manufacturer, to coerce, or attempt to coerce, any motor vehicle dealer:

9 (1) To order or accept delivery of any motor vehicle or vehicles, equipment, parts, or
10 accessories for them, or any other commodity or commodities which the motor vehicle dealer has
11 not voluntarily ordered.

12 (2) To order or accept delivery of any motor vehicle with special features, accessories, or
13 equipment not included in the list price of that motor vehicle as publicly advertised by the
14 manufacturer of the vehicle.

15 (3) To participate monetarily in an advertising campaign or contest, or to purchase any
16 promotional materials, or training materials, showroom or other display decorations or materials
17 at the expense of the new motor vehicle dealership.

18 (4) To enter into any agreement with the manufacturer or to do any other act prejudicial

1 to the new motor vehicle dealer by threatening to terminate or cancel a franchise or any
2 contractual agreement existing between the dealer and the manufacturer; except that this
3 subdivision is not intended to preclude the manufacturer or distributor from insisting on
4 compliance with the reasonable terms or provisions of the franchise or other contractual
5 agreement, and notice in good faith to any new motor vehicle dealer of the new motor vehicle
6 dealer's violation of those terms or provisions shall not constitute a violation of the chapter.

7 (5) To refrain from participation in the management of, investment in, or acquisition of
8 any other line of new motor vehicle or related products. This subdivision does not apply unless
9 the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new
10 motor vehicle, the new motor vehicle dealer remains in compliance with any reasonable facilities
11 requirements of the manufacturer, and no change is made in the principal management of the new
12 motor vehicle dealer.

13 (6) To assent to a release, assignment, novation, waiver, or estoppel in connection with
14 the transfer or voluntary termination of a franchise, or which would relieve any person from the
15 liability to be imposed by this law or to require any controversy between a new motor vehicle
16 dealer and a manufacturer, distributor, or representative to be referred to any person other than
17 the duly constituted courts of this state or of the United States of America, or to the department of
18 revenue of this state, if that referral would be binding upon the new motor vehicle dealer.

19 (7) To order for any person any parts, accessories, equipment, machinery, tools or any
20 commodities.

21 (c) It shall be deemed a violation of this chapter for a manufacturer, or officer, agent, or
22 other representative:

23 (1) To refuse to deliver in reasonable quantities and within a reasonable time after
24 receipt of the dealer's order, to any motor vehicle dealer having a franchise or contractual
25 arrangement for the retail sale of new motor vehicles sold or distributed by the manufacturer, any
26 motor vehicles covered by the franchise or contract, specifically publicly advertised by the
27 manufacturer to be available for immediate delivery. However, the failure to deliver any motor
28 vehicle shall not be considered a violation of this chapter if that failure is due to an act of God,
29 work stoppage or delay due to a strike or labor difficulty, shortage of materials, a freight
30 embargo, or other cause over which the manufacturer, distributor, or wholesaler, or its agent,
31 shall have no control.

32 (2) To refuse to deliver or otherwise deny to any motor vehicle dealer having a franchise
33 or contractual arrangement for the retail sale of new motor vehicles sold or distributed by the
34 manufacturer any particular new motor vehicle model made or distributed by the manufacturer

1 under the name of the division of the manufacturer of which the dealer is an authorized franchise.

2 (3) It shall be deemed a prima facie violation of this chapter for any automotive vehicle
3 division manufacturer to require any separate franchise or contractual arrangement with any new
4 motor vehicle dealer already a party to a franchise or contractual arrangement with that
5 automotive vehicle division for the retail sale of any particular new motor vehicle model made or
6 distributed by that division.

7 (4) To coerce, or attempt to coerce, any motor vehicle dealer to enter into any agreement
8 with the manufacturer, or their officers, agents, or other representatives, or to do any other act
9 prejudicial to the dealer, by threatening to cancel any franchise or any contractual agreement
10 existing between the manufacturer and the dealer. Notice in good faith to any motor vehicle
11 dealer of the dealer's violation of any terms or provisions of the franchise or contractual
12 agreement shall not constitute a violation of this chapter.

13 (5) To resort to or use any false or misleading advertisement in connection with his or
14 her business as a manufacturer, an officer, agent, or other representative.

15 (6) To sell or lease any new motor vehicle to, or through, any new motor vehicle dealer
16 at a lower actual price therefore than the actual price offered to any other new motor vehicle
17 dealer for the same model vehicle similarly equipped or to utilize any device, including, but not
18 limited to, sales promotion plans or programs, which result in a lesser actual price. The provisions
19 of this paragraph shall not apply to sales to a new motor vehicle dealer for resale to any unit of
20 the United States government, or to the state or any of its political subdivisions. A manufacturer
21 may not reduce the price of a motor vehicle charged to a dealer or provide different financing
22 terms to a dealer in exchange for the dealer's agreement to:

- 23 (i) Maintain an exclusive sales or service facility;
- 24 (ii) Build or alter a sales or service facility; or
- 25 (iii) Participate in a floor plan or other financing.

26 (7) To sell or lease any new motor vehicle to any person, except a manufacturer's
27 employee, at a lower actual price than the actual price offered and charged to a new motor vehicle
28 dealer for the same model vehicle similarly equipped or to utilize any device which results in a
29 lesser actual price. The provisions of this paragraph shall not apply to sales to a new motor
30 vehicle dealer for resale to any unit of the United States government, or to the state or any of its
31 political subdivisions.

32 (8) To offer in connection with the sale of any new motor vehicle or vehicles directly or
33 indirectly to a fleet purchaser within or without this state terms, discounts, refunds, or other
34 similar types of inducements to that purchaser without making the same offer or offers available

1 to all of its new motor vehicles dealers in this state. No manufacturer may impose or enforce any
2 restrictions against new motor vehicle dealers in this state or their leasing, rental, or fleet
3 divisions or subsidiaries that are not imposed or enforced against any other direct or indirect
4 purchaser from the manufacturer. The provisions of this paragraph shall not apply to sales to a
5 new motor vehicle dealer for resale to any unit of the United States government, or to the state or
6 any of its political subdivisions.

7 (9) To use or consider the performance of a motor vehicle dealer relating to the sale of
8 the manufacturer's vehicles or the motor vehicle dealer's ability to satisfy any minimum sales or
9 market share quota or responsibility relating to the sale of the manufacturer's new vehicles in
10 determining:

11 (i) The motor vehicle dealer's eligibility to purchase program, certified, or other used
12 motor vehicles from the manufacturer;

13 (ii) The volume, type, or model of program, certified, or other used motor vehicles that a
14 motor vehicle dealer is eligible to purchase from the manufacturer;

15 (iii) The price of any program, certified, or other used motor vehicle that the dealer is
16 eligible to purchase from the manufacturer; or

17 (iv) The availability or amount of any discount, credit, rebate, or sales incentive that the
18 dealer is eligible to receive from the manufacturer for the purchase of any program, certified, or
19 other used motor vehicle offered for sale by the manufacturer.

20 (10) To offer to sell or to sell parts or accessories to any new motor vehicle dealer for
21 use in the dealer's own business for the purpose of repairing or replacing the same parts or
22 accessories or a comparable part or accessory, at a lower actual price than the actual price
23 charged to any other new motor vehicle dealer for similar parts or accessories to use in the
24 dealer's own business. In those cases where new motor vehicle dealers operate or serve as
25 wholesalers of parts and accessories to retail outlets, these provisions shall be construed to
26 prevent a manufacturer, or their agents, from selling to a new motor vehicle dealer who operates
27 and services as a wholesaler of parts and accessories, any parts and accessories that may be
28 ordered by that new motor vehicle dealer for resale to retail outlets, at a lower actual price than
29 the actual price charged a new motor vehicle dealer who does not operate or serve as a wholesaler
30 of parts and accessories.

31 (11) To prevent or attempt to prevent by contract or otherwise any new motor vehicle
32 dealer from changing the capital structure of his or her dealership or the means by which or
33 through which the dealer finances the operation of his or her dealership. However, the new motor
34 vehicle dealer shall at all times meet any reasonable capital standards agreed to between the

1 dealership and the manufacturer, provided that any change in the capital structure by the new
2 motor vehicle dealer does not result in a change in the executive management control of the
3 dealership.

4 (12) To prevent or attempt to prevent by contract or otherwise any new motor vehicle
5 dealer or any officer, partner, or stockholder of any new motor vehicle dealer from selling or
6 transferring any part of the interest of any of them to any other person or persons or party or
7 parties. Provided, however, that no dealer, officer, partner, or stockholder shall have the right to
8 sell, transfer or assign the franchise or power of management or control without the consent of the
9 manufacturer, except that the consent shall not be unreasonably withheld.

10 (13) To obtain money, goods, services, anything of value, or any other benefit from any
11 other person with whom the new motor vehicle dealer does business, on account of or in relation
12 to the transactions between the dealer and that other person, unless that benefit is promptly
13 accounted for and transmitted to the new motor vehicle dealer.

14 (14) To compete with a new motor vehicle dealer operating under an agreement or
15 franchise from the manufacturer in the state of Rhode Island, through the ownership, operation, or
16 control of any new motor vehicle dealers in this state or by participation in the ownership,
17 operation, or control of any new motor vehicle dealer in this state. A manufacturer shall not be
18 deemed to be competing when operating, controlling, or owning a dealership either temporarily
19 for a reasonable period in any case not to exceed one year, which one year period may be
20 extended for a one-time additional period of up to six (6) months upon application to and
21 approval by the motor vehicle dealers license and hearing board, which approval shall be subject
22 to the manufacturer demonstrating the need for this extension, and with other new motor vehicle
23 dealers of the same line making being given notice and an opportunity to be heard in connection
24 with said application, or in a bona fide relationship in which an independent person had made a
25 significant investment subject to loss in the dealership and can reasonably expect to acquire full
26 ownership of the dealership on reasonable terms and conditions within a reasonable period of
27 time.

28 (15) To refuse to disclose to any new motor vehicle dealer, handling the same line or
29 make, the manner and mode of distribution of that line or make within the relevant market area.

30 (16) To increase prices of new motor vehicles which the new motor vehicle dealer had
31 ordered for private retail consumers prior to the new motor vehicle dealer's receipt of the written
32 official price increase notification. A sales contract signed by a private retail consumer shall
33 constitute evidence of an order provided that the vehicle is in fact delivered to that customer. In
34 the event of manufacturer price reductions or cash rebates paid to the new motor vehicle dealer,

1 the amount of any reduction or rebate received by a new motor vehicle dealer shall be passed on
2 to the private retail consumer by the new motor vehicle dealer. Price reductions shall apply to all
3 vehicles in the dealer's inventory which were subject to the price reduction. Price differences
4 applicable to new model or series motor vehicles at the time of the introduction of new models or
5 series shall not be considered a price increase or price decrease. Price changes caused by either:
6 (i) the addition to a motor vehicle of required or optional equipment; (ii) revaluation of the United
7 States dollar, in the case of foreign-make vehicles or components; or (iii) an increase in
8 transportation charges due to increased rates imposed by common carriers, shall not be subject to
9 the provisions of this subdivision.

10 (17) To release to any outside party, except under subpoena or as otherwise required by
11 law or in an administrative, judicial, or arbitration proceeding involving the manufacturer or new
12 motor vehicle dealer, any business, financial, or personal information which may be from time to
13 time provided by the new motor vehicle dealer to the manufacturer, without the express written
14 consent of the new motor vehicle dealer.

15 (18) To unfairly discriminate among its new motor vehicle dealers with respect to
16 warranty reimbursement, or any program that provides assistance to its dealers, including Internet
17 listings; sales leads; warranty policy adjustments; marketing programs; and dealer recognition
18 programs.

19 (19) To unreasonably withhold consent to the sale, transfer, or exchange of the franchise
20 to a qualified buyer capable of being licensed as a new motor vehicle dealer in this state.

21 (20) To fail to respond in writing to a request for consent as specified in subdivision (19)
22 of this subsection within sixty (60) days of the receipt of a written request on the forms, if any,
23 generally utilized by the manufacturer or distributor for those purposes and containing the
24 information required therein. The failure to respond shall be deemed to be a consent to the
25 request. A manufacturer may not impose a condition on the approval of a sale, transfer, or
26 exchange of the franchise if the condition would violate the provisions of this chapter if imposed
27 on an existing dealer.

28 (21) To unfairly prevent a new motor vehicle dealer from receiving fair and reasonable
29 compensation for the value of the new motor vehicle dealership.

30 (22) To require that a new motor vehicle dealer execute a written franchise agreement
31 that does not contain substantially the same provisions as the franchise agreement being offered
32 to other new motor vehicle dealers handling the same line or make. In no instance shall the term
33 of any franchise agreement be of a duration of less than three (3) years.

34 (23) To require that a new motor vehicle dealer provide exclusive facilities, personnel, or

1 display space taking into consideration changing market conditions, or that a dealer execute a site
2 control agreement giving a manufacturer control over the dealer's facilities.

3 (24) To require that a dealer expand facilities without a guarantee of a sufficient supply
4 of new motor vehicles to justify that expansion or to require that a dealer expand facilities to a
5 greater degree than is necessary to sell and service the number of vehicles that the dealer sold and
6 serviced in the most recent calendar year.

7 (25) To prevent a dealer from adjusting his or her facilities to permit a relocation of
8 office space, showroom space, and service facilities so long as the relocation is within five
9 hundred (500) yards of the present location.

10 (26) To engage in any predatory practice against a new motor vehicle dealer.

11 (27) To prevent, prohibit, or coerce any new motor vehicle dealer from charging any
12 consumer any fee allowed to be charged by the dealer under Rhode Island law or regulation;
13 except as related to eligible participants under a military discount program in which the dealer
14 voluntarily participates and receives financial compensation from the manufacturer or distributor,
15 to the extent that such a program is not offered to the general public.

16 (d) It shall be a violation of this chapter for a manufacturer to terminate, cancel, or fail to
17 renew the franchise of a new motor vehicle dealer except as provided in this subsection:

18 (1) Notwithstanding the terms, provisions, or conditions of any franchise, whether
19 entered into before or after the enactment of this chapter or any of its provisions, or
20 notwithstanding the terms or provisions of any waiver, whether entered into before or after the
21 enactment of this chapter or any of its provisions, no manufacturer shall cancel, terminate, or fail
22 to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has:

- 23 (i) Satisfied the notice requirement of this subsection;
- 24 (ii) Has good cause for the cancellation, termination, or nonrenewal;
- 25 (iii) Has not committed any violations set forth in subsection (b) of this section; and
- 26 (iv) Has acted in good faith as defined in this chapter and has complied with all
27 provisions of this chapter.

28 (2) Notwithstanding the terms, provisions, or conditions of any franchise or the terms or
29 provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation, or
30 nonrenewal when:

- 31 (i) There is a failure by the new motor vehicle dealer to comply with a provision of the
32 franchise which provision is both reasonable and of material significance to the franchise
33 relationship, provided that the dealer has been notified in writing of the failure within one
34 hundred eighty (180) days after the manufacturer first acquired knowledge of that failure;

1 (ii) If the failure by the new motor vehicle dealer, as provided in paragraph (i) of this
2 subdivision, relates to the performance of the new motor vehicle dealer in sales or service, then
3 good cause shall be defined as the failure of the new motor vehicle dealer to comply with
4 reasonable performance criteria established by the manufacturer if the new motor vehicle dealer
5 was apprised by the manufacturer in writing of that failure; and:

6 (A) The notification stated that notice was provided of failure of performance pursuant to
7 paragraph (i) of this subdivision;

8 (B) The new motor vehicle dealer was afforded a reasonable opportunity, for a period of
9 not less than six (6) months, to comply with those criteria; and

10 (C) The new motor vehicle dealer did not demonstrate substantial progress towards
11 compliance with the manufacturer's performance criteria during that period.

12 (3) The manufacturer shall have the burden of proof for showing that the notice
13 requirements have been complied with, that there was good cause for the franchise termination,
14 cancellation or nonrenewal, and that the manufacturer has acted in good faith.

15 (i) Notwithstanding the terms, provisions, or conditions of any franchise, prior to the
16 termination, cancellation, or nonrenewal of any franchise, the manufacturer shall furnish
17 notification of the termination, cancellation, or nonrenewal to the new motor vehicle dealer as
18 follows:

19 (A) In the manner described in paragraph (ii) of this subdivision; and

20 (B) Not fewer than ninety (90) days prior to the effective date of the termination,
21 cancellation, or nonrenewal; or

22 (C) Not fewer than fifteen (15) days prior to the effective date of the termination,
23 cancellation, or nonrenewal for any of the following reasons:

24 (I) Insolvency of the new motor vehicle dealer, or the filing of any petition by or against
25 the new motor vehicle dealer under any bankruptcy or receivership law;

26 (II) Failure of the new motor vehicle dealer to conduct his customary sales and service
27 operations during his or her customary business hours for seven (7) consecutive business days;

28 (III) Final conviction of the new motor vehicle dealer, or any owner or operator of the
29 dealership, of a crime which is associated with or related to the operation of the dealership;

30 (IV) Revocation of any license which the new motor vehicle dealer is required to have to
31 operate a dealership; or

32 (D) Not fewer than one hundred eighty (180) days prior to the effective date of the
33 termination or cancellation where the manufacturer or distributor is discontinuing the sale of the
34 product line.

1 (ii) Notification under this subsection shall be in writing, shall be by certified mail or
2 personally delivered to the new motor vehicle dealer, and shall contain:

3 (A) A statement of intention to terminate, cancel, or not to renew the franchise;

4 (B) A statement of the reasons for the termination, cancellation, or nonrenewal; and

5 (C) The date on which the termination, cancellation, or nonrenewal shall take effect.

6 (iii) Upon the involuntary or voluntary termination, nonrenewal, or cancellation of any
7 franchise, by either the manufacturer or the new motor vehicle dealer, notwithstanding the terms
8 of any franchise whether entered into before or after the enactment of this chapter or any of its
9 provisions, the new motor vehicle dealer shall be allowed fair and reasonable compensation by
10 the manufacturer for the following:

11 (A) The new motor vehicle dealer's cost, less allowances paid by the manufacturer, of
12 each new, undamaged, unsold and unaltered, except for dealer installed manufacturer-authorized
13 accessories, motor vehicle, regardless of model year purchased from the manufacturer or another
14 dealer of the same line-make in the ordinary course of business within twenty-four (24) months of
15 termination, having five hundred (500) or fewer miles recorded on the odometer that is in the new
16 motor vehicle dealer's inventory at the time of termination, nonrenewal, or cancellation.

17 (B) The new motor vehicle dealer's cost of each new, unused, undamaged, and unsold
18 part or accessory that is in the current parts catalogue or is identical to a part or accessory in the
19 current parts catalogue except for the number assigned to the part or accessory due to a change in
20 the number after the purchase of the part or accessory, and that is still in the original, resalable
21 merchandising package and in an unbroken lot, except that, in the case of sheet metal, a
22 comparable substitute for the original package may be used.

23 (C) The fair market value of each undamaged sign, normal wear and tear excepted,
24 owned by the dealer that bears a trademark or trade name used or claimed by the manufacturer
25 that were purchased as a requirement of the manufacturer.

26 (D) The fair market value of all special tools, and automotive services equipment owned
27 by the dealer that: (I) Were recommended in writing and designated as special tools and
28 equipment; (II) Were purchased as a requirement of the manufacturer; and (III) Are in usable and
29 good condition except for reasonable wear and tear.

30 (E) The cost of transporting, handling, packing, storing, and loading any property that is
31 subject to repurchase under this section.

32 (F) The payments above are due within sixty (60) days from the date the dealer submits
33 an accounting to the manufacturer of the vehicle inventory subject to repurchase, and for other
34 items within sixty (60) days from the date the dealer submits an accounting of the other items

1 subject to repurchase, provided, the new motor vehicle dealer has clear title (or will have clear
2 title upon using the repurchase funds to obtain clear title) to the inventory and other items and is
3 in a position to convey that title to the manufacturer. If the inventory or other items are subject to
4 a security interest, the manufacturer, wholesaler, or franchisor may make payment jointly to the
5 dealer and the holder of the security interest. In no event shall the payments be made later than
6 ninety (90) days of the effective date of the termination, cancellation, or nonrenewal.

7 (iv) In the event the termination, cancellation or nonrenewal is involuntary and not
8 pursuant to subsection (3)(i)(C) of this section, and:

9 (A) The new motor vehicle dealer is leasing the dealership facilities from a lessor other
10 than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent
11 to the rent for the unexpired term of the lease or (2) two year's rent, whichever is less; or

12 (B) If the new motor vehicle dealer owns the facilities, the manufacturer shall pay the
13 new motor vehicle dealer a sum equivalent to the reasonable rental value of the facilities for two
14 (2) years; if:

15 (I) The new motor vehicle dealer is unable to reasonably utilize the facilities for another
16 purpose;

17 (II) The new motor vehicle dealer, or the manufacturer acting as its agent, is unable to
18 make arrangements for the cancellation or assumption of its lease obligations by another party in
19 the case of leased facilities, or is unable to sell dealer owned facilities, and

20 (III) Only to the extent those facilities were required as a condition of the franchise and
21 used to conduct sales and service operations related to the franchise product.

22 (v) In addition to any injunctive relief and any other damages allowable by this chapter,
23 if the manufacturer is discontinuing the product line or fails to prove that there was good cause
24 for the termination, cancellation, or nonrenewal or if the manufacturer fails to prove that the
25 manufacturer acted in good faith, then the manufacturer shall pay the new motor vehicle dealer
26 fair and reasonable compensation for the value of the dealership as an ongoing business.

27 In addition to the other compensation described in paragraphs (iii) and (iv) above and in
28 this section, the manufacturer shall also reimburse the dealer for any costs incurred for facility
29 upgrades or alterations required by the manufacturer within two (2) years of the effective date of
30 the termination.

31 (vi) If a manufacturer is discontinuing the product line and thus as a result a franchise for
32 the sale of motor vehicles is subject to termination, cancellation, or nonrenewal, the manufacturer
33 shall:

34 (A) Authorize the dealer at the dealer's option, that remains a franchised dealer of the

1 manufacturer regardless of the discontinuation of a product line, to continue servicing and
2 supplying parts (without prejudice to the right of the manufacturer to also authorize other
3 franchised dealers to provide service and parts for a discontinued product line), including services
4 and parts pursuant to a warranty issued by the manufacturer for any goods or services marketed
5 by the dealer pursuant to the motor vehicle franchise for a period of not less than five (5) years
6 from the effective date of the termination, cancellation, or nonrenewal;

7 (B) Continue to reimburse the dealer that remains a franchised dealer of the
8 manufacturer regardless of the discontinuation of a product line or another franchised dealer of
9 the manufacturer in the area for warranty parts and service in an amount and on terms not less
10 favorable than those in effect prior to the termination, cancellation, or nonrenewal;

11 (C) The manufacturer shall continue to supply the dealer that remains a franchised dealer
12 of the manufacturer regardless of the discontinuation of a product line or another franchised
13 dealer of the manufacturer in the area with replacement parts for any goods or services marketed
14 by the dealer pursuant to the franchise agreement for a period of not less than five (5) years from
15 the effective date of the termination, cancellation, or nonrenewal, at a price and on terms not less
16 favorable than those in effect prior to the termination, cancellation, or nonrenewal;

17 (vii) The requirements of this section do not apply to a termination, cancellation or
18 nonrenewal due to the sale of the assets or stock of the motor vehicle dealer.

19 (D) To be entitled to facilities assistance from the manufacturer as described above, the
20 dealer shall have the obligation to mitigate damages by listing the dealership facilities for lease or
21 sublease with a licensed real estate agent within thirty (30) days after the effective date of the
22 termination of the franchise and thereafter be reasonably cooperating with such real estate agent
23 in the performance of the agent's duties and responsibilities. If the dealer is able to lease or
24 sublease the dealership facilities on terms that are consistent with local zoning requirements to
25 preserve the right to sell motor vehicles from the dealership facilities and the terms of the dealer's
26 lease, the dealer shall be obligated to pay the manufacturer the net revenue received from such
27 mitigation, but only following receipt of facilities assistance payments pursuant to this chapter,
28 and only up to the total amount of facilities assistance payments that the dealer has received.

29 (e) It shall be deemed a violation of this chapter for a motor vehicle dealer:

30 (1) To require a purchaser of a new motor vehicle, as a condition of the sale and delivery
31 thereof, to also purchase special features, equipment, parts, or accessories not desired or
32 requested by the purchaser. This prohibition shall not apply as to special features, equipment,
33 parts, or accessories which are already installed on the car before sale by the dealer.

34 (2) To represent and sell as a new motor vehicle any motor vehicle which is a used motor

1 vehicle.

2 (3) To resort to or use any false or misleading advertisement in connection with his or
3 her business as a motor vehicle dealer.

4 (4) To engage in any deception or fraudulent practice in the repair of motor vehicles.

5 **31-5.1-6. Warranty agreement.** -- (a) Every manufacturer shall properly fulfill any
6 warranty agreement and adequately and fairly compensate each of its motor vehicle dealers for
7 labor and parts. In no event shall that compensation fail to include reasonable compensation for
8 diagnostic work, as well as repair service and labor. All claims made by motor vehicle dealers for
9 labor and parts shall be paid in accord with the provisions of subsection (b) of this section. Any
10 delay in payment after approval or disapproval that is caused by conditions beyond the reasonable
11 control of the manufacturer shall not constitute a violation of this section. Reimbursement for
12 warranty repairs or diagnostic work shall be at the dealer retail rate in effect at the time the
13 warranty repair or diagnostic work is performed.

14 (b) A claim filed under this section by a dealer with a manufacturer or distributor shall
15 be:

16 (1) In the manner and form prescribed by the manufacturer or distributor; and

17 (2) (i) Approved or disapproved within (30) days of receipt.

18 (ii) A claim not approved or disapproved within thirty (30) days of receipt shall be
19 deemed approved.

20 (iii) Payment of or credit issued on a claim filed under this section shall be made within
21 thirty (30) days of approval.

22 (3) (i) If a claim filed under this section is shown by the manufacturer or distributor to be
23 false or unsubstantiated, the manufacturer or distributor may charge back the claim within twelve
24 (12) months from the date the claim was paid or credit issued.

25 (ii) A manufacturer or distributor shall not charge back a claim based solely on a motor
26 vehicle dealer's incidental failure to comply with a specific claim processing requirement, such as
27 a clerical error or other administrative technicality that does not put into question the legitimacy
28 of the claim after the motor vehicle dealer properly resubmits the claim in accordance with the
29 manufacturer's or distributor's submission guidelines.

30 (iii) A dealer shall have no less than sixty (60) days from the date of notification by a
31 manufacturer or distributor of a charge back to the dealer to resubmit a claim for payment or
32 compensation if the claim was denied for a dealer's incidental failure as set forth in subsection
33 (3)(ii) of this section, whether the chargeback was a direct or an indirect transaction.

34 ~~(iv)~~(iv) This subdivision does not limit the right of a manufacturer or distributor to charge

1 back for any claim that is proven to be fraudulent.

2 **31-5.1-21. Promotional activities.** -- (a) Upon filing of a claim, a manufacturer or
3 distributor shall compensate a dealer for any incentive or reimbursement program sponsored by
4 the manufacturer or distributor, under the terms of which the dealer is eligible for compensation.

5 (b) (1) A claim filed under this section shall be:

6 (i) In the manner and form prescribed by the manufacturer or distributor; and

7 (ii) Approved or disapproved within thirty (30) days of receipt.

8 (2) A claim not approved or disapproved within thirty (30) days of receipt shall be
9 deemed approved.

10 (3) Payment of a claim filed under this section shall be made within thirty (30) days of
11 approval.

12 (c)(1) If a claim filed under this section is shown by the manufacturer or distributor to be
13 false or unsubstantiated, the manufacturer or distributor may charge back the claim within one
14 year from the date the claim was paid or credit issued or one year from the end of a manufacturer
15 program that does not exceed one year in length, whichever is later.

16 (ii) A manufacturer or distributor shall not charge back a claim based solely on a motor
17 vehicle dealer's incidental failure to comply with a specific claim processing requirement, such as
18 a clerical error or other administrative technicality that does not put into question the legitimacy
19 of the claim after the motor vehicle dealer properly resubmits the claim in accordance with the
20 manufacturer's or distributor's submission guidelines.

21 (iii) A dealer shall have no less than sixty (60) days from the date of notification by a
22 manufacturer or distributor of a charge back to the dealer to resubmit a claim for payment or
23 compensation if the claim was denied for a dealer's incidental failure as set forth in subsection
24 (c)(1)(ii) whether the chargeback was a direct or an indirect transaction.

25 (2) This paragraph does not limit the right of a manufacturer or distributor to charge back
26 for any claim that is proven fraudulent.

27 SECTION 2. This act shall take effect upon passage.

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LC004720/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES -- REGULATION OF BUSINESS
PRACTICES AMONG MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS AND
DEALERS

1 This act would make it a violation for a motor vehicle manufacturer or representative to
2 prevent any motor vehicle dealer from charging a consumer any fee allowed under law. It would
3 also regulate the manner in which a manufacturer or distributor would be allowed to deny or
4 charge back a claim.

5 This act would take effect upon passage.

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LC004720/SUB A
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