**A** **BILL**

TO AMEND SECTION 56-15-10 OF THE 1976 CODE, RELATING TO DEFINITIONS FOR THE REGULATION OF MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, AND DEALERS, TO AMEND AND ADD DEFINITIONS, TO AMEND ARTICLE 1, CHAPTER 15, TITLE 56 OF THE 1976 CODE BY ADDING SECTION 56‑15‑35, TO PROVIDE FOR HOW A FRANCHISOR, MANUFACTURER, DISTRIBUTOR, OR A THIRD PARTY AFFILIATE MUST HANDLE CONSUMER DATA; TO AMEND SECTION 56‑15‑40 OF THE 1976 CODE, RELATING TO SPECIFIC ACTS DEEMED UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES, TO AMEND A VIOLATION FOR TAKING ANY ADVERSE ACTION AGAINST A DEALER FOR OFFERING OR DECLINING TO OFFER PROMOTIONS, SERVICE CONTRACTS, DEBT CANCELLATION AGREEMENTS, MAINTENANCE AGREEMENTS, OR OTHER SIMILAR PRODUCTS; AND TO ADD AND PROVIDE FOR ADDITIONAL VIOLATIONS; TO AMEND SECTION 56‑15‑45(A)(3) AND (D) OF THE 1976 CODE, RELATING TO OWNERSHIP, OPERATION OR CONTROL OF COMPETING DEALERSHIPS BY MANUFACTURER OR FRANCHISOR, TO PROVIDE FOR A DATE CHANGE, TO DELETE QUALIFICATIONS FOR AN EXEMPTION, AND TO ADD THAT A MANUFACTURER MAY NOT LEASE OF ENTER INTO A SUBSCRIPTION AGREEMENT EXCEPT TO A NEW DEALER HOLDING A FRANCHISE IN THE LINE MAKE THAT INCLUDES THE VEHICLE; TO AMEND SECTION 56‑15‑46 OF THE 1976 CODE, RELATING TO THE NOTICE OF INTENT TO ESTABLISH OR RELOCATE COMPETING DEALERSHIP, TO AMEND THE RADIUS AND ADD A TIME REQUIREMENT FOR NOTICE; TO AMEND SECTION 56‑15‑50 OF THE 1976 CODE, RELATING TO THE REQUIREMENT THAT MANUFACTURERS MUST SPECIFY DELIVERY AND PREPARATION OBLIGATIONS OF DEALERS, FILING OF COPY OF OBLIGATIONS, AND SCHEDULE OF COMPENSATION, TO ADD A PROVISION FOR INDEMNIFICATION; TO AMEND SECTION 56‑15‑60 OF THE 1976 CODE, RELATING TO THE FULFILLMENT OF WARRANTY AGREEMENTS AND A DEALERS’ CLAIMS FOR COMPENSATION, TO PROVIDE THAT IT IS UNLAWFUL FOR A NEW MOTOR VEHICLE MANUFACTURER TO RECOVER ANY PORTION OF ITS COSTS FOR COMPENSATING DEALERS FOR RECALLS OR WARRANTY PARTS AND SERVICE, EITHER BY REDUCTION IN THE AMOUNT DUE TO THE DEALER, OR BY SEPARATE CHARGE, SURCHARGE, OR OTHER IMPOSITION, TO PROVIDE FOR COMPENSATION AND A COMPENSATION SCHEDULE, TO PROVIDE EXCLUSIONS, TO PROHIBIT A MANUFACTURER FROM TAKING CERTAIN ADVERSE ACTION AGAINST A DEALER TO SEEKING TO OBTAIN COMPENSATION, TO PROVIDE FOR A PROTEST PROCEDURE, TO PROVIDE FOR CLAIMS AND VIOLATIONS, TO PROVIDE FOR AUDITS, AND TO PROVIDE FOR USED MOTOR VEHICLES; TO AMEND SECTION 56‑15‑65 OF THE 1976 CODE, RELATING TO REQUIREMENTS FOR A CHANGE OF LOCATION OR ALTERATION OF A DEALERSHIP, TO PROVIDE ADDITIONAL VIOLATIONS; TO AMEND SECTION 56‑15‑70 OF THE 1976 CODE, RELATING TO CERTAIN UNREASONABLE RESTRICTIONS ON DEALERS OR FRANCHISEES THAT ARE UNLAWFUL, TO ADD RELOCATION; TO AMEND SECTION 56‑15‑75 OF THE 1976 CODE, RELATING TO REQUIREMENTS THAT THE DEALER REFRAIN FROM ACQUIRING ANOTHER LINE OF NEW MOTOR VEHICLES, TO DELETE THE EVIDENTIARY STANDARD; TO AMEND SECTION 56‑15‑90 OF THE 1976 CODE, RELATING TO THE FAILURE TO RENEW, TERMINATION OR RESTRICTION OF TRANSFER OF FRANCHISE AND DETERMINING REASONABLE COMPENSATION FOR THE VALUE OF A DEALERSHIP FRANCHISE, TO EXPAND FAIR MARKET VALUE CONSIDERATIONS; TO AMEND SECTION 56‑15‑140 OF THE 1976 CODE, RELATING TO VENUE, AND TO DECLARE THAT VENUE IS IN STATE COURTS IN SOUTH CAROLINA RATHER THAN THE STATE OF SOUTH CAROLINA.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 56-15-10(h)(1), (j), and (l) of the 1976 Code is amended to read:

“(1) manufacturers, distributors, or wholesalers;

(j) ‘~~Franchiser,~~ Franchisor’ a manufacturer, distributor or wholesaler who grants a franchise to a motor vehicle dealer.

(l) ‘Sale,’ shall include the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of any motor vehicle or interest therein or of any franchise related thereto; and any option, lease, subscription or other contract, or solicitation, looking to a sale, or offer or attempt to sell in any form, whether spoken or written. A gift or delivery of any motor vehicle or franchise with respect thereto with, or as, a bonus on account of the sale of anything shall be deemed a sale of such motor vehicle or franchise.”

SECTION 2. Section 56-15-10 of the 1976 Code is amended by adding appropriately lettered new items to read:

“( ) ‘Consumer data’ has the same meaning as ‘nonpublic personal information,’ as defined in 15 U.S.C. s. 6809(4), and that is collected by a dealer and provided directly to a manufacturer or third party acting on behalf of a manufacturer. ‘Consumer data’ does not include the same or similar data obtained by a manufacturer from any source other than the dealer or dealer’s data management system.

( )(1) ‘Data management system’ means a computer hardware or software system that:

(a) is owned, leased, or licensed by a dealer, including a system of web‑based applications, computer software, or computer hardware;

(b) is located at the dealership or hosted remotely; and

(c) stores and provides access to consumer data collected or stored by a dealer.

(2) ‘Data management system’ includes, but shall not be limited to, dealership management systems and customer relations management systems.

( ) ‘New motor vehicle dealer’ means a dealer that:

(1) buys, sells, exchanges, offers, or attempts to negotiate a sale or exchange of an interest in new, or new and used, motor vehicles; or

(2) engages, wholly or in part, in the business of selling new, or new and used, motor vehicles.

( ) ‘Relevant market area’ or ‘trade area’ means an area within a twenty-mile radius around an existing dealer or the area of responsibility defined in a franchise, whichever is greater. In the event that a franchisor seeks to establish an additional dealer and the population around a proposed site is two hundred thousand or more within a ten-mile radius, then the relevant market area is the area within a ten-mile radius. ”

SECTION 3. Article 1, Chapter 15, Title 56 of the 1976 Code is amended by adding:

“Section 56-15-35. (A) If a franchisor, manufacturer, distributor, or third party acting on behalf of a franchisor, manufacturer, or distributor handles consumer data, then the franchisor, manufacturer, distributor, or third party:

(1) must comply with and shall not cause a dealer to violate applicable restrictions regarding reuse or consumer data disclosure established by federal or state law;

(2) upon a dealer’s request, must provide a statement to the dealer describing procedures that meet or exceed any federal or state consumer data protection requirements;

(3) upon a dealer’s written request, must provide a written list of the consumer data obtained from the dealer and all persons to whom any consumer data has been furnished during the preceding six months. The dealer may make such a request no more than once every six months. The list must indicate the specific fields of consumer data that were provided to each person;

(4)(a) may not require a dealer to provide direct or indirect access to the dealer’s data management system for obtaining consumer data. A dealer may furnish consumer data in a widely accepted file format and through a third‑party vendor selected by the dealer;

(b) may directly access or obtain consumer data from a dealer’s data management system with the express written consent from the dealer. The consent must be a separate document executed by the dealer principal and may be withdrawn by the dealer upon providing a thirty-day written notice to the manufacturer or distributor. Consent is not required as a condition of a new motor vehicle dealer’s participation in an incentive program, unless consent is necessary to obtain consumer data to implement the program; and

(5) must indemnify the dealer for any third‑party claims or damages incurred by the dealer if damage is caused by access to, use of, or disclosure of consumer data in violation of this section by the franchisor, manufacturer, distributor or a third party to whom the franchisor, manufacturer or distributor has provided consumer data.

(B) This section is not a limitation on a franchisor, manufacturer, or distributor’s ability to require the dealer to provide or use customer information exclusively related to the manufacturer or distributor’s own vehicle makes to the extent necessary to:

(1) satisfy safety, recall, or other legal notice obligations required of the manufacturer;

(2) complete the sale and delivery of a new motor vehicle to a customer;

(3) validate and pay customer or dealer incentives; or

(4) submit claims for any services supplied by the dealer for any claim for warranty parts or repair.”

SECTION 4. Section 56-15-40 of the 1976 Code is amended to read:

“Section 56-15-40. (A) For the purposes of this section:

(1) ‘Goods’ does not include moveable displays, brochures, or promotional materials containing information subject to a manufacturer or distributor’s intellectual property rights; special tools as reasonably required by the manufacturer; or repair parts under a manufacturer or distributor’s warranty obligations.

(2) ‘Financial services company’ or ‘captive finance source’ mean any finance source that provides automotive‑related loans, or purchases retail installment contracts or lease contracts for motor vehicles and is, directly or indirectly, owned, operated, or controlled, in whole or in part, by a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division.

~~(1)~~(B) It shall be deemed a violation of ~~paragraph~~ subsection (a) of Section 56‑15‑30 for any manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, distributor representative or motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public.

~~(2)~~(C) It shall be deemed a violation of subsection (a) of Section 56‑15‑30 for a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division, or an officer, agent or other representative, to require, coerce, or attempt to coerce, any motor vehicle dealer:

~~(a)~~(1) to order or accept delivery of any motor vehicle or vehicles, appliances, equipment, parts or accessories, or any other commodity or commodities which such motor vehicle dealer has not voluntarily ordered;

~~(b)~~(2) to order or accept delivery of any motor vehicle with special features, appliances, accessories, or equipment not included in the list price of said motor vehicles as publicly advertised by the manufacturer thereof;

~~(c)~~(3) to order for any person any parts, accessories, equipment, machinery, tools, appliances, or any commodity whatsoever;

~~(d)~~(4) ~~to offer to sell or to sell any extended service contract, extended maintenance plan, financial product, or insurance product offered, sold, or sponsored by the manufacturer, distributor, or wholesaler. Nothing in this item shall prohibit a manufacturer or distributor or financial arm from providing functionally available incentive programs to a motor vehicle dealer who voluntarily offers to sell or sells any extended service contract, extended maintenance plan, financial product, or insurance product offered, sold, or sponsored by the manufacturer or distributor or financial arm~~ to coerce, require, threaten, measure performance, or take any adverse action against a dealer for offering or declining to offer or promote, service contracts, debt cancellation agreements, maintenance agreements, or other similar products. This does not prohibit a manufacturer, distributor, affiliate, or captive finance source from offering voluntary incentives to the motor vehicle dealer;

~~(e)~~(5) to sell, assign, or transfer any retail installment sales contract or lease obtained by the motor vehicle dealer in connection with the sale or lease of a new motor vehicle manufactured by the manufacturer to a specified finance company, class of finance companies, leasing company, class of leasing companies, or to any other specified person.

~~(3)~~(D) It shall be deemed a violation of ~~paragraph~~ subsection (a) of Section 56‑15‑30 for a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division, or officer, agent or other representative thereof:

~~(a)~~(1) ~~To~~ to refuse to deliver in reasonable quantities and within a reasonable time after receipt of dealer's order, to any motor vehicle dealer having a franchise or contractual arrangement for the retail sale of new motor vehicles sold or distributed by such manufacturer, distributor branch or division, factory branch or division or wholesale branch or division, any such motor vehicles as are covered by such franchise or contract specifically publicly advertised by such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to be available for immediate delivery; provided, however, the failure to deliver any motor vehicle shall not be considered a violation of this chapter if such failure be due to an act of God, work stoppage or delay due to a strike or labor difficulty, shortage of materials, freight embargo or other cause over which the manufacturer, distributor, or wholesaler, or any agent thereof, shall have no control~~.~~;

~~(b)~~(2) ~~To~~ to coerce, or attempt to coerce, any motor vehicle dealer to enter into any agreement with such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, or officer, agent or other representative thereof, or to do any other act prejudicial to such dealer by threatening to cancel any franchise or any contractual agreement existing between such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, and such dealer; provided, however, that notice in good faith to any motor vehicle dealer of such dealer's violation of any terms or provisions of such franchise or contractual agreement shall not constitute a violation of this chapter~~.~~;

~~(c)~~(3) ~~To~~ to terminate or cancel the franchise or selling agreement of any such dealer without due cause. The nonrenewal of a franchise or selling agreement, without due cause, shall constitute an unfair termination or cancellation, regardless of the terms or provisions of such franchise or selling agreement. Such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, or officer, agent or other representatives thereof shall notify a motor vehicle dealer in writing of the termination or cancellation of the franchise or selling agreement of such dealer at least ~~sixty~~ ninety days before the effective date thereof, stating the specific grounds for such termination or cancellation; and such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, or officer, agent or other representative thereof shall notify a motor vehicle dealer in writing by registered or certified mail with a return receipt requested at least ~~sixty~~ ninety days before the contractual term of his franchise or selling agreement expires that the same will not be renewed, stating the specific grounds for such nonrenewal in those cases where there is no intention to renew, and in no event shall the contractual term of any such franchise or selling agreement expire, without the written consent of the motor vehicle dealer involved, prior to the expiration of at least ~~sixty~~ ninety days following such written notice. During the ninety-day ~~sixty~~‑~~day~~ period, either party may in appropriate circumstances petition a court to modify such ninety-day ~~sixty‑day~~ stay or to extend it pending a final determination of such proceedings on the merits. The court shall have authority to grant preliminary and final injunctive relief. A dealer who receives notice of franchise termination, cancellation, or nonrenewal as provided herein shall continue to have the right to assign, sell, or transfer the franchise to a third party under the franchise and pursuant to Section 56-15-70 unless otherwise ordered by a court and until franchise termination, cancellation, or nonrenewal are effective;

~~(d)~~(4) ~~To~~ to resort to or use any false or misleading advertisement in connection with his business as such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, or officer, agent or other representative thereof~~.~~;

~~(e)~~(5) ~~To~~ to offer to sell or to sell any new motor vehicle to any motor vehicle dealer at a lower actual price therefor than the actual price offered to any other motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device including, but not limited to, sales promotion plans, incentives, or other programs which result in such lesser actual price; provided, however, the provisions of this paragraph shall not apply to sales to a motor vehicle dealer for resale to any unit of the United States Government, the State or any of its political subdivisions; and provided, further, the provisions of this paragraph shall not apply to sales to a motor vehicle dealer of any motor vehicle ultimately sold, donated or used by such dealer in a driver education program; and provided, further, that the provisions of this paragraph shall not apply so long as a manufacturer, distributor, or wholesaler, or any agent thereof, offers to sell or sells new motor vehicles to all motor vehicle dealers at an equal price. This provision shall not apply to sales by manufacturer, distributor, or wholesaler to the United States Government or any agency thereof~~.~~;

~~(f)~~(6) ~~To~~ to wilfully discriminate, either directly or indirectly, in price between different purchasers of a commodity of like grade or quality where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly or to injure or destroy the business of a competitor~~.~~;

~~(g)~~(7) ~~To~~ to offer to sell or to sell parts or accessories to any new motor vehicle dealer for use in his own business for the purpose of repairing or replacing the same on a comparable part or accessory, at a lower actual price therefor than the actual price charged to any other new motor vehicle dealer for similar parts or accessories for use in his own business; provided, however, in those cases where motor vehicle dealers operate and serve as wholesalers of parts and accessories to retail outlets or other dealers, whether or not such dealer is regularly designated as a wholesaler, nothing herein contained shall be construed to prevent a manufacturer, distributor, or wholesaler, or any agent thereof, from selling to such motor vehicle dealer who operates and services as a wholesaler of parts and accessories, such parts and accessories as may be ordered by such motor vehicle dealer for resale to retail outlets, at a lower actual price than the actual price charged a motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories~~.~~;

~~(h)~~(8) ~~To~~ to prevent or attempt to prevent by contract or otherwise, any motor vehicle dealer from changing the capital structure of his dealership or the means by or through which he finances the operation of his dealership, provided the dealer at all times meets any reasonable capital standards agreed to between the dealership and the manufacturer, distributor or wholesaler, and provided such change by the dealer does not result in a change in the executive management of the dealership~~.~~;

~~(i)~~(9) ~~To~~ to prevent or attempt to prevent by contract or otherwise, any motor vehicle dealer or any officer, partner or stockholder of any motor vehicle dealer from selling or transferring any part of the interest of any of them to any other person or persons or party or parties; provided, however, that no dealer, officer, partner or stockholder shall have the right to sell, transfer or assign the franchise or power of management or control thereunder without the consent of the manufacturer, distributor or wholesaler except that such consent shall not be unreasonably withheld. If a manufacturer or distributor objects, then the objection must state the reasons for the denial of the request. A copy must be provided to the motor vehicle dealer by certified mail, return receipt requested, within thirty days of the receipt of the dealer’s request;

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

~~(k)~~(11) ~~To~~ to require a motor vehicle dealer to assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this chapter~~.~~;

(12) to refuse to pay, or claim reimbursement from, a dealer for sales, incentives, or payments related to a motor vehicle sold by the dealer because the purchaser exported or resold the motor vehicle in violation of the manufacturer’s policy, unless the manufacturer can show that the dealer knew or reasonably should have known at the time of the sale that the purchaser intended to export or resell the motor vehicle. There is a rebuttable presumption that the dealer did not know or should not have reasonably known that the vehicle would be exported if the vehicle is titled and registered in any state of the United States;

(13) to require, coerce, or attempt to coerce a motor vehicle dealer to either establish or maintain exclusive facilities, personnel, or display space;

(14) to allocate its products within this State in a manner that provides any of its franchised dealers an inadequate supply of products and vehicles by series, product line, and model, or in a unfair, unreasonable, and inequitable manner based on each dealer’s historical selling pattern and reasonable sales standards as compared to other same line‑make dealers and in a manner that would inhibit the dealer from achieving manufacturer or distributor performance standards. Additionally, each manufacturer must make available to each dealer at least one of each vehicle series, model, or product line that the manufacturer makes available to any dealer in this State and advertises as being available for purchase;

(15) to fail to reimburse a dealer in full for the actual cost of providing a loaner vehicle to any customer who is having a vehicle serviced at the dealership if the manufacturer requires that a loaner vehicle be provided; or

(16) to require, coerce, or attempt to coerce a dealer to purchase goods or services from a vendor selected, identified, or designated by a manufacturer, distributor, affiliate, or captive finance source if the dealer may obtain substantially similar goods or services from a vendor selected by the dealer. Prior to selecting a vendor, the dealer must obtain approval from the manufacturer, distributor, affiliate, or captive finance source. Approval may not be unreasonably withheld. If the manufacturer, distributor, affiliate, or captive finance source claims that a vendor selected by the dealer cannot supply substantially similar goods or services, then the dealer may file a protest with the court of common pleas. The court shall conduct a hearing on the merits of the protest within ninety days following the filing of a response to the protest. The manufacturer, distributor, affiliate, or captive finance source shall bear the burden of proving that the goods or services chosen by the dealer are not of substantially similar quality and design to those required by the manufacturer, distributor, affiliate, or captive finance source.

~~(4)~~(E) It shall be deemed a violation of ~~paragraph~~ subsection (a) of Section 56‑15‑30 for a motor vehicle dealer:

~~(a)~~(1) To require a purchaser of a new motor vehicle, as a condition of sale and delivery thereof, to also purchase special features, appliances, equipment, parts or accessories not desired or requested by the purchaser; provided, however, that this prohibition shall not apply as to special features, appliances, equipment, parts or accessories which are already installed on the car when received by the dealer; provided, further, that the motor vehicle dealer prior to the consummation of the purchase reveals to the purchaser the substance of this paragraph.

~~(b)~~(2) To represent and sell as a new motor vehicle any motor vehicle which has been used and operated for demonstration purposes or which is otherwise a used motor vehicle.

~~(c)~~(3) To resort to or use any false or misleading advertisement in connection with his business as such motor vehicle dealer.

~~(5)~~(F) There is hereby created the Office of Administrator, within the Attorney General's office, and he shall appoint such personnel within his office for the purpose of regulating this chapter. The Administrator shall have the power to investigate, issue cease and desist orders and injunctive relief on any valid abuse connected with the sale, rental or leasing of a new or used motor vehicle; provided, however, this power shall only apply after reasonable attempts by the consumer have been made with the seller, dealer, manufacturer or lessor of the motor vehicle to alleviate the complaint.

~~(6)(a)~~(G) ~~For purposes of this subsection, a ‘financial services company’ means any finance source that provides automotive‑related loans, or purchases retail installment contracts or lease contracts for motor vehicles and is, directly or indirectly, owned, operated, or controlled, in whole or in part, by a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division.~~ A manufacturer or distributor may not use any financial services company, captive finance source, or leasing company owned or controlled by the manufacturer or distributor to accomplish what would otherwise be illegal conduct on the part of the manufacturer or distributor pursuant to ~~subitems (2)(d)~~ subsection (C)(4) or ~~(e)~~(5).”

SECTION 5. Section 56-15-45(A)(3) and (D) of the 1976 Code are amended to read:

“(3) at the same location at which the manufacturer or franchisor has been continuously engaged in the retail sale of new motor vehicles as the owner, operator, or controller of the dealership ~~for a continuous two‑year period of time immediately before~~ since January 1, 1998 ~~2000, where there is no prospective new motor vehicle dealer available to own or operate the dealership in a manner consistent with the public interest~~.

(D) Except as may be provided otherwise in subsections (A) and (B) of this section, a manufacturer or franchisor may not sell, lease, or enter into a subscription agreement, directly or indirectly, a motor vehicle to a consumer in this State, except through a new motor vehicle dealer holding a franchise for the line make that includes the motor vehicle. This subsection does not apply to manufacturer or franchisor sales of new motor vehicles to the federal government, nor to manufacturer or franchisor leases of new motor vehicles to employees of the manufacturer or franchisor. Nothing in this subsection prohibits a manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor operating as a motor vehicle lessor from selling a motor vehicle to the lessee at the conclusion of a lease agreement between the two parties. Nothing in this subsection prevents a manufacturer or franchisor from establishing an e‑commerce website for the purpose of referring prospective customers to motor vehicle dealers holding a franchise for the same line make of the manufacturer or franchisor.”

SECTION 6. Section 56-15-46(A) and (B) of the 1976 Code are amended to read:

“Section 56-15-46. (A) A franchisor that intends to establish a new dealership or to relocate a current dealership for a particular line‑make motor vehicle within ~~a ten‑mile radius~~ the relevant market area or trade area of an existing dealership of the same line‑make motor vehicle shall give at least ninety-day prior written notice of that intent by certified mail to the existing dealership. The notice must include the:

(1) specific location of the additional or relocated dealership;

(2) date of commencement of operation of the additional or relocated dealership at the new location;

(3) identities of all existing dealerships located in the market area of the new or relocated dealership; and

(4) names and addresses of the dealer and principals in the new or relocated dealership.

(B) If a franchisor intends to establish a new dealership or to relocate ~~a current~~ an existing dealership within ~~a ten‑mile radius~~ the relevant market area or trade area of an existing dealership, then that existing dealership may petition the court, within sixty days of the receipt of the notice, to enjoin or prohibit the establishment of the new or relocated dealership within ~~a ten‑mile radius~~ the relevant market area or trade area of the existing dealership. The court shall enjoin or prohibit the establishment of the new or relocated dealership within ~~a ten‑mile radius~~ the relevant market area or trade area of the protesting dealership unless the franchisor shows by a preponderance of the evidence that the existing dealership is not providing adequate representation of the line‑make motor vehicle and that the new or relocated dealership is necessary to provide the public with reliable and convenient sales and service within that area. The burden of proof in establishing adequate representation is on the franchisor. In determining if the existing dealership is providing adequate representation and if the new or relocated dealership is necessary, the court may consider, but is not limited to considering:

(1) the impact the establishment of the new or relocated dealership will have on consumers, the public interest, and the protesting dealership, except that financial impact may be considered only with respect to the protesting dealership;

(2) the size and permanency of investment reasonably made and the reasonable obligations incurred by the protesting dealership to perform its obligation pursuant to the dealership's franchise agreement;

(3) the reasonably expected market penetration of the line‑make motor vehicle, after consideration of all factors which may affect the penetration including, but not limited to, demographic factors such as age, income, education, size class preference, product popularity, retail lease transactions, and other factors affecting sales to consumers;

(4) actions by the franchisor in denying its existing dealership of the same line make the opportunity for reasonable growth, market expansion, or relocation, including the availability of line‑make motor vehicles in keeping with reasonable expectations of the franchisor in providing an adequate number of dealerships;

(5) attempts by the franchisor to coerce the protesting dealership into consenting to an additional or relocated dealership of the same line make within a ten‑mile radius of the protesting dealership;

(6) distance, travel time, traffic patterns, and accessibility between the protesting dealership of the same line make and the location of the proposed new or relocated dealership;

(7) the likelihood of benefits to consumers from the establishment or relocation of the dealership, which benefits may not be obtained by other geographic or demographic changes or other expected changes within a ten‑mile radius of the protesting dealership;

(8) if the protesting dealership is in substantial compliance with its franchise agreement;

(9) if there is adequate interbrand and intrabrand competition with respect to the line‑make motor vehicles, including the adequacy of sales and service facilities;

(10) if the establishment or relocation of the proposed dealership appears to be warranted and justified based on economic and market conditions pertinent to dealerships competing within a ten‑mile radius of the protesting dealership, including anticipated changes; and

(11) the volume of registrations and service business transacted by the protesting dealership.”

SECTION 7. Section 56-15-50 of the 1976 Code is amended to read:

“Section 56-15-50. (A) Every manufacturer shall specify to the dealer the delivery and preparation obligations of its motor vehicle dealers prior to delivery of new motor vehicles to retail buyers. A copy of the delivery and preparation obligations of its motor vehicle dealers and a schedule or statement of the compensation to be paid or credited to its motor vehicle dealers for the work and services they shall be required to perform in connection with such delivery and preparation obligations shall be filed with the Department of Motor Vehicles by every motor vehicle manufacturer and shall constitute any such dealer's only responsibility for product liability as between such dealer and such manufacturer. The compensation as set forth on such schedule or statement shall be reasonable and paid or credited as set out in Section 56‑15‑60.

(B) Manufacturers and franchisors shall indemnify and hold harmless their franchised dealers licensed in this State against any judgment for damages or settlements agreed to by the manufacturer or franchisor. Judgments may include, but shall not be limited to, court costs and reasonable attorneys’ fees for the motor vehicle dealer, arising out of complaints, claims, or lawsuits, to the extent that the judgment or settlement relates in any way to the alleged defective negligent manufacture, assembly or design of new motor vehicles, parts, or accessories or other functions by the manufacturer or franchisor. These complaints, claims, or lawsuits shall include, but not be limited to:

(1) strict liability;

(2) negligence;

(3) misrepresentation;

(4) express or implied warranty; or

(5) recision or revocation of acceptance of the sale of a motor vehicle.”

SECTION 8. Section 56-15-60 of the 1976 Code is amended to read:

“Section 56-15-60. (A)~~(1) Every manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division must fulfill properly a warranty agreement and compensate adequately and fairly each of its motor vehicle dealers for labor and parts. All warranty claims, service claims, or incentive claims made by motor vehicle dealers pursuant to this section and Section 56‑15‑50 for labor and parts must be paid within thirty days following their approval. All claims must be either approved or disapproved within thirty days after their receipt. Any claim not specifically disapproved in writing within thirty days of receipt shall be construed as approved and payment must follow within thirty days. The motor vehicle dealer who submits a disapproved claim must be notified in writing of its disapproval within that period, and the notice must state the specific grounds upon which the disapproval is based.~~

~~(2)~~ ~~A claim disapproval must be based on a material defect. A manufacturer shall not disapprove claims:~~

~~(a)~~ ~~for which the motor vehicle dealer has received preauthorization from the manufacturer or its representative; or~~

~~(b)~~ ~~based on the motor vehicle dealer's incidental failure to comply with a specific claim processing requirement that results in a clerical or administrative error.~~

~~(3)~~ ~~In the event of neglect, oversight, or mistake by the motor vehicle dealer, the dealer may submit an amended claim for labor and parts up to sixty days from the date on which the manufacturer provided written notice to the motor vehicle dealer of the material defect or deviation. The motor vehicle dealer must substantiate the claim in accordance with the manufacturer's reasonable written procedures.~~

~~(4)~~ ~~Any special handling of claims required by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, but not uniformly required of all dealers of that make, may be enforced only after thirty days' notice in writing of good and sufficient reason.~~

~~(B)~~ ~~An audit for sales incentives, service incentives, rebates, or other forms of incentive compensation may include only the twelve‑month period immediately following the date of the termination of the incentive compensation program. This limitation is not effective in the case of fraudulent claims.~~

~~(C)~~ ~~If an audit or other authorized means of review by the manufacturer or franchisor discloses a material defect in the claim, the manufacturer or franchisor may demand reimbursement for funds previously paid to a dealer for warranty service provided the audit is completed within twelve months of filing a claim.~~ It is unlawful for a new motor vehicle manufacturer to recover any portion of its costs for compensating dealers for recalls or warranty parts and service, either by reduction in the amount due to the dealer, or by separate charge, surcharge, or other imposition.

(B) A compensation schedule must include reasonable compensation for diagnostic work, parts, repair service, and labor. Time allowances for the diagnosis and performance of warranty work and service must be reasonable and adequate for the work to be performed. For parts and labor warranty reimbursement, reasonable compensation shall not be less than the rate charged by the dealer for like services to nonwarranty customers for nonwarranty parts, service, and repairs.

(C)(1) If a manufacturer or distributor provides a part or component to a dealer at reduced or no cost for repairs completed because of a recall, campaign service action, or warranty repair, then the manufacturer or distributor must compensate the dealer for the part or component in the same manner as compensation for warranty parts based on the dealer’s average markup less the cost for the part or component as listed in the manufacturer’s or distributor’s price schedule.

(2) For purposes of subsection (C), the dealer’s rate charged to nonwarranty customers for parts and labor must be established by the dealer submitting to the manufacturer one hundred sequential customer-paid service repair orders or ninety days of customer-paid service repair orders, whichever is less, covering like repairs made no more than one hundred and eighty days before the submission of such customer-paid service repair orders and declaring the compensation schedule. The new compensation schedule takes effect within thirty days after the initial submission to the manufacturer and shall be presumed to be fair and reasonable; however, within thirty days following receipt of the declared compensation schedule from the dealer, the manufacturer may make reasonable requests for additional information supporting the declared compensation schedule. The thirty‑day time frame in which the manufacturer shall make the schedule of compensation effective shall commence following receipt from the dealer of any reasonably requested supporting information. No manufacturer shall require a motor vehicle dealer to establish a schedule of compensation by any other methodology or require supportive information that is unduly burdensome or time consuming to provide including, but not limited to, part by part or transaction by transaction calculations. The dealer shall not request a change in the schedule of compensation more than once every nine months. No manufacturer shall require a motor vehicle dealer to establish a compensation schedule by any other methodology or require supportive information that is unduly burdensome or time consuming to provide including, but not limited to, part-by-part or transaction-by-transaction calculations.

(3) For purposes of subsection (C), the following parts or types of repairs are to be excluded from the calculation:

(a) repairs to motor vehicles owned by the dealer, or for manufacturer special events, and manufacturer discounted service campaigns;

(b) parts sold at wholesale or discounted by a dealer for repairs made in group fleet, insurance, or other third‑party payer service work, or parts used in repairs of government vehicles for which volume discounts have been negotiated;

(c) tires;

(d) routine maintenance not covered under any retail customer warranty, such as alignments, flushes, oil changes, brakes, fluids, filters, and belts not provided in the course of repairs;

(e) engine and transmission assemblies;

(f) vehicle reconditioning;

(g) batteries and lightbulbs; and

(h) nuts, bolts, fasteners, and similar items that do not have an individual part number.

(4) A manufacturer shall not take or threaten to take any adverse action against a dealer seeking to obtain compensation pursuant to this subsection, including, but not limited to, creating or implementing an obstacle or process that is inconsistent with the manufacturer’s obligations to the dealer.

(5) Within thirty days of receiving a manufacturer’s notice of denial of the dealer’s parts or labor submission, a new motor vehicle dealer may file a protest with the court of common pleas to protest a manufacturer’s denial. If a protest is filed, then the manufacturer possesses the burden of proof to establish that the dealer’s submission did not meet the respective submission requirements contained within this subsection. If a dealer prevails in a protest filed under this subsection, then the dealer’s increased parts or labor reimbursement must be provided retroactively as of the date the submission would have been effective but for the manufacturer’s denial.

(D) It is a violation of this section for any new motor vehicle manufacturer to fail to:

(1) perform any warranty obligations;

(2) include, in written notices of factory recalls to new motor vehicle owners and dealers, the expected date by which necessary parts and equipment will be available to dealers for the correction of defects; or

(3) compensate any new motor vehicle dealer for repairs effected by a recall.

(E)(1) All claims made by a new motor vehicle dealer pursuant to this section for labor and parts shall be paid within thirty days following approval; provided, however, that the manufacturer may audit claims for up to one year after payment and charge the dealer for fraudulent claims, work done unnecessarily, or work not properly performed. All claims must be approved or disapproved within thirty days after receipt on forms and in the manner specified by the manufacturer. Any claim not specifically disapproved in writing within thirty days after receipt shall be construed to be approved and payment must follow within thirty days. A manufacturer or distributor shall not deny a claim or reduce the reimbursement amount to the dealer if the dealer:

(a) has provided reasonably sufficient documentation demonstrating a good faith attempt to perform the work in compliance with the reasonable written policies and procedures of the manufacturer; and

(b) performed the work.

(2) The manufacturer or distributor shall not disapprove or charge back for a reimbursement claim if the dealer can substantiate the claim, either in accordance with the manufacturer’s reasonable policies and procedures, or by other reasonable means. A claim may not be denied or charged back due to a dealer’s unintentional administrative error if the claim meets the requirements of this subsection. The one‑year limitation on the manufacturer’s right to audit a claim shall not be in effect in the case of fraudulent claims.

(F) Unless a dealer has failed to comply with the manufacturer’s claim documentation procedures within the previous twelve months, and the manufacturer has provided a written warning to the dealer by certified mail, return receipt requested, identifying the specific claim documentation procedures violated by the dealer within the previous twelve months, then a manufacturer must fully compensate a dealer for warranty, recall work, or charge back to the dealer’s account based upon the dealer’s failure to comply with the manufacturer’s claim documentation procedures.

(G)(1) Any audit for warranty or recall parts, service compensation, or compensation for a qualifying used motor vehicle in accordance with subsection (I) may only be conducted once within any twelve‑month period and must only be for the twelve‑month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch.

(2) Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation may only be conducted once within any twelve‑month period and must only be for the twelve‑month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch pursuant to a sales incentives program, service incentives program, rebate program, or other form of incentive compensation program.

(3) The limitations of this subsection do not apply to fraudulent claims.

(H) A manufacturer or distributor may not deny a new motor vehicle dealer’s claim for sales incentives, service incentives, rebates, or other forms of incentive compensation, reduce the amount to be paid to the dealer, or charge a dealer back subsequent to the payment of the claim unless it can be shown that the claim was false, fraudulent, or that the dealer failed to reasonably substantiate the claim either in accordance with the manufacturer’s reasonable written procedures or by other reasonable means.

(I)(1) A manufacturer that has entered into a franchise agreement with a new motor vehicle dealer must compensate the new motor vehicle dealer for a used motor vehicle if the vehicle:

(a) is the same make and model manufactured, imported, or distributed by the manufacturer;

(b) is subject to a recall notice issued by the manufacturer, distributor or an authorized governmental agency, regardless of whether the vehicle is identified by its vehicle identification number;

(c) is held by the new motor vehicle dealer in the dealer’s inventory at the time the recall notice is issued or that is taken by the new motor vehicle dealer into the dealer’s inventory after the recall notice as a result of a retail consumer trade‑in or a lease return to the dealer inventory in accordance with an applicable lease contract;

(d) cannot be repaired within thirty days of the issuance of the recall notice because lack of remedy or parts availability; and

(e) for which the manufacturer or distributor has not issued a written statement to the new motor vehicle dealer indicating that the used vehicle may be sold or delivered to a retail customer before completion of the recall repair. The purpose of the written statement is to provide notice to the new vehicle dealer that the vehicle may be sold or delivered based solely on the specific recall notice and is not intended to address any other aspect of the vehicle unrelated to the recall notice.

(2) The manufacturer or distributor shall compensate the dealer pursuant to this subsection within thirty days after the dealer’s application for payment.

(3) Compensation pursuant to this section must be the greater of:

(a) payment at a rate of at least one and a half percent per month of the vehicle value, as determined by the average Black Book value of the corresponding model year vehicle of average condition, of each eligible used vehicle in the new dealer’s inventory for each month that the dealer does not receive a remedy and parts to complete the required recall repair. Payment must be prorated for any period less than one month that each eligible used vehicle is in the dealer’s inventory; or

(b) payment under a national program applicable to all vehicle dealers holding a franchise agreement with the manufacturer for the dealer’s costs associated with holding the eligible used vehicles.”

SECTION 9. Section 56-15-65 of the 1976 Code is amended to read:

“Section 56-15-65. (A) It is unlawful for any manufacturer, distributor, factory representative, or distributor representative to require, coerce, or attempt to coerce any motor vehicle dealer to change the location of the motor vehicle dealership or to make any substantial alterations to the dealer's premises or facilities unless:

(1) the manufacturer demonstrates that such change or alteration is reasonable in light of the current market and economic conditions; and

(2) the motor vehicle dealer has been provided written assurance from the manufacturer or distributor of a sufficient supply of motor vehicles to justify such change or alteration.

(B) It is unlawful for any manufacturer, distributor, factory representative, or distributor representative to require, coerce, or attempt to coerce any motor vehicle dealer to change the location of the dealership, or to make any substantial alterations to its dealership premises or facilities if:

(1) the dealer changed the location of the dealership or made substantial alterations to the premises or facilities within the preceding ten years at a cost of more than two hundred fifty thousand dollars, indexed to the Consumer Price Index, over this ten‑year period; and

(2) the change in location or alteration was made pursuing compliance with a facility initiative or program that was sponsored or supported by the manufacturer, factory branch, distributor, or distributor branch, with the approval of the manufacturer, factory branch, distributor, or distributor branch.”

SECTION 10. Section 56-15-70 of the 1976 Code is amended to read:

“Section 56-15-70. It ~~shall be unlawful~~ is unlawful to directly or indirectly ~~to~~ impose unreasonable restrictions on the motor vehicle dealer or franchisee relative to transfer, sale, relocation, right to renew, termination, discipline, noncompetition covenants, site‑control (whether by sublease, collateral pledge of lease, or otherwise), or to exercise a right of first refusal to purchase, option to purchase, compliance with subjective standards and assertion of legal or equitable rights.”

SECTION 11. Section 56-15-75 of the 1976 Code is amended to read:

“Section 56-15-75. (A) It is unlawful for any manufacturer, distributor, factory branch, distributor branch, factory representative, or distributor representative to require, coerce, or attempt to coerce any motor vehicle dealer to refrain from participation in the management of, investment in, or acquisition of any other make or line of new motor vehicles or related products if:

(1) the requirements are unreasonable considering current economic conditions and are not otherwise justified by reasonable business considerations;

(2) the motor vehicle dealer has maintained a reasonable line of credit for each make or line of a new motor vehicle; and

(3) the motor vehicle dealer remains in compliance with reasonable capital standards and reasonable facilities requirements specified by the manufacturer.

(B) Reasonable facilities requirements shall not include any requirement that a motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space~~, unless the manufacturer or distributor establishes by a preponderance of the evidence that such requirements are justified by current economic conditions or reasonable business considerations~~.”

SECTION 12. Section 56-15-90(A) and (B) of the 1976 Code are amended to read:

“Section 56-15-90. (A) ~~Anything to the contrary notwithstanding, it shall be~~ It is unlawful for ~~the~~ a manufacturer, wholesaler, distributor, or franchisor, without due cause, to fail to renew on terms then equally available to all its motor vehicle dealers of the same line‑make, to terminate a franchise or to unreasonably restrict the transfer of a franchise ~~unless the franchisee~~. In the event of a termination for due cause, the dealer must ~~shall~~ receive fair and reasonable compensation for the value of the business and compensation for its dealership facilities or location as provided in subsection (C).

(B)(1) In determining the fair and reasonable compensation for a business, pursuant to subsection (A) or (D), the value of the business shall include, but not be limited to:

~~(1)~~(a) the dealer cost for all new untitled, undamaged, and unaltered motor vehicles in the dealer's inventory purchased from the manufacturer or from another same line‑make dealer in the ordinary course of business within ~~eighteen~~ twenty-four months of termination;

~~(2)~~(b) the dealer cost for all new, unused, and undamaged parts and supplies listed in the current price catalog and still in the original, resalable merchandising package and in unbroken lots, purchased from the manufacturer or distributor;

~~(3)~~(c) the fair market value of equipment, furnishings, and signage bearing a trademark or trade name of the manufacturer or line‑make ~~purchased from and~~ required by the manufacturer or distributor and purchased from the manufacturer, distributor, or their approved sources;

~~(4)~~(d) the fair market value of special tools and automotive service equipment owned by the dealer that were designated as special tools or equipment required by and purchased from the manufacturer or distributor, if the tools and equipment are in useable and good condition, normal wear and tear excepted; and

~~(5)~~(e) the reasonable cost of return shipping and handling charges incurred as a result of returning such items.

(2) Provided ~~the~~ that a new motor vehicle dealer has clear title to the inventory and other items and is in a position to convey that title to the manufacturer, the payments required under this section shall be paid by the manufacturer, wholesaler, distributor, or franchisor within ninety days of the effective date of the termination, nonrenewal, or cancellation of a franchise. If the inventory or other items are subject to a security interest, the manufacturer, wholesaler, distributor, or franchisor may make payment jointly to the dealer and the holder of the security interest.

(C)(1) Within ninety days of the termination, cancellation, or nonrenewal of a franchise by a manufacturer, wholesaler, distributor, or franchisor, due to a dealer's poor sales and service performance, or due to the discontinuation of a line‑make, the party shall pay the franchisee an amount equal to:

~~(1)~~(a) the franchisee's reasonable cost to rent or lease its dealership facility or location for one year or the unexpired term of the lease or rental period, whichever is less; or

~~(2)~~(b) the reasonable rental value of the facilities or location for one year if the franchisee owns the facility or location.

(2) If more than one franchise is being terminated, canceled, or not renewed, then the reimbursement shall be prorated equally among the different manufacturers, wholesalers, distributors, and franchisors. If the facility is used for the operations of more than one franchise and only one is being terminated, then the reasonable rent shall be paid based upon the prorated portion of new vehicle sales for the previous year attributable to the line‑make being terminated, canceled, or nonrenewed for the prior one‑year period.

(D) In the event a franchisee terminates the franchise agreement with the manufacturer, wholesaler, distributor, or franchisor, it is unlawful for the manufacturer, wholesaler, distributor, or franchisor to not abide by the provisions included in subsection (B) in determining fair and reasonable compensation to the dealer. However, the requirements of subsection (B) do not apply to a termination, cancellation, or nonrenewal due to the sale of the assets or stock of a motor vehicle franchisee.

(E)(1) ~~In the case of a franchise for motor homes as defined in Section 56‑15‑10(q), subsections (B), (C), and (D) do not apply.~~ If a termination, cancellation, or nonrenewal occurs pursuant to subsection (E)(2), then the manufacturer or distributor shall compensate the dealer in an amount at least equivalent to the fair market value of the franchise as of:

(a) the date the franchisor announces the action that results in termination, cancellation, or nonrenewal;

(b) the date the action that results in termination, cancellation, or nonrenewal first became general knowledge; or

(c) the day eighteen months before the date on which the notice of termination, cancellation, or nonrenewal is issued, whichever amount is higher.

(2) The provisions of this subsection apply if a termination, cancellation, or nonrenewal occurs as a result of:

(a) any change in ownership, operation, or control of all or any part of the business of the manufacturer or distributor, whether by sale or transfer of assets, corporate stock or other equity interest, assignment, merger, consolidation, combination, joint venture, redemption, operation of law or otherwise;

(b) the termination, suspension, or cessation of a part or all of the business operations of the manufacturer or distributor; or

(c) the discontinuance of the sale of the line‑make or brand, or a change in distribution system by the manufacturer, whether through a change in distributors or the manufacturer’s decision to cease conducting business through a distributor altogether.”

SECTION 13. Section 56-15-140 of the 1976 Code is amended to read:

“Section 56-15-140. In an action brought pursuant to this article, venue is in the state courts ~~State~~ of South Carolina. A provision of a franchise or other agreement with contrary provisions is void and unenforceable.”

SECTION 14. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, then such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 15. This act takes effect upon approval by the Governor and applies to all current and future franchises and other agreements in existence between any franchisee located in this State and a franchisor as of the effective date of this act.

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