

1 SB157
2 190639-4
3 By Senators Scofield and Ward
4 RFD: Judiciary
5 First Read: 11-JAN-18

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to the Motor Vehicle Franchise Act; to
12 amend Section 8-20-4 of the Code of Alabama 1975, to further
13 define unfair and deceptive trade practices when a motor
14 vehicle manufacturer or wholesaler or similar entity coerces
15 or attempts to coerce a new motor vehicle dealer to change its
16 location or alter its dealership premises when to do so would
17 be unreasonable.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

21 "§8-20-4.

22 "Notwithstanding the terms, provisions, or
23 conditions of any dealer agreement or franchise or the terms
24 or provisions of any waiver, prior to the termination,
25 cancellation, or nonrenewal of any dealer agreement or
26 franchise, the following acts or conduct shall constitute
27 unfair and deceptive trade practices:

1 "(1) For any manufacturer, factory branch, factory
2 representative, distributor, or wholesaler, distributor
3 branch, or distributor representative to coerce or attempt to
4 coerce any motor vehicle dealer to do any of the following:

5 "a. To accept, buy, or order any motor vehicle or
6 vehicles, appliances, equipment, parts, or accessories
7 therefor, or any other commodity or commodities or service or
8 services which such motor vehicle dealer has not voluntarily
9 ordered or requested except items required by applicable
10 local, state, or federal law; or to require a motor vehicle
11 dealer to accept, buy, order, or purchase such items in order
12 to obtain any motor vehicle or vehicles or any other commodity
13 or commodities which have been ordered or requested by such
14 motor vehicle dealer.

15 "b. To order or accept delivery of any motor vehicle
16 with special features, appliances, accessories, or equipment
17 not included in the list price of the motor vehicles as
18 publicly advertised by the manufacturer thereof, except items
19 required by applicable law.

20 "c. To enter into any agreement with such
21 manufacturer, factory branch, factory representative,
22 distributor, or wholesaler, distributor branch or distributor
23 representative, to do any other act prejudicial to the dealer,
24 the effect of which is to reduce the motor vehicle dealer's
25 allocation of motor vehicles or cancel or fail to renew any
26 franchise or any dealer agreement existing between the parties
27 other than as hereinafter provided; provided, however, that

1 this subsection is not intended to preclude the manufacturer
2 or distributor from insisting on compliance with the
3 reasonable terms or provisions of the franchise, and notice in
4 good faith to any motor vehicle dealer of the dealer's
5 violation of any reasonable terms or provisions of such
6 franchise or dealer agreement or of any law or regulation
7 applicable to the conduct of a motor vehicle dealer shall not
8 constitute a violation of this chapter.

9 "d. To participate monetarily in an advertising
10 campaign or contest, or to purchase any promotional materials,
11 training materials, showroom, or other display decorations or
12 materials at the expense of the new motor vehicle dealer. This
13 paragraph is not intended to modify any reasonable and
14 uniformly applied provision of the franchise which requires
15 the new motor vehicle dealer to advertise and promote the sale
16 of vehicles and does not apply to campaigns, contests,
17 advertising, and other promotional programs in which the new
18 motor vehicle dealer voluntarily elects to participate.

19 "e. To refrain from participation in the management
20 of, investment in, or the acquisition of any other line of new
21 motor vehicle or related products; provided that the new motor
22 vehicle dealer maintains a reasonable line of credit for each
23 make or line of new motor vehicle, and that the new motor
24 vehicle dealer remains in substantial compliance with the
25 terms and conditions of the franchise.

26 "f. To change the location of the new motor vehicle
27 dealership or, during the course of the agreement, to make any

1 substantial alterations to the dealership premises when to do
2 so would be unreasonable.

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

5 "(i) To require the construction of or substantial
6 alteration to a facility or premises if the same item or
7 design component, consisting of interior or exterior elements
8 of the sales, service, administrative, or parts components,
9 was constructed or substantially altered within the prior 10
10 years and that construction or alteration, was required and
11 approved by the manufacturer, factory branch, factory
12 representative, distributor, or wholesaler, distributor
13 branch, or distributor representative. A substantial
14 alteration shall mean an alteration that has a major impact on
15 the architectural features, characteristics, appearance, or
16 integrity of a structure or lot. The term does not include
17 routine maintenance, such as interior painting reasonably
18 necessary to maintain a dealership facility in attractive
19 condition, nor any changes to items protected by federal
20 intellectual property rights.

21 "(ii) To require the use of a vendor of goods or
22 services selected by the manufacturer, factory branch, factory
23 representative, distributor, or wholesaler, distributor
24 branch, or distributor representative for construction or
25 substantial alterations if the dealer, with approval of the
26 manufacturer, factory branch, factory representative,
27 distributor, or wholesaler, distributor branch, or distributor

1 representative selects an alternative vendor of goods and
2 services that are of the same design, quality, and kind. This
3 section shall not be construed to eliminate, impair, damage,
4 or otherwise limit a manufacturer's intellectual property,
5 trademark, or trade dress rights in any way. This section
6 shall not apply to goods or services paid for entirely by a
7 manufacturer, factory branch, factory representative,
8 distributor, or wholesaler, distributor branch, or distributor
9 representative nor to their initial design or architectural
10 review service.

11 "2. This paragraph does not apply to construction or
12 alterations necessary to comply with a health or safety law,
13 to comply with technology requirements necessary to sell or
14 service a vehicle that the dealer is authorized to sell and
15 service, and for routine facility maintenance.

16 "3. This paragraph is not intended to prohibit a
17 manufacturer, factory branch, factory representative,
18 distributor, or wholesaler, distributor branch, or distributor
19 representative from continuing a facility improvement program
20 that is in effect as of the effective date of the act adding
21 this amendatory language with more than one new vehicle dealer
22 in the state nor to any modification or renewal of the program
23 or providing program payments to assist a new vehicle dealer
24 in making agreed upon facility improvements, construction, or
25 substantial alterations, including signage or an image
26 element, or from enforcing a voluntary agreement between a new
27 vehicle dealer and manufacturer, factory branch, factory

1 representative, distributor, wholesaler, distributor branch,
2 or distributor representative where separate and valuable
3 consideration has been offered and accepted.

4 "g. To establish or maintain exclusive sales
5 facilities or sales display space for a new motor vehicle line
6 make unless such exclusive sales facilities or sales display
7 space are reasonable and are otherwise justified by reasonable
8 business considerations. The burden of proving that reasonable
9 business considerations justify exclusive sales facilities or
10 sales display space is on the manufacturer. Provided, however,
11 a manufacturer or distributor may not coerce, attempt to
12 coerce, or require a motor vehicle dealer to establish or
13 maintain exclusive personnel or exclusive service, parts, or
14 administrative facilities for a line make.

15 "h. To adhere to performance standards that are not
16 fair, reasonable, and equitable or that are not applied
17 uniformly to other similarly situated dealers. A performance
18 standard, sales objective, or program for measuring dealership
19 performance that may have a material effect on a dealer,
20 including the dealer's right to payment under any incentive or
21 reimbursement program shall be fair, reasonable, equitable,
22 and based on accurate information.

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

26 "j. To offer to sell or to sell any extended service
27 contract or extended maintenance plan offered, sold, backed

1 by, or sponsored by the manufacturer or to sell, assign, or
2 transfer any retail installment sales contract or lease
3 obtained by the dealer in connection with the sale or lease of
4 a new motor vehicle manufactured by the manufacturer to a
5 specified finance company, class of finance companies, leasing
6 company, or class of leasing companies, or to any other
7 specified persons.

8 "(2) For any manufacturer, factory branch, factory
9 representative, distributor, or wholesaler, distributor
10 branch, distributor representative, or motor vehicle dealer to
11 engage in any action with respect to a franchise which is
12 arbitrary, unconscionable, unreasonable, or is not in good
13 faith and which causes damage to any of the parties.

14 "(3) For any manufacturer, factory branch, factory
15 representative, distributor, or wholesaler, distributor
16 branch, or distributor representative to do any of the
17 following:

18 "a. To adopt, change, establish, or implement a plan
19 or system for the allocation and distribution of new or used
20 motor vehicles to motor vehicle dealers which is arbitrary,
21 capricious, or unreasonably discriminatory or to modify an
22 existing plan so as to cause the same to be arbitrary,
23 capricious, or unreasonably discriminatory.

24 "b. To fail or refuse to advise or disclose to any
25 motor vehicle dealer having a franchise or dealer agreement,
26 upon written request therefor, the basis upon which new motor
27 vehicles of the same line make are allocated or distributed to

1 motor vehicle dealers in the state and the basis upon which
2 the current allocation or distribution is being made or will
3 be made to such motor vehicle dealer.

4 "c. To refuse to deliver to a motor vehicle dealer
5 in reasonable quantities and within a reasonable time after
6 receipt of the motor vehicle dealer's order any such motor
7 vehicles as are covered by a franchise or dealer agreement and
8 specifically publicly advertised in the state by such
9 manufacturer, factory branch, factory representative,
10 distributor, or wholesaler, distributor branch, or distributor
11 representative to be available for immediate delivery;
12 provided, however, that the failure to deliver any motor
13 vehicle shall not be considered a violation of this chapter if
14 such failure is due to an act of God, a work stoppage or delay
15 due to a strike or labor difficulty, a shortage of materials,
16 lack of available manufacturing capacity, a freight embargo,
17 or other cause over which the manufacturer, factory branch,
18 factory representative, distributor, or wholesaler,
19 distributor branch, or distributor representative shall have
20 no control.

21 "d. To cancel or terminate the franchise or dealer
22 agreement of a motor vehicle dealer other than as hereinafter
23 provided.

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

1 "f. To offer a renewal, replacement, or succeeding
2 franchise or dealer agreement containing terms and provisions
3 the effect of which is to substantially change or modify the
4 sales and service obligations or capital requirements of the
5 motor vehicle dealer other than as hereinafter provided.

6 "g. To offer to sell or lease, or to sell or lease,
7 any new motor vehicle to any motor vehicle dealer at a lower
8 actual price therefor than the actual price offered to any
9 other motor vehicle dealer for the same model vehicle
10 similarly equipped or to utilize any device including, but not
11 limited to, sales promotion plans or programs which result in
12 such lesser actual price and which are not offered to dealers
13 of vehicles of the same line make; provided, however, that the
14 provisions of this paragraph shall not apply to sale to a
15 motor vehicle dealer for resale to any unit of the United
16 States government, the state, or any of its political
17 subdivisions.

18 "h. To offer to sell or lease, or to sell or lease,
19 any new motor vehicle to any person, except a wholesaler's or
20 distributor's or manufacturer's employees, at a lower actual
21 price therefor than the actual price offered and charged to a
22 motor vehicle dealer for the same model vehicle similarly
23 equipped or to utilize any device which results in such lesser
24 actual price and which are not offered to dealers of vehicles
25 of the same line make; provided, however, that the provisions
26 of this paragraph shall not apply to sales to a motor vehicle

1 dealer for resale to any unit of the United States government,
2 the state, or any of its political subdivisions.

3 "i. To prevent or attempt to prevent by contract or
4 otherwise any motor vehicle dealer from changing the executive
5 management control of the motor vehicle dealer unless such
6 change of executive management control will result in
7 executive management control by a person or persons who are
8 not of good moral character or who do not meet the
9 manufacturer's or wholesaler's or distributor's existing and
10 reasonable capital standards and, with consideration given to
11 the volume of sales and service of the new motor vehicle
12 dealer, uniformly applied minimum business experience
13 standards in the market area; provided, however, that where
14 the manufacturer, or distributor, or wholesaler rejects a
15 proposed change in executive management control, the
16 manufacturer, or distributor, or wholesaler shall give written
17 notice of his or her reasons to the motor vehicle dealer
18 within 45 days of notice to the manufacturer, or wholesaler,
19 or distributor by the motor vehicle dealer of the proposed
20 change accompanied by information reflecting the identity,
21 business experience and affiliations, and source of investment
22 funds of the proposed new management.

23 "j. To prevent or attempt to prevent by contract or
24 otherwise any motor vehicle dealer from establishing or
25 changing the capital structure of his or her dealership or the
26 means by or through which he or she finances the operation
27 thereof; provided the dealer meets any reasonable capital

1 standards agreed to between the motor vehicle dealer and the
2 manufacturer, distributor, or wholesaler, who may require that
3 the sources, method, and manner by which the motor vehicle
4 dealer finances or intends to finance its operation,
5 equipment, or facilities be fully disclosed.

6 "k. To refuse to give effect to or prevent or
7 attempt to prevent by contract or otherwise any motor vehicle
8 dealer or any officer, partner, or stockholder of any motor
9 vehicle dealer from selling or transferring any part of the
10 interest of any of them to any other person unless such sale
11 or transfer is to a transferee who would not otherwise qualify
12 for a new motor vehicle dealer's license issued by the State
13 of Alabama or a political subdivision thereof or unless such
14 sale or transfer is to a person who is not of good moral
15 character or who does not meet the manufacturer's or
16 wholesaler's or distributor's existing and reasonable capital
17 standards and, with consideration given to the volume of sales
18 and service of the dealership, uniformly applied minimum
19 business experience standards in the market area; provided,
20 however, that where such a rejection of a transfer is made the
21 manufacturer or distributor or wholesaler shall give written
22 notice of his or her reasons to the motor vehicle dealer
23 within 60 days of notice to the manufacturer or wholesaler or
24 distributor by the dealer of the proposed transfer accompanied
25 by information reflecting the identity of the new owner or
26 owners, their business experience and affiliations and the pro
27 forma balance sheet and source of investment funds of the

1 proposed new dealership. A manufacturer or distributor may
2 exercise a contractual right of first refusal with respect to
3 the sale or transfer of the interest of the dealer only if
4 each of the following requirements are met:

5 "1. The sale or transfer is not to a family member
6 of an owner of the dealership, nor a managerial employee of
7 the dealership owning 15 percent or more of the dealership,
8 nor a corporation, partnership, or other legal entity owned by
9 the existing owners of the dealership. For purposes of this
10 subparagraph, a "family member" means the spouse of an owner
11 of the dealership, the child, grandchild, brother, sister, or
12 parent of an owner, or a spouse of one of those family
13 members.

14 "2. The manufacturer or distributor notifies the
15 dealer in writing within 60 days after receipt of the
16 completed application forms and related information generally
17 used by a manufacturer or distributor to conduct its review
18 and a copy of all agreements regarding the proposed transfer
19 of its intent to exercise its right of first refusal or its
20 rejection of the proposed transfer. If the manufacturer or
21 distributor fails to notify the dealer of its exercise of the
22 right of first refusal or its rejection of the proposed
23 transferee within the 60-day period, the effect of such
24 failure shall constitute approval of the proposed sale or
25 transfer. If the manufacturer or distributor exercises a right
26 of first refusal under this section, the transfer shall be
27 deemed to be rejected.

1 "3. The exercise of the right of first refusal
2 provides to the dealer the same compensation as, or greater
3 compensation than, the dealer had negotiated to receive from
4 the proposed buyer or transferee.

5 "4. The manufacturer or distributor agrees to pay
6 the reasonable expenses, including reasonable attorneys' and
7 accountants' fees that do not exceed the usual, customary, and
8 reasonable fees charged for similar work done for other
9 clients incurred by the proposed buyer or transferee before
10 the manufacturer's or distributor's exercise of its right of
11 first refusal in negotiating and implementing the contract for
12 the sale or transfer. The proposed buyer or transferee shall
13 provide to the manufacturer or distributor a written
14 itemization of the expenses incurred within 30 days of the
15 receipt by the proposed buyer or transferee of a written
16 request from the manufacturer or distributor for an accounting
17 of the expenses. The manufacturer or distributor shall make
18 payment of these expenses within 30 days of exercising the
19 right of first refusal.

20 "1. To unreasonably and without notice to existing
21 motor vehicle dealers, as hereinafter provided, enter into a
22 franchise with an additional motor vehicle dealer who intends
23 to conduct its dealership operations from a place of business
24 situated within the relevant market area of an existing motor
25 vehicle dealer or motor vehicle dealers representing the same
26 line make. The appointment of a successor motor vehicle dealer
27 at the same location as its predecessor or within a two-mile

1 radius therefrom within two years from the date on which its
2 predecessor ceased operations or was terminated, whichever
3 occurred later, shall not be construed as the entering into of
4 an additional franchise. Any manufacturer, distributor, or
5 wholesaler, factory branch, factory representative,
6 distributor branch, or distributor representative which
7 intends to enter into an additional franchise shall, at least
8 60 days prior to granting such franchise, give written notice
9 of its intention to do so to each motor vehicle dealer of the
10 same line make within the relevant market area. Such notice
11 shall state the date on or after which such proposed franchise
12 shall be granted or entered into. Prior to the date set forth
13 in the notice on or after which such franchise will be entered
14 into, any such motor vehicle dealer may petition a court of
15 competent jurisdiction to determine whether such appointment
16 or proposed appointment is unreasonable in which action the
17 manufacturer, wholesaler, or distributor shall have the burden
18 of proof that such action is not unreasonable. No bond shall
19 be required as a precondition to entry of an injunction
20 enjoining appointment of an additional franchise. Such
21 petition shall be entitled to a speedy trial. In determining
22 whether such proposed appointment is unreasonable, the court
23 shall consider all pertinent circumstances. These may include
24 but are not limited to:

25 "1. Whether the establishment of such additional
26 franchise is warranted by economic and marketing conditions
27 including anticipated future changes.

1 "2. The past, present, and anticipated retail sales
2 and service business transacted by the objecting motor vehicle
3 dealer or dealers and other motor vehicle dealers of the same
4 line make with a place of business in the relevant market
5 area.

6 "3. The investment made and obligations incurred by
7 the objecting motor vehicle dealer or dealers and other motor
8 vehicle dealers of the same line make with a place of business
9 in the relevant market area.

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

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

26 "n. To prevent or refuse to give effect to the
27 succession to the ownership or management control of a

1 dealership upon the death or incapacity of a motor vehicle
2 dealer to any legatee or devisee under the will of a dealer or
3 to an heir under the laws of descent and distribution of this
4 state unless the successor is a person who is not of good
5 moral character or who does not meet the manufacturer's or
6 distributor's or wholesaler's existing and reasonable capital
7 standards and, with consideration given to the volume of the
8 sales and service of the dealership, uniformly applied minimum
9 business experience standards in the market area; provided,
10 however, that where such a rejection of succession is made,
11 the manufacturer or distributor or wholesaler shall give
12 written notice of his or her reasons to the proposed successor
13 within 60 days of notice to the manufacturer or wholesaler or
14 distributor by the proposed successor of his or her intent to
15 succeed to the ownership or management of the dealership
16 accompanied by information reflecting the identity of the new
17 owner or owners, their business experience and affiliation and
18 the pro forma balance sheet and source of investment funds of
19 the proposed new dealership. This section does not preclude
20 the owner of a new motor vehicle dealer from designating any
21 person as his or her successor by written instrument filed
22 with the manufacturer or distributor and, in the event there
23 is a conflict between such written instrument and the
24 provisions of this section, the written instrument shall
25 govern.

26 "o. To fail to indemnify and hold harmless its motor
27 vehicle dealers against any losses, including, but not limited

1 to, court costs and reasonable attorneys' fees, or damages
2 arising out of complaints, claims, or lawsuits, including, but
3 not limited to, strict liability, negligence,
4 misrepresentation, warranty (express or implied), or
5 rescission of the sale where the complaint, claim, or lawsuit
6 relates to 1. the manufacture, assembly, or design of new
7 motor vehicles, parts, or accessories; 2. a defect in any
8 forms furnished to the dealer or in the written instructions
9 for the completion of such forms by the manufacturer, an
10 affiliate of the manufacturer, or person controlled by the
11 manufacturer used in connection with the sale, lease, or
12 financing of a vehicle and associated products, unless the
13 dealer improperly completes the forms or makes
14 misrepresentations contrary either to the terms of the forms
15 or the written instructions for their completion; or 3. other
16 functions by the manufacturer, beyond the control of the
17 dealer, including, without limitation, the selection by the
18 manufacturer of parts or components for the vehicle, or any
19 damages to merchandise occurring in transit to the dealer
20 where the carrier is designated by the manufacturer.

21 "p. To increase prices of new motor vehicles which
22 the new motor vehicle dealer had ordered for retail consumers
23 prior to the dealer's receipt of the written official price
24 increase notification. A sales contract signed by a retail
25 consumer shall constitute evidence of each such order;
26 provided that the vehicle is in fact delivered to that
27 customer. In the event of manufacturer price reductions or

1 cash rebates, the amount of any such reduction or rebate
2 received by a dealer shall be passed on to the retail consumer
3 by the dealer if the retail price was negotiated on the basis
4 of the previous higher price to the dealer. Price reductions
5 shall apply to all vehicles in the dealer's inventory which
6 were subject to the price reduction. Price differences
7 applicable to new model or series motor vehicles at the time
8 of the introduction of new models or series shall not be
9 considered a price increase or price decrease. Price changes
10 caused by either: 1. the addition to a motor vehicle of
11 required or optional equipment pursuant to state or federal
12 law; 2. revaluation of the United States dollar, in the case
13 of foreign-made vehicles or components; or 3. an increase in
14 transportation charges due to increased rates imposed by
15 common or contract carriers, shall not be subject to the
16 provisions of this paragraph.

17 "q. To offer any refunds or other types of
18 inducements to any person for the purchase of new motor
19 vehicles of a certain line make to be sold to the state or any
20 political subdivision thereof without making the same offer to
21 all other new motor vehicle dealers in the same line make
22 within the state.

23 "r. To release to any outside party, except under
24 subpoena, or as otherwise required by law or in an
25 administrative, judicial, or arbitration proceeding, any
26 business, financial, or personal information which may be from

1 time to time provided by the dealer to the manufacturer,
2 without the express written consent of the dealer.

3 "s. To own an interest in a new motor vehicle
4 dealership, to operate or control a dealership, to make direct
5 sales or leases of new motor vehicles to the public in
6 Alabama, or to own, operate, or control a facility for
7 performance of motor vehicle warranty or repair service work,
8 except as follows:

9 "1. The manufacturer or distributor is owning or
10 operating a new motor vehicle dealership or a warranty repair
11 facility for a temporary period of not more than 24 months, as
12 long as the new motor vehicle dealership or warranty repair
13 center is for sale at a reasonable price and on reasonable
14 terms and conditions; or

15 "2. The manufacturer's or distributor's
16 participation is in a bona fide relationship with an
17 independent person (i) who is required to make significant
18 investment in the new motor vehicle dealership or warranty
19 repair center subject to loss, (ii) and operates the
20 dealership or warranty repair center and may reasonably be
21 expected to acquire full ownership of the dealership or
22 warranty repair center within a reasonable time and under
23 reasonable terms and conditions.

24 "3. The manufacturer or distributor is selling or
25 leasing new motor vehicles in Alabama to its qualified
26 vendors, not-for-profit organizations, fleets, or the federal,
27 state, or local government if sold or leased and delivered

1 through new motor vehicle dealers in this state. The
2 manufacturer or distributor is selling or leasing new motor
3 vehicles in Alabama to its employees and employees' families
4 if delivered through new motor vehicle dealers in this state.
5 The manufacturer or distributor is implementing a program to
6 sell or lease or offer to sell or lease new motor vehicles
7 through new motor vehicle dealers in this state.

8 "4. The manufacturer or distributor owns a passive
9 interest of not more than 10 percent in a publicly traded
10 corporation held exclusively for investment purposes.

11 "5. A manufacturer of recreational vehicles which as
12 of December 31, 1999, owns, operates, or controls a facility
13 in this state for performance of motor vehicle warranty repair
14 or service work on recreational vehicles manufactured by that
15 manufacturer.

16 "6. The manufacturer or distributor is owning,
17 operating, or controlling an entity primarily engaged in the
18 business of renting passenger and commercial motor vehicles
19 and industrial and construction equipment, as well as
20 activities incidental to the businesses, including warranty
21 and repair work on vehicles that it owns, previously owned, or
22 takes in trade.

23 "7. A manufacturer or distributor that meets all of
24 the following requirements:

25 "(i) Manufactures or distributes engines for
26 installation in a vehicle having as its primary purpose the
27 transport of a person or persons or property on a public

1 highway and having a gross vehicle weight rating of more than
2 16,000 pounds, provided that the manufacturer does not
3 otherwise manufacture motor vehicles as defined in Section
4 8-20-3.

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

8 "(iii) Does not own or operate more than three new
9 motor vehicle dealership or warranty repair facilities in this
10 state.

11 "(iv) Does not regularly provide motor vehicle
12 warranty or repair service work in this state to noncommercial
13 single-family passenger motor vehicles having a gross vehicle
14 weight rating of less than 16,000 pounds unless the repair is
15 not reasonably available at a motor vehicle dealer that sells
16 new motor vehicles with a gross vehicle weight rating of less
17 than 16,000 pounds or at the request of such motor vehicle
18 dealer.

19 "(v) Avoids any acts or practices the effect of
20 which may be to lessen or eliminate competition that provided
21 to dealers on materially equal terms access to all support for
22 completing repairs, including, but not limited to, parts and
23 assemblies, training, and technical service bulletins and other
24 information concerning repairs that the manufacturer provides
25 to facilities owned, operated, or controlled by the
26 manufacturer.

1 "t. To make any material change in any franchise
2 agreement without giving the dealer written notice by
3 certified mail of such change at least 60 days prior to the
4 effective date of such change.

5 "u. To fail to pay or otherwise compensate its new
6 motor vehicle dealers for sales incentives, service
7 incentives, rebates, or other forms of incentive compensation
8 earned by the dealer as a consequence of incentive programs of
9 the manufacturer. The manufacturer shall have the right to
10 audit any such incentive payments made to the dealer and to
11 charge back the dealer for any fraudulent claims for incentive
12 payments made to the dealer for a period not to exceed 12
13 months from the date the claim was paid. A manufacturer shall
14 not disapprove claims for which the dealer has received
15 preauthorization from the manufacturer or its representative
16 nor shall the manufacturer unreasonably disapprove a claim
17 solely based on the dealer's incidental failure to comply with
18 a specific claim processing requirement that results only in a
19 clerical error or administrative error; rather a claim denial
20 must be based upon a material defect and deviation from the
21 reasonable written claim submission requirements of the
22 manufacturer. In the event of neglect, oversight, or mistake
23 by the dealer, a dealer may submit an amended claim, or may
24 submit a claim not submitted within the time required by the
25 manufacturer, for sales incentives, service incentives,
26 rebates, or other forms of incentive compensation up to 120

1 days from the date on which such claim was first submitted or
2 could have been submitted.

3 "v. To fail or refuse to offer its same line make
4 franchised dealers all models of new motor vehicles
5 manufactured for that line make and offered to any dealer in
6 this state. No unreasonable additional requirements, over the
7 requirements originally required to obtain a franchise from
8 the manufacturer, may be required of existing franchised
9 dealers to receive any model by that line make. The provisions
10 in this paragraph shall not apply to recreational vehicles and
11 reasonable requirements of a manufacturer that its dealers
12 obtain tools or diagnostic equipment to properly service its
13 line make of motor vehicles. The failure to deliver any such
14 new motor vehicle shall not be considered a violation of this
15 section if the failure is due to a lack of manufacturing
16 capacity or to a strike or labor difficulty, a shortage of
17 materials, a freight embargo, or any other cause over which
18 the manufacturer has no control.

19 "w. To prohibit a motor vehicle dealer from changing
20 the location of the new motor vehicle dealership to another
21 location within the dealer's assigned area of responsibility
22 if the refusal to approve the relocation is not reasonable
23 under the circumstances.

24 "x. To charge back, deny vehicle allocation,
25 withhold payments, or take any other adverse actions against a
26 dealer because of a sale of a new motor vehicle which is
27 exported from the United States unless the manufacturer can

1 prove that the dealer knew or reasonably should have known on
2 the date of the sale that the new motor vehicle was to be
3 exported. A dealer is rebuttably presumed to have no knowledge
4 of the intended export if the vehicle is sold by the dealer to
5 a United States resident who titles and registers the vehicle
6 in any state in the United States.

7 "y. To condition the sale, transfer, relocation, or
8 renewal of a franchise or dealer agreement or to condition
9 sales, service, parts, or finance incentives upon site control
10 or an agreement to renovate or make substantial improvements
11 to a facility; provided, however, that voluntary and
12 non-coerced acceptance of such conditions by the dealer in
13 writing, including, but not limited to, a written agreement
14 for which the dealer has accepted separate and valuable
15 consideration, shall not constitute a violation.

16 "z. To assign or change a dealer's area of
17 responsibility under the franchise or dealer agreement
18 arbitrarily or without due regard to the present or projected
19 future pattern of motor vehicle sales and registrations within
20 the dealer's market area and without first having provided the
21 dealer with written notice of the change in the dealer's area
22 of responsibility and a detailed description of the change and
23 reasons therefor."

24 Section 2. This act shall become effective
25 immediately following its passage and approval by the
26 Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate committee on Judiciary.....	11-JAN-18
Read for the second time and placed on the calen- dar with 1 substitute and.....	01-FEB-18
Read for the third time and passed as amended	08-FEB-18

Yeas 24
Nays 0
Abstaining 1

Patrick Harris,
Secretary.