

1 SB22
2 179009-1
3 By Senator Whatley
4 RFD: Tourism and Marketing
5 First Read: 15-AUG-16

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8 SYNOPSIS: Under existing law, it is an unfair and
9 deceptive trade practice for a manufacturer of
10 motor vehicles to make direct sales or leases of
11 new motor vehicles to the public in Alabama.

12 This bill would allow a manufacturer of
13 alternative fuel motor vehicles to sell and lease
14 its vehicles directly to the public.

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT

19
20 Relating to alternative fuel motor vehicles; to
21 amend Section 8-20-4, Code of Alabama 1975, as amended by Act
22 2016-357 of the 2016 Regular Session, to allow a manufacturer
23 of alternative fuel motor vehicles to sell and lease its
24 vehicles directly to the public.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Section 8-20-4, Code of Alabama 1975, as
2 amended by Act 2016-357 of the 2016 Regular Session, is
3 amended to read as follows:

4 "§8-20-4.

5 "Notwithstanding the terms, provisions, or
6 conditions of any dealer agreement or franchise or the terms
7 or provisions of any waiver, prior to the termination,
8 cancellation, or nonrenewal of any dealer agreement or
9 franchise, the following acts or conduct shall constitute
10 unfair and deceptive trade practices:

11 "(1) For any manufacturer, factory branch, factory
12 representative, distributor, or wholesaler, distributor
13 branch, or distributor representative to coerce or attempt to
14 coerce any motor vehicle dealer to do any of the following:

15 "a. To accept, buy, or order any motor vehicle or
16 vehicles, appliances, equipment, parts, or accessories
17 therefor, or any other commodity or commodities or service or
18 services which such motor vehicle dealer has not voluntarily
19 ordered or requested except items required by applicable
20 local, state, or federal law; or to require a motor vehicle
21 dealer to accept, buy, order, or purchase such items in order
22 to obtain any motor vehicle or vehicles or any other commodity
23 or commodities which have been ordered or requested by such
24 motor vehicle dealer.

25 "b. To order or accept delivery of any motor vehicle
26 with special features, appliances, accessories, or equipment
27 not included in the list price of the motor vehicles as

1 publicly advertised by the manufacturer thereof, except items
2 required by applicable law.

3 "c. To enter into any agreement with such
4 manufacturer, factory branch, factory representative,
5 distributor, or wholesaler, distributor branch or distributor
6 representative, to do any other act prejudicial to the dealer,
7 the effect of which is to reduce the motor vehicle dealer's
8 allocation of motor vehicles or cancel or fail to renew any
9 franchise or any dealer agreement existing between the parties
10 other than as hereinafter provided; provided, however, that
11 this subsection is not intended to preclude the manufacturer
12 or distributor from insisting on compliance with the
13 reasonable terms or provisions of the franchise, and notice in
14 good faith to any motor vehicle dealer of the dealer's
15 violation of any reasonable terms or provisions of such
16 franchise or dealer agreement or of any law or regulation
17 applicable to the conduct of a motor vehicle dealer shall not
18 constitute a violation of this chapter.

19 "d. To participate monetarily in an advertising
20 campaign or contest, or to purchase any promotional materials,
21 training materials, showroom, or other display decorations or
22 materials at the expense of the new motor vehicle dealer. This
23 paragraph is not intended to modify any reasonable and
24 uniformly applied provision of the franchise which requires
25 the new motor vehicle dealer to advertise and promote the sale
26 of vehicles and does not apply to campaigns, contests,

1 advertising, and other promotional programs in which the new
2 motor vehicle dealer voluntarily elects to participate.

3 "e. To refrain from participation in the management
4 of, investment in, or the acquisition of any other line of new
5 motor vehicle or related products; provided that the new motor
6 vehicle dealer maintains a reasonable line of credit for each
7 make or line of new motor vehicle, and that the new motor
8 vehicle dealer remains in substantial compliance with the
9 terms and conditions of the franchise.

10 "f. To change the location of the new motor vehicle
11 dealership or, during the course of the agreement, to make any
12 substantial alterations to the dealership premises when to do
13 so would be unreasonable.

14 "g. To establish or maintain exclusive sales
15 facilities or sales display space for a new motor vehicle line
16 make unless such exclusive sales facilities or sales display
17 space are reasonable and are otherwise justified by reasonable
18 business considerations. The burden of proving that reasonable
19 business considerations justify exclusive sales facilities or
20 sales display space is on the manufacturer. Provided, however,
21 a manufacturer or distributor may not coerce, attempt to
22 coerce, or require a motor vehicle dealer to establish or
23 maintain exclusive personnel or exclusive service, parts, or
24 administrative facilities for a line make.

25 "h. To adhere to performance standards that are not
26 fair, reasonable, and equitable or that are not applied
27 uniformly to other similarly situated dealers. A performance

1 standard, sales objective, or program for measuring dealership
2 performance that may have a material effect on a dealer,
3 including the dealer's right to payment under any incentive or
4 reimbursement program shall be fair, reasonable, equitable,
5 and based on accurate information.

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

9 "j. To offer to sell or to sell any extended service
10 contract or extended maintenance plan offered, sold, backed
11 by, or sponsored by the manufacturer or to sell, assign, or
12 transfer any retail installment sales contract or lease
13 obtained by the dealer in connection with the sale or lease of
14 a new motor vehicle manufactured by the manufacturer to a
15 specified finance company, class of finance companies, leasing
16 company, or class of leasing companies, or to any other
17 specified persons.

18 "(2) For any manufacturer, factory branch, factory
19 representative, distributor, or wholesaler, distributor
20 branch, distributor representative, or motor vehicle dealer to
21 engage in any action with respect to a franchise which is
22 arbitrary, unconscionable, unreasonable, or is not in good
23 faith and which causes damage to any of the parties.

24 "(3) For any manufacturer, factory branch, factory
25 representative, distributor, or wholesaler, distributor
26 branch, or distributor representative to do any of the
27 following:

1 "a. To adopt, change, establish, or implement a plan
2 or system for the allocation and distribution of new or used
3 motor vehicles to motor vehicle dealers which is arbitrary,
4 capricious, or unreasonably discriminatory or to modify an
5 existing plan so as to cause the same to be arbitrary,
6 capricious, or unreasonably discriminatory.

7 "b. To fail or refuse to advise or disclose to any
8 motor vehicle dealer having a franchise or dealer agreement,
9 upon written request therefor, the basis upon which new motor
10 vehicles of the same line make are allocated or distributed to
11 motor vehicle dealers in the state and the basis upon which
12 the current allocation or distribution is being made or will
13 be made to such motor vehicle dealer.

14 "c. To refuse to deliver to a motor vehicle dealer
15 in reasonable quantities and within a reasonable time after
16 receipt of the motor vehicle dealer's order any such motor
17 vehicles as are covered by a franchise or dealer agreement and
18 specifically publicly advertised in the state by such
19 manufacturer, factory branch, factory representative,
20 distributor, or wholesaler, distributor branch, or distributor
21 representative to be available for immediate delivery;
22 provided, however, that the failure to deliver any motor
23 vehicle shall not be considered a violation of this chapter if
24 such failure is due to an act of God, a work stoppage or delay
25 due to a strike or labor difficulty, a shortage of materials,
26 lack of available manufacturing capacity, a freight embargo,
27 or other cause over which the manufacturer, factory branch,

1 factory representative, distributor, or wholesaler,
2 distributor branch, or distributor representative shall have
3 no control.

4 "d. To cancel or terminate the franchise or dealer
5 agreement of a motor vehicle dealer other than as hereinafter
6 provided.

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

10 "f. To offer a renewal, replacement, or succeeding
11 franchise or dealer agreement containing terms and provisions
12 the effect of which is to substantially change or modify the
13 sales and service obligations or capital requirements of the
14 motor vehicle dealer other than as hereinafter provided.

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

1 "h. To offer to sell or lease, or to sell or lease,
2 any new motor vehicle to any person, except a wholesaler's or
3 distributor's or manufacturer's employees, at a lower actual
4 price therefor than the actual price offered and charged to a
5 motor vehicle dealer for the same model vehicle similarly
6 equipped or to utilize any device which results in such lesser
7 actual price and which are not offered to dealers of vehicles
8 of the same line make; provided, however, that the provisions
9 of this paragraph shall not apply to sales to a motor vehicle
10 dealer for resale to any unit of the United States government,
11 the state, or any of its political subdivisions.

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

1 or distributor by the motor vehicle dealer of the proposed
2 change accompanied by information reflecting the identity,
3 business experience and affiliations, and source of investment
4 funds of the proposed new management.

5 "j. To prevent or attempt to prevent by contract or
6 otherwise any motor vehicle dealer from establishing or
7 changing the capital structure of his or her dealership or the
8 means by or through which he or she finances the operation
9 thereof; provided the dealer meets any reasonable capital
10 standards agreed to between the motor vehicle dealer and the
11 manufacturer, distributor, or wholesaler, who may require that
12 the sources, method, and manner by which the motor vehicle
13 dealer finances or intends to finance its operation,
14 equipment, or facilities be fully disclosed.

15 "k. To refuse to give effect to or prevent or
16 attempt to prevent by contract or otherwise any motor vehicle
17 dealer or any officer, partner, or stockholder of any motor
18 vehicle dealer from selling or transferring any part of the
19 interest of any of them to any other person unless such sale
20 or transfer is to a transferee who would not otherwise qualify
21 for a new motor vehicle dealer's license issued by the State
22 of Alabama or a political subdivision thereof or unless such
23 sale or transfer is to a person who is not of good moral
24 character or who does not meet the manufacturer's or
25 wholesaler's or distributor's existing and reasonable capital
26 standards and, with consideration given to the volume of sales
27 and service of the dealership, uniformly applied minimum

1 business experience standards in the market area; provided,
2 however, that where such a rejection of a transfer is made the
3 manufacturer or distributor or wholesaler shall give written
4 notice of his or her reasons to the motor vehicle dealer
5 within 60 days of notice to the manufacturer or wholesaler or
6 distributor by the dealer of the proposed transfer accompanied
7 by information reflecting the identity of the new owner or
8 owners, their business experience and affiliations and the pro
9 forma balance sheet and source of investment funds of the
10 proposed new dealership. A manufacturer or distributor may
11 exercise a contractual right of first refusal with respect to
12 the sale or transfer of the interest of the dealer only if
13 each of the following requirements are met:

14 "1. The sale or transfer is not to a family member
15 of an owner of the dealership, nor a managerial employee of
16 the dealership owning 15 percent or more of the dealership,
17 nor a corporation, partnership, or other legal entity owned by
18 the existing owners of the dealership. For purposes of this
19 subparagraph, a "family member" means the spouse of an owner
20 of the dealership, the child, grandchild, brother, sister, or
21 parent of an owner, or a spouse of one of those family
22 members.

23 "2. The manufacturer or distributor notifies the
24 dealer in writing within 60 days after receipt of the
25 completed application forms and related information generally
26 used by a manufacturer or distributor to conduct its review
27 and a copy of all agreements regarding the proposed transfer

1 of its intent to exercise its right of first refusal or its
2 rejection of the proposed transfer. If the manufacturer or
3 distributor fails to notify the dealer of its exercise of the
4 right of first refusal or its rejection of the proposed
5 transferee within the 60-day period, the effect of such
6 failure shall constitute approval of the proposed sale or
7 transfer. If the manufacturer or distributor exercises a right
8 of first refusal under this section, the transfer shall be
9 deemed to be rejected.

10 "3. The exercise of the right of first refusal
11 provides to the dealer the same compensation as, or greater
12 compensation than, the dealer had negotiated to receive from
13 the proposed buyer or transferee.

14 "4. The manufacturer or distributor agrees to pay
15 the reasonable expenses, including reasonable attorneys' and
16 accountants' fees that do not exceed the usual, customary, and
17 reasonable fees charged for similar work done for other
18 clients incurred by the proposed buyer or transferee before
19 the manufacturer's or distributor's exercise of its right of
20 first refusal in negotiating and implementing the contract for
21 the sale or transfer. The proposed buyer or transferee shall
22 provide to the manufacturer or distributor a written
23 itemization of the expenses incurred within 30 days of the
24 receipt by the proposed buyer or transferee of a written
25 request from the manufacturer or distributor for an accounting
26 of the expenses. The manufacturer or distributor shall make

1 payment of these expenses within 30 days of exercising the
2 right of first refusal.

3 "1. To unreasonably and without notice to existing
4 motor vehicle dealers, as hereinafter provided, enter into a
5 franchise with an additional motor vehicle dealer who intends
6 to conduct its dealership operations from a place of business
7 situated within the relevant market area of an existing motor
8 vehicle dealer or motor vehicle dealers representing the same
9 line make. The appointment of a successor motor vehicle dealer
10 at the same location as its predecessor or within a two-mile
11 radius therefrom within two years from the date on which its
12 predecessor ceased operations or was terminated, whichever
13 occurred later, shall not be construed as the entering into of
14 an additional franchise. Any manufacturer, distributor, or
15 wholesaler, factory branch, factory representative,
16 distributor branch, or distributor representative which
17 intends to enter into an additional franchise shall, at least
18 60 days prior to granting such franchise, give written notice
19 of its intention to do so to each motor vehicle dealer of the
20 same line make within the relevant market area. Such notice
21 shall state the date on or after which such proposed franchise
22 shall be granted or entered into. Prior to the date set forth
23 in the notice on or after which such franchise will be entered
24 into, any such motor vehicle dealer may petition a court of
25 competent jurisdiction to determine whether such appointment
26 or proposed appointment is unreasonable in which action the
27 manufacturer, wholesaler, or distributor shall have the burden

1 of proof that such action is not unreasonable. No bond shall
2 be required as a precondition to entry of an injunction
3 enjoining appointment of an additional franchise. Such
4 petition shall be entitled to a speedy trial. In determining
5 whether such proposed appointment is unreasonable, the court
6 shall consider all pertinent circumstances. These may include
7 but are not limited to:

8 "1. Whether the establishment of such additional
9 franchise is warranted by economic and marketing conditions
10 including anticipated future changes.

11 "2. The past, present, and anticipated retail sales
12 and service business transacted by the objecting motor vehicle
13 dealer or dealers and other motor vehicle dealers of the same
14 line make with a place of business in the relevant market
15 area.

16 "3. The investment made and obligations incurred by
17 the objecting motor vehicle dealer or dealers and other motor
18 vehicle dealers of the same line make with a place of business
19 in the relevant market area.

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

22 "m. To prospectively assent to a release,
23 assignment, novation, agreement, waiver, or estoppel 1. which
24 would relieve any person from any liability or obligation
25 under this chapter, 2. which would require any controversy
26 between a new motor vehicle dealer and a manufacturer to be
27 referred to any person other than the duly constituted courts

1 of this state or the United States, if the referral would be
2 binding on the new motor vehicle dealer, 3. which would limit
3 the entitlement to recover damages under this chapter or other
4 Alabama law, 4. which specifies the jurisdiction or venues in
5 which disputes arising with respect to the franchise shall or
6 shall not be submitted for resolution or otherwise prohibits a
7 dealer from bringing an action in the courts of Alabama, or 5.
8 which would waive the right to trial by jury.

9 "n. To prevent or refuse to give effect to the
10 succession to the ownership or management control of a
11 dealership upon the death or incapacity of a motor vehicle
12 dealer to any legatee or devisee under the will of a dealer or
13 to an heir under the laws of descent and distribution of this
14 state unless the successor is a person who is not of good
15 moral character or who does not meet the manufacturer's or
16 distributor's or wholesaler's existing and reasonable capital
17 standards and, with consideration given to the volume of the
18 sales 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 succession is made,
21 the manufacturer or distributor or wholesaler shall give
22 written notice of his or her reasons to the proposed successor
23 within 60 days of notice to the manufacturer or wholesaler or
24 distributor by the proposed successor of his or her intent to
25 succeed to the ownership or management of the dealership
26 accompanied by information reflecting the identity of the new
27 owner or owners, their business experience and affiliation and

1 the pro forma balance sheet and source of investment funds of
2 the proposed new dealership. This section does not preclude
3 the owner of a new motor vehicle dealer from designating any
4 person as his or her successor by written instrument filed
5 with the manufacturer or distributor and, in the event there
6 is a conflict between such written instrument and the
7 provisions of this section, the written instrument shall
8 govern.

9 "o. To fail to indemnify and hold harmless its motor
10 vehicle dealers against any losses, including, but not limited
11 to, court costs and reasonable attorneys' fees, or damages
12 arising out of complaints, claims, or lawsuits, including, but
13 not limited to, strict liability, negligence,
14 misrepresentation, warranty (express or implied), or
15 rescission of the sale where the complaint, claim, or lawsuit
16 relates to 1. the manufacture, assembly, or design of new
17 motor vehicles, parts, or accessories; 2. a defect in any
18 forms furnished to the dealer or in the written instructions
19 for the completion of such forms by the manufacturer, an
20 affiliate of the manufacturer, or person controlled by the
21 manufacturer used in connection with the sale, lease, or
22 financing of a vehicle and associated products, unless the
23 dealer improperly completes the forms or makes
24 misrepresentations contrary either to the terms of the forms
25 or the written instructions for their completion; or 3. other
26 functions by the manufacturer, beyond the control of the
27 dealer, including, without limitation, the selection by the

1 manufacturer of parts or components for the vehicle, or any
2 damages to merchandise occurring in transit to the dealer
3 where the carrier is designated by the manufacturer.

4 "p. To increase prices of new motor vehicles which
5 the new motor vehicle dealer had ordered for retail consumers
6 prior to the dealer's receipt of the written official price
7 increase notification. A sales contract signed by a retail
8 consumer shall constitute evidence of each such order;
9 provided that the vehicle is in fact delivered to that
10 customer. In the event of manufacturer price reductions or
11 cash rebates, the amount of any such reduction or rebate
12 received by a dealer shall be passed on to the retail consumer
13 by the dealer if the retail price was negotiated on the basis
14 of the previous higher price to the dealer. Price reductions
15 shall apply to all vehicles in the dealer's inventory which
16 were subject to the price reduction. Price differences
17 applicable to new model or series motor vehicles at the time
18 of the introduction of new models or series shall not be
19 considered a price increase or price decrease. Price changes
20 caused by either: 1. the addition to a motor vehicle of
21 required or optional equipment pursuant to state or federal
22 law; 2. revaluation of the United States dollar, in the case
23 of foreign-made vehicles or components; or 3. an increase in
24 transportation charges due to increased rates imposed by
25 common or contract carriers, shall not be subject to the
26 provisions of this paragraph.

1 "q. To offer any refunds or other types of
2 inducements to any person for the purchase of new motor
3 vehicles of a certain line make to be sold to the state or any
4 political subdivision thereof without making the same offer to
5 all other new motor vehicle dealers in the same line make
6 within the state.

7 "r. To release to any outside party, except under
8 subpoena, or as otherwise required by law or in an
9 administrative, judicial, or arbitration proceeding, any
10 business, financial, or personal information which may be from
11 time to time provided by the dealer to the manufacturer,
12 without the express written consent of the dealer.

13 "s. To own an interest in a new motor vehicle
14 dealership, to operate or control a dealership, to make direct
15 sales or leases of new motor vehicles to the public in
16 Alabama, or to own, operate, or control a facility for
17 performance of motor vehicle warranty or repair service work,
18 except as follows:

19 "1. The manufacturer or distributor is owning or
20 operating a new motor vehicle dealership or a warranty repair
21 facility for a temporary period of not more than 24 months, as
22 long as the new motor vehicle dealership or warranty repair
23 center is for sale at a reasonable price and on reasonable
24 terms and conditions; or

25 "2. The manufacturer's or distributor's
26 participation is in a bona fide relationship with an
27 independent person (i) who is required to make significant

1 investment in the new motor vehicle dealership or warranty
2 repair center subject to loss, (ii) and operates the
3 dealership or warranty repair center and may reasonably be
4 expected to acquire full ownership of the dealership or
5 warranty repair center within a reasonable time and under
6 reasonable terms and conditions.

7 "3. The manufacturer or distributor is selling or
8 leasing new motor vehicles in Alabama to its qualified
9 vendors, not-for-profit organizations, fleets, or the federal,
10 state, or local government if sold or leased and delivered
11 through new motor vehicle dealers in this state. The
12 manufacturer or distributor is selling or leasing new motor
13 vehicles in Alabama to its employees and employees' families
14 if delivered through new motor vehicle dealers in this state.
15 The manufacturer or distributor is implementing a program to
16 sell or lease or offer to sell or lease new motor vehicles
17 through new motor vehicle dealers in this state.

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

21 "5. A manufacturer of recreational vehicles which as
22 of December 31, 1999, owns, operates, or controls a facility
23 in this state for performance of motor vehicle warranty repair
24 or service work on recreational vehicles manufactured by that
25 manufacturer.

26 "6. The manufacturer or distributor is owning,
27 operating, or controlling an entity primarily engaged in the

1 business of renting passenger and commercial motor vehicles
2 and industrial and construction equipment, as well as
3 activities incidental to the businesses, including warranty
4 and repair work on vehicles that it owns, previously owned, or
5 takes in trade.

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

8 "(i) Manufactures or distributes engines for
9 installation in a vehicle having as its primary purpose the
10 transport of a person or persons or property on a public
11 highway and having a gross vehicle weight rating of more than
12 16,000 pounds, provided that the manufacturer does not
13 otherwise manufacture motor vehicles as defined in Section
14 8-20-3.

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

18 "(iii) Does not own or operate more than three new
19 motor vehicle dealership or warranty repair facilities in this
20 state.

21 "(iv) Does not regularly provide motor vehicle
22 warranty or repair service work in this state to noncommercial
23 single-family passenger motor vehicles having a gross vehicle
24 weight rating of less than 16,000 pounds unless the repair is
25 not reasonably available at a motor vehicle dealer that sells
26 new motor vehicles with a gross vehicle weight rating of less

1 than 16,000 pounds or at the request of such motor vehicle
2 dealer.

3 "(v) Avoids any acts or practices the effect of
4 which may be to lessen or eliminate competition that provided
5 to dealers on materially equal terms access to all support for
6 completing repairs, including, but not limited to, parts and
7 assembles, training, and technical service bulletins and other
8 information concerning repairs that the manufacturer provides
9 to facilities owned, operated, or controlled by the
10 manufacturer.

11 "8. The manufacturer is selling or leasing to the
12 public motor vehicles fueled solely by electricity, natural
13 gas, or propane.

14 "t. To make any material change in any franchise
15 agreement without giving the dealer written notice by
16 certified mail of such change at least 60 days prior to the
17 effective date of such change.

18 "u. To fail to pay or otherwise compensate its new
19 motor vehicle dealers for sales incentives, service
20 incentives, rebates, or other forms of incentive compensation
21 earned by the dealer as a consequence of incentive programs of
22 the manufacturer. The manufacturer shall have the right to
23 audit any such incentive payments made to the dealer and to
24 charge back the dealer for any fraudulent claims for incentive
25 payments made to the dealer for a period not to exceed 12
26 months from the date the claim was paid. A manufacturer shall
27 not disapprove claims for which the dealer has received

1 preauthorization from the manufacturer or its representative
2 nor shall the manufacturer unreasonably disapprove a claim
3 solely based on the dealer's incidental failure to comply with
4 a specific claim processing requirement that results only in a
5 clerical error or administrative error; rather a claim denial
6 must be based upon a material defect and deviation from the
7 reasonable written claim submission requirements of the
8 manufacturer. In the event of neglect, oversight, or mistake
9 by the dealer, a dealer may submit an amended claim, or may
10 submit a claim not submitted within the time required by the
11 manufacturer, for sales incentives, service incentives,
12 rebates, or other forms of incentive compensation up to 120
13 days from the date on which such claim was first submitted or
14 could have been submitted.

15 "v. To fail or refuse to offer its same line make
16 franchised dealers all models of new motor vehicles
17 manufactured for that line make and offered to any dealer in
18 this state. No unreasonable additional requirements, over the
19 requirements originally required to obtain a franchise from
20 the manufacturer, may be required of existing franchised
21 dealers to receive any model by that line make. The provisions
22 in this paragraph shall not apply to recreational vehicles and
23 reasonable requirements of a manufacturer that its dealers
24 obtain tools or diagnostic equipment to properly service its
25 line make of motor vehicles. The failure to deliver any such
26 new motor vehicle shall not be considered a violation of this
27 section if the failure is due to a lack of manufacturing

1 capacity or to a strike or labor difficulty, a shortage of
2 materials, a freight embargo, or any other cause over which
3 the manufacturer has no control.

4 "w. To prohibit a motor vehicle dealer from changing
5 the location of the new motor vehicle dealership to another
6 location within the dealer's assigned area of responsibility
7 if the refusal to approve the relocation is not reasonable
8 under the circumstances.

9 "x. To charge back, deny vehicle allocation,
10 withhold payments, or take any other adverse actions against a
11 dealer because of a sale of a new motor vehicle which is
12 exported from the United States unless the manufacturer can
13 prove that the dealer knew or reasonably should have known on
14 the date of the sale that the new motor vehicle was to be
15 exported. A dealer is rebuttably presumed to have no knowledge
16 of the intended export if the vehicle is sold by the dealer to
17 a United States resident who titles and registers the vehicle
18 in any state in the United States.

19 "y. To condition the sale, transfer, relocation, or
20 renewal of a franchise or dealer agreement or to condition
21 sales, service, parts, or finance incentives upon site control
22 or an agreement to renovate or make substantial improvements
23 to a facility; provided, however, that voluntary and
24 non-coerced acceptance of such conditions by the dealer in
25 writing, including, but not limited to, a written agreement
26 for which the dealer has accepted separate and valuable
27 consideration, shall not constitute a violation.

1 "z. To assign or change a dealer's area of
2 responsibility under the franchise or dealer agreement
3 arbitrarily or without due regard to the present or projected
4 future pattern of motor vehicle sales and registrations within
5 the dealer's market area and without first having provided the
6 dealer with written notice of the change in the dealer's area
7 of responsibility and a detailed description of the change and
8 reasons therefor."

9 Section 2. This act shall become effective on the
10 first day of the third month following its passage and
11 approval by the Governor, or its otherwise becoming law.