

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 17-1208.01 Jery Payne x2157

SENATE BILL 17-298

SENATE SPONSORSHIP

Tate,

HOUSE SPONSORSHIP

Kraft-Tharp,

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 CONCERNING THE RELATIONSHIP BETWEEN A MOTOR VEHICLE
102 MANUFACTURER AND THE MOTOR VEHICLE DEALERS THAT HAVE
103 FRANCHISE AGREEMENTS WITH THE MANUFACTURER.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Current law prohibits a motor vehicle manufacturer (manufacturer) from requiring a motor vehicle dealer (dealer) to substantially alter a facility or premises if the manufacturer required it within the last 7 years at a cost set in statute based on the type of dealer. **Section 1** of the bill extends this prohibition to 15 years. Section 1 also prohibits a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

manufacturer from:

- ! Selling a similarly equipped motor vehicle to one dealer at a lower price than to another dealer;
- ! Requiring or enforcing a contract giving the manufacturer a right of first refusal or an option to purchase the dealership;
- ! Using an unreasonable, arbitrary, unfair, or surprise performance standard in determining a dealer's compliance with a franchise agreement; and
- ! Failing, when a manufacturer requires the dealer to stop selling a used motor vehicle due to a technical mechanical issue, to provide parts and a solution within 7 days or to provide compensation to the dealer.

Section 2 repeals a provision that gives a dealer a right of first refusal for new franchises when the dealer was terminated due to the insolvency of the manufacturer. Section 2 also authorizes a dealer to sue in court to contest a manufacturer adding or moving a dealership to a market with a current dealer when this action would materially and adversely affect the dealer or the public. Such an action may currently be done administratively. Procedures are set for the civil action and an administrative hearing. Standards are set for determining the outcome. A prevailing dealer may get attorney fees and costs.

Section 3 authorizes a dealer to sue a manufacturer in court to contest whether a termination was for just cause or for failing to provide notice of a termination. Such an action may currently be done administratively. The current process for staying the termination is strengthened. The manufacturer has the burden of proof. A prevailing dealer may get attorney fees and costs.

Section 4 requires a manufacturer to fulfill warranty, recall, and similar obligations to repair a motor vehicle. Section 4 also requires a manufacturer to timely compensate a dealer at the prevailing retail value the dealer charges for similar work. Standards are set for calculating this value. Procedures are set for the dealer to communicate the dealer's calculations and for the manufacturer to contest the dealer's calculations. The manufacturer has the burden of proving that the calculations are incorrect. The manufacturer is prohibited from requiring the dealer to use different calculations than those provided in the bill.

Section 4 prohibits a manufacturer from:

- ! Establishing a special part or component number for parts used if the change results in lower compensation to the motor vehicle dealer than as calculated in the bill;
- ! Requiring a dealer to implement or change the prices for which it sells parts or labor in nonwarranty repairs;
- ! Taking adverse action against a dealer who seeks to obtain compensation in accordance with the bill or dissuading a

- dealer from doing so;
- ! Implementing a policy affecting a dealer that violates the bill; and
- ! Eliminating flat-rate times, or establishing an unfair or unreasonable flat-rate time.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 12-6-120, **amend**
3 (1)(x); and **add** (1)(y), (1)(z), (1)(aa), and (1)(bb) as follows:

4 **12-6-120. Unlawful acts.** (1) It is unlawful and a violation of this
5 part 1 for any manufacturer, distributor, or manufacturer representative:

6 (x) To require, coerce, or attempt to coerce a motor vehicle dealer
7 to substantially alter a facility or premises if:

8 (I) The facility or premises has been altered within the last ~~seven~~
9 FIFTEEN years at a cost of more than two hundred fifty thousand dollars
10 and the alteration was required and approved by the manufacturer,
11 distributor, or manufacturer representative unless ~~the motor vehicle dealer~~
12 ~~sells only motorcycles or motorcycles and powersports vehicles~~
13 SUBSECTION (1)(X)(II) APPLIES TO THE DEALER; except that this ~~paragraph~~
14 ~~(x)~~ SUBSECTION (1)(x) does not apply to improvements made to comply
15 with health or safety laws or to accommodate the technology
16 requirements necessary to sell or service a line-make; or

17 (II) The motor vehicle dealer sells only motorcycles or
18 motorcycles and powersports vehicles, the facility or premises has been
19 altered within the last ~~seven~~ FIFTEEN years at a cost of more than
20 twenty-five thousand dollars, and the alteration was required and
21 approved by the manufacturer, distributor, or manufacturer representative;
22 except that this ~~paragraph (x)~~ SUBSECTION (1)(x) does not apply to
23 improvements made to comply with health or safety laws or to

1 accommodate the technology requirements necessary to sell or service a
2 line-make.

3 (y) (I) TO SELL OR OFFER TO SELL NEW MOTOR VEHICLES TO A
4 FRANCHISED MOTOR VEHICLE DEALER WITH WHOM THE MANUFACTURER
5 HAS A FRANCHISE AGREEMENT AT A LOWER ACTUAL PRICE THAN THE
6 ACTUAL PRICE OFFERED TO ANY OTHER MOTOR VEHICLE DEALER WITH
7 WHOM THE MANUFACTURER HAS A FRANCHISE AGREEMENT FOR THE SAME
8 MOTOR VEHICLE SIMILARLY EQUIPPED; EXCEPT THAT THIS SUBSECTION
9 (1)(y) DOES NOT APPLY TO A:

10 (A) RESALE TO ANY GOVERNMENT; OR

11 (B) DONATION OR USE BY THE DEALER IN A DRIVER EDUCATION
12 PROGRAM.

13 (II) THIS SUBSECTION (1)(y) DOES NOT PROHIBIT A
14 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE
15 FROM OFFERING INCENTIVE PROGRAMS, SALES-PROMOTION PLANS, OR
16 OTHER DISCOUNTS IF THE INCENTIVES OR DISCOUNTS ARE REASONABLY
17 AVAILABLE TO ALL MOTOR VEHICLE DEALERS WITH WHOM THE
18 MANUFACTURER HAS A FRANCHISE AGREEMENT ON A PROPORTIONATELY
19 EQUAL BASIS;

20 (z) TO REQUIRE A MOTOR VEHICLE DEALER TO GRANT A
21 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE THE
22 FOLLOWING OR TO ENFORCE THE FOLLOWING:

23 (I) A RIGHT OF FIRST REFUSAL TO PURCHASE THE MOTOR VEHICLE
24 DEALER; OR

25 (II) AN OPTION TO PURCHASE THE MOTOR VEHICLE DEALER;

26 (aa) (I) TO USE AN UNREASONABLE, ARBITRARY, OR UNFAIR
27 PERFORMANCE STANDARD IN DETERMINING A MOTOR VEHICLE DEALER'S

1 COMPLIANCE WITH A FRANCHISE AGREEMENT.

2 (II) TO FAIL TO COMMUNICATE ANY PERFORMANCE STANDARD IN
3 A CLEAR AND CONCISE WRITING TO A MOTOR VEHICLE DEALER BEFORE
4 APPLYING THE STANDARD TO THE MOTOR VEHICLE DEALER.

5 (bb) (I) TO REQUIRE OR COERCE A MOTOR VEHICLE DEALER OF THE
6 SAME LINE-MAKE TO REFRAIN FROM SELLING A USED MOTOR VEHICLE
7 BECAUSE OF A RECALL, STOP-SALE DIRECTIVE, TECHNICAL SERVICE
8 BULLETIN, OR OTHER NOTIFICATION TO PERFORM WORK ON THE USED
9 MOTOR VEHICLE UNLESS THE MANUFACTURER, DISTRIBUTOR, OR
10 MANUFACTURER REPRESENTATIVE:

11 (A) HAS A REMEDY AND PARTS AVAILABLE WITHIN SEVEN DAYS
12 AFTER REQUIRING THE MOTOR VEHICLE DEALER TO REFRAIN FROM SELLING
13 THE USED MOTOR VEHICLE; OR

14 (B) COMPENSATES THE MOTOR VEHICLE DEALER FOR ANY
15 AFFECTED USED MOTOR VEHICLES AT A RATE OF AT LEAST TWENTY-FOUR
16 TENTHS OF ONE PERCENT PER MONTH, OR ANY PART OF A MONTH, OF THE
17 DEALER'S COST, INCLUDING REPAIRS AND RECONDITIONING EXPENSES, OF
18 THE USED MOTOR VEHICLE;

19 (II) TO FAIL TO TRANSMIT TO EVERY MOTOR VEHICLE DEALER WITH
20 WHOM THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
21 REPRESENTATIVE HAS A FRANCHISE AGREEMENT A WRITTEN PROCEDURE
22 TO COMPENSATE THE MOTOR VEHICLE DEALER IN ACCORDANCE WITH
23 SUBSECTION (1)(bb)(I) OF THIS SECTION;

24 (III) TO FAIL TO PAY THE CLAIM IN THE SAME MANNER AS A CLAIM
25 FOR WARRANTY REIMBURSEMENTS; EXCEPT THAT, TO BE ELIGIBLE FOR
26 REIMBURSEMENTS, A MOTOR VEHICLE DEALER MUST SUBMIT A CLAIM FOR
27 COMPENSATION UNDER THIS SUBSECTION (1)(bb) ON A MONTHLY BASIS;

1 (IV) (A) THIS SUBSECTION (1)(bb) DOES NOT PROHIBIT A
2 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE
3 FROM REQUIRING THAT A MOTOR VEHICLE THAT IS SUBJECT TO AN OPEN
4 RECALL OR STOP-SALE ORDER BE REPAIRED TO BE QUALIFIED OR BE SOLD
5 AS A CERTIFIED PREOWNED VEHICLE OR UNDER A SIMILAR DESIGNATION;
6 FROM PAYING INCENTIVES FOR SELLING USED MOTOR VEHICLES WITH NO
7 UNREMEDIED RECALLS; OR FROM PAYING INCENTIVES FOR PERFORMING
8 RECALL REPAIRS ON A MOTOR VEHICLE IN THE MOTOR VEHICLE DEALER'S
9 INVENTORY.

10 (B) THIS SUBSECTION (1)(bb) DOES NOT PROHIBIT A
11 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE
12 FROM REQUIRING A MOTOR VEHICLE DEALER TO REPAIR USED MOTOR
13 VEHICLES WITH AN OPEN RECALL OF THE LINE-MAKE FOR WHICH THE
14 DEALER HOLDS A FRANCHISE IF THE INSTRUCTION DOES NOT INVOLVE
15 COERCION THAT IMPOSES A PENALTY OR LOSS OF BENEFITS ON THE
16 DEALER.

17 **SECTION 2.** In Colorado Revised Statutes, 12-6-120.3, **amend**
18 (1) introductory portion, (1.5), and (3)(b); **repeal** (3)(c), (4), and (5); and
19 **add** (6) as follows:

20 **12-6-120.3. New, reopened, or relocated dealer - notice**
21 **required - grounds for refusal of dealer license - definitions - rules.**

22 (1) No manufacturer ~~or distributor~~ shall PROPOSE OR establish an
23 additional ~~new~~ motor vehicle dealer, reopen a previously existing motor
24 vehicle dealer, or ~~relocate~~ AUTHORIZE an existing motor vehicle dealer TO
25 RELOCATE without first providing at least sixty days' notice to all of its
26 franchised dealers and former dealers whose franchises were terminated,
27 cancelled, or not renewed by a manufacturer ~~distributor, or manufacturer~~

1 ~~representative~~ in the previous five years due to the insolvency of the
2 manufacturer ~~or distributor~~ within whose relevant market area the new,
3 reopened, or relocated dealer would be located. The notice ~~shall~~ MUST
4 state:

5 (1.5) A manufacturer shall ~~reasonably~~ approve or disapprove of
6 a motor vehicle dealer facility initial site location, ~~or~~ relocation, OR
7 REOPENING request within sixty days after the request or after sending the
8 notice required by subsection (1) of this section to all of its franchised
9 dealers, ~~and former dealers whose franchises were terminated, cancelled,~~
10 ~~or not renewed in the previous five years due to the insolvency of the~~
11 ~~manufacturer or distributor, whichever is later, but not to exceed one~~
12 ~~hundred days~~ WHICHEVER IS LATER.

13 (3) As used in this section:

14 (b) "Relevant market area" means the greater of the following:

15 (I) The geographic area of responsibility defined in the franchise
16 agreement of an existing dealer; ~~or~~

17 (II) The geographic area within a radius of ~~five~~ FIFTEEN miles of
18 any existing dealer of the same line-make of vehicle ~~that is located in a~~
19 ~~county with a population of more than one hundred fifty thousand or~~
20 ~~within a radius of ten miles of an existing dealer of the same line-make~~
21 ~~of vehicles that is located in a county with a population of one hundred~~
22 ~~fifty thousand or less.~~ AS THE PROPOSED ADDITIONAL MOTOR VEHICLE
23 DEALER; OR

24 (III) A COUNTY WHERE AN EXISTING MOTOR VEHICLE DEALER OF
25 THE SAME LINE-MAKE IS LOCATED.

26 (c) "~~Right of first refusal area~~" means a ~~five-mile radius extending~~
27 ~~from the location of where a motor vehicle dealer had a franchise~~

1 terminated, cancelled, or not renewed if the franchise was in a county
2 with a population of more than one hundred fifty thousand or a ten-mile
3 radius if the franchise was in a county with a population of one hundred
4 fifty thousand or less.

5 (4) (a) ~~If a licensee or former licensee whose franchise was~~
6 ~~terminated, cancelled, or not renewed by the manufacturer, distributor, or~~
7 ~~manufacturer representative in the previous five years due to the~~
8 ~~insolvency of the manufacturer or distributor brings an action or~~
9 ~~proceeding before the executive director or a court pursuant to this part~~
10 ~~1, the manufacturer shall have the burden of proof on the following~~
11 ~~issues:~~

12 (I) ~~The size and permanency of investment and obligations~~
13 ~~incurred by the existing motor vehicle dealers of the same line-make~~
14 ~~located in the relevant market area;~~

15 (II) ~~Growth or decline in population and new motor vehicle~~
16 ~~registrations in the relevant market area;~~

17 (III) ~~The effect on the consuming public in the relevant market~~
18 ~~area and whether the opening of the proposed additional, reopened, or~~
19 ~~relocated dealer is injurious or beneficial to the public welfare; and~~

20 (IV) ~~Whether the motor vehicle dealers of the same line-make in~~
21 ~~the relevant market area are providing adequate and convenient customer~~
22 ~~care for motor vehicles of the same line-make in the relevant market area,~~
23 ~~including but not limited to the adequacy of sales and service facilities,~~
24 ~~equipment, parts, and qualified service personnel.~~

25 (b) (I) ~~In addition to the powers specified in section 12-6-105, the~~
26 ~~executive director has jurisdiction to resolve actions or proceedings~~
27 ~~brought before the executive director pursuant to this part 1 that allege a~~

1 violation of this part 1 or rules promulgated pursuant to this part 1. The
2 executive director may promulgate rules to facilitate the administration
3 of such actions or proceedings, including provisions specifying
4 procedures for the executive director or the executive director's designee
5 to:

6 (A) Conduct an investigation pursuant to section 12-6-105 (1)(d)
7 of an alleged violation of this part 1 or rules promulgated pursuant to this
8 part 1, including issuance of a notice of violation;

9 (B) Hold a hearing regarding the alleged violation to be held
10 pursuant to section 24-4-105, C.R.S.;

11 (C) Issue an order, including a cease-and-desist order issued
12 pursuant to section 12-6-105 (1)(f), to resolve the notice of violation; and

13 (D) Impose a fine pursuant to section 12-6-105 (1)(f)(III).

14 (H) The court of appeals has initial jurisdiction to review all final
15 actions and orders that are subject to judicial review of the executive
16 director made pursuant to this subsection (4). Such proceedings shall be
17 conducted in accordance with section 24-4-106, C.R.S.

18 (5) (a) No manufacturer, distributor, or manufacturer
19 representative shall offer or award a person a franchise or permit the
20 relocation of an existing franchise to the right of first refusal area unless
21 the manufacturer, distributor, or manufacturer representative has
22 complied with paragraph (b) of this subsection (5) or unless paragraph (b)
23 of this subsection (5) does not apply.

24 (b) If a manufacturer, distributor, or manufacturer representative,
25 or the predecessor thereof, has terminated, cancelled, or not renewed a
26 motor vehicle dealer's franchise for a line-make within the right of first
27 refusal area due to the insolvency of the manufacturer or distributor that

1 was held by the motor vehicle dealer immediately prior to the franchise
2 being terminated, cancelled, or not renewed within the amount of time the
3 right of first refusal is granted under paragraph (c) of this subsection (5);
4 the manufacturer, distributor, or manufacturer representative, or the
5 successor thereof, shall offer the former motor vehicle dealer whose
6 franchise was terminated, cancelled, or not renewed a franchise within the
7 first refusal area prior to making the offer to any other person for the
8 same line-make unless the former motor vehicle dealer elects to receive
9 the payments required by section 12-6-120 (1)(l) and (1)(r) in lieu of the
10 right of first refusal or the motor vehicle dealer has accepted
11 compensation from the manufacturer, distributor, or manufacturer
12 representative for the termination, cancellation, or nonrenewal of the
13 franchise agreement.

14 (c) The duration of the right of first refusal granted in paragraph
15 (b) of this subsection (5) is equal to five years after the franchise is
16 terminated, cancelled, or not renewed.

17 (d) If a manufacturer, distributor, or manufacturer representative,
18 or the predecessor thereof, has made any payment to the motor vehicle
19 dealer in consideration for the termination, cancellation, or nonrenewal
20 of a franchise agreement and the motor vehicle dealer obtains a new
21 franchise agreement through this subsection (5), the motor vehicle dealer
22 shall reimburse the manufacturer, distributor, or manufacturer
23 representative for such payments. The motor vehicle dealer may
24 reimburse the manufacturer, distributor, or manufacturer representative
25 with a commercially reasonable repayment installment plan.

26 (e) The right of first refusal survives a court voiding the payments
27 required by section 12-6-120 (1)(l) and (1)(r).

1 ~~(f) (I) The right of first refusal survives a manufacturer,~~
2 ~~distributor, or manufacturer representative, or predecessor thereof,~~
3 ~~awarding a franchise within the same right of first refusal for the same~~
4 ~~line-make to a person or entity other than the former motor vehicle dealer~~
5 ~~whose franchise was terminated, cancelled, or not renewed.~~

6 ~~(H) If a manufacturer, distributor, or manufacturer representative,~~
7 ~~or predecessor thereof, has awarded the franchise to another motor~~
8 ~~vehicle dealer in the same right of first refusal area without granting the~~
9 ~~right of first refusal under this section, the former motor vehicle dealer~~
10 ~~may elect to either receive a franchise agreement in the same area or the~~
11 ~~payments required by section 12-6-120 (1)(l) and (1)(r) from the~~
12 ~~manufacturer, distributor, or manufacturer representative unless the~~
13 ~~manufacturer, distributor, or manufacturer representative, or predecessor~~
14 ~~thereof, has paid compensation in consideration of the initial termination,~~
15 ~~cancellation, or nonrenewal of the franchise agreement.~~

16 (6) (a) AN EXISTING MOTOR VEHICLE DEALER ADVERSELY
17 AFFECTED BY A REOPENING OR RELOCATION OF AN EXISTING SAME
18 LINE-MAKE MOTOR VEHICLE DEALER OR THE ADDITION OF A SAME
19 LINE-MAKE MOTOR VEHICLE DEALER MAY, WITHIN NINETY DAYS AFTER
20 RECEIPT OF THE NOTICE REQUIRED IN SUBSECTION (1) OF THIS SECTION,
21 FILE A LEGAL ACTION IN A DISTRICT COURT OF COMPETENT JURISDICTION
22 OR FILE AN ADMINISTRATIVE COMPLAINT WITH THE EXECUTIVE DIRECTOR
23 TO PREVENT OR ENJOIN THE RELOCATION, REOPENING, OR ADDITION OF
24 THE PROPOSED MOTOR VEHICLE DEALER. AN EXISTING MOTOR VEHICLE
25 DEALER IS ADVERSELY IMPACTED IF:

26 (I) THE DEALER IS LOCATED WITHIN THE RELEVANT MARKET AREA
27 OF THE PROPOSED RELOCATED, REOPENED, OR ADDITIONAL DEALERSHIP

1 DESCRIBED IN THE NOTICE REQUIRED IN SUBSECTION (1); OR

2 (II) THE EXISTING DEALER OR DEALERS OF THE SAME LINE-MAKE
3 SHOW THAT, DURING ANY TWELVE-MONTH PERIOD OF THE THIRTY-SIX
4 MONTHS PRECEDING THE RECEIPT OF THE NOTICE REQUIRED IN SUBSECTION
5 (1), THE DEALER OR DEALERS, OR A DEALER'S PREDECESSOR, MADE AT
6 LEAST TWENTY PERCENT OF THE DEALER'S RETAIL SALES OF NEW MOTOR
7 VEHICLES TO PERSONS WHOSE ADDRESSES ARE LOCATED WITHIN FIFTEEN
8 MILES OF THE LOCATION OF THE PROPOSED RELOCATED, REOPENED, OR
9 ADDITIONAL DEALERSHIP.

10 (b) THE EXECUTIVE DIRECTOR SHALL REFER A COMPLAINT FILED
11 UNDER THIS SECTION TO AN ADMINISTRATIVE LAW JUDGE WITH THE OFFICE
12 OF ADMINISTRATIVE COURTS FOR FINAL AGENCY ACTION.

13 (c) IN ANY COURT OR ADMINISTRATIVE ACTION, THE
14 MANUFACTURER HAS THE BURDEN OF PROOF ON EACH OF THE FOLLOWING
15 ISSUES:

16 (I) THE SIZE AND PERMANENCY OF THE INVESTMENT OF AND
17 OBLIGATIONS INCURRED BY THE EXISTING MOTOR VEHICLE DEALERS OF
18 THE SAME LINE-MAKE LOCATED IN THE RELEVANT MARKET AREA;

19 (II) THE CHANGE IN POPULATION;

20 (III) ALL RELEVANT VEHICLE BUYER PROFILES;

21 (IV) THE RELEVANT HISTORICAL AND PROJECTED NEW MOTOR
22 VEHICLE REGISTRATIONS FOR THE LINE-MAKE OF VEHICLES VERSUS THE
23 MANUFACTURER'S ACTUAL COMPETITORS IN THE RELEVANT MARKET
24 AREA;

25 (V) WHETHER THE OPENING OF THE PROPOSED ADDITIONAL,
26 REOPENED, OR RELOCATED MOTOR VEHICLE DEALER IS MATERIALLY
27 INJURIOUS TO THE PUBLIC INTEREST, THE CONSUMERS, OR EXISTING SAME

1 LINE-MAKE DEALERS IN THE RELEVANT MARKET AREA;

2 (VI) WHETHER THE MOTOR VEHICLE DEALERS OF THE SAME
3 LINE-MAKE IN THE RELEVANT MARKET AREA ARE PROVIDING ADEQUATE
4 REPRESENTATION AND CONVENIENT CUSTOMER CARE, INCLUDING THE
5 ADEQUACY OF SALES AND SERVICE FACILITIES, EQUIPMENT, PARTS, AND
6 QUALIFIED SERVICE PERSONNEL, FOR MOTOR VEHICLES OF THE SAME
7 LINE-MAKE IN THE RELEVANT MARKET AREA; AND

8 (VII) THE REASONABLY EXPECTED MARKET PENETRATION OF THE
9 LINE-MAKE GIVEN THE FACTORS AFFECTING PENETRATION, INCLUDING THE
10 DEMOGRAPHICS AND ECONOMIC PROFILES OF THE BUYERS IN THE
11 RELEVANT MARKET AREA; THE PROMOTION AND ADVERTISING BY THE
12 MANUFACTURER; AVAILABLE FINANCING FOR THE LINE-MAKE AND
13 WHETHER SUCH FINANCING IS AND HAS BEEN COMPETITIVE WITH OTHER
14 COMPETING LINE-MAKE VEHICLES; THE POPULARITY AND ACCEPTANCE OF
15 THE LINE-MAKE VEHICLES WITHIN THE RELEVANT MARKET AREA; AND
16 WHETHER THE ADDITIONAL, REOPENED, OR RELOCATED DEALERSHIP IS
17 WARRANTED AND JUSTIFIABLE BASED ON EXPECTED ECONOMIC AND
18 MARKET CONDITIONS WITHIN THE RELEVANT MARKET AREA.

19 (d) IN ANY COURT OR ADMINISTRATIVE ACTION, THE MOTOR
20 VEHICLE DEALER HAS THE BURDEN OF PROOF ON EACH OF THE FOLLOWING
21 ISSUES:

22 (I) WHETHER THE MANUFACTURER HAS ENGAGED IN ANY ACTION
23 OR OMISSION THAT, DIRECTLY OR INDIRECTLY, DENIED THE EXISTING
24 MOTOR VEHICLE DEALER OF THE SAME LINE-MAKE THE OPPORTUNITY FOR
25 REASONABLE GROWTH, MARKET EXPANSION, OR RELOCATION, INCLUDING
26 THE AVAILABILITY OF LINE-MAKE VEHICLES IN KEEPING WITH THE
27 REASONABLE EXPECTATIONS OF THE MANUFACTURER IN PROVIDING AN

1 ADEQUATE NUMBER OF DEALERS IN THE COMMUNITY OR TERRITORY; AND

2 (II) WHETHER THE MANUFACTURER HAS COERCED OR ATTEMPTED
3 TO COERCE ANY EXISTING MOTOR VEHICLE DEALER OR DEALERS INTO
4 CONSENTING TO ADDITIONAL OR RELOCATED FRANCHISES OF THE SAME
5 LINE-MAKE IN THE COMMUNITY OR TERRITORY OR RELEVANT MARKET
6 AREA.

7 (e) (I) IN A LEGAL OR ADMINISTRATIVE ACTION CHALLENGING THE
8 RELOCATING, REOPENING, OR ADDITION OF A MOTOR VEHICLE DEALER, THE
9 DISTRICT COURT OR ADMINISTRATIVE LAW JUDGE SHALL MAKE A
10 DETERMINATION OF WHETHER THE RELOCATION, REOPENING, OR ADDITION
11 OF A MOTOR VEHICLE DEALER IS, BASED ON THE FACTORS IDENTIFIED IN
12 SUBSECTIONS (6)(c) AND (6)(d) OF THIS SECTION:

13 (A) IN THE PUBLIC INTEREST; AND

14 (B) FAIR AND EQUITABLE TO THE EXISTING MOTOR VEHICLE
15 DEALERS.

16 (II) THE DISTRICT COURT OR THE EXECUTIVE DIRECTOR SHALL
17 DENY ANY PROPOSED RELOCATING, REOPENING, OR ADDITION OF A MOTOR
18 VEHICLE DEALER UNLESS THE MANUFACTURER SHOWS BY CLEAR AND
19 CONVINCING EVIDENCE THAT THE EXISTING MOTOR VEHICLE DEALER OR
20 DEALERS OF THE SAME LINE-MAKE IN THE RELEVANT MARKET AREA OF
21 THE PROPOSED DEALERSHIP ARE NOT PROVIDING ADEQUATE
22 REPRESENTATION OF THE LINE-MAKE MOTOR VEHICLES. A DETERMINATION
23 TO DENY, PREVENT, OR ENJOIN THE RELOCATING, REOPENING, OR ADDITION
24 OF A MOTOR VEHICLE DEALER IS EFFECTIVE FOR AT LEAST EIGHTEEN
25 MONTHS.

26 **SECTION 3.** In Colorado Revised Statutes, **amend** 12-6-131 as
27 follows:

1 **12-6-131. Termination appeal.** (1) A motor vehicle dealer who
2 has reason to believe that a manufacturer, distributor, or manufacturer
3 representative has violated section 12-6-120 (1)(d) or (1)(w) may appeal
4 to the board by filing a complaint with the executive director OR WITH A
5 DISTRICT COURT.

6 (2) Upon ~~receiving the~~ FILING OF A VERIFIED complaint ~~and upon~~
7 ~~a showing of specific facts that a violation has occurred, the executive~~
8 ~~director shall summarily issue a cease-and-desist order under section~~
9 ~~12-6-105 (1)(f) staying~~ UNDER THIS SECTION, the termination, elimination,
10 modification, or nonrenewal of the franchise agreement IS
11 AUTOMATICALLY STAYED, WITHOUT THE MOTOR VEHICLE DEALER POSTING
12 A BOND, UNTIL A FINAL DETERMINATION IS MADE ON EACH ISSUE RAISED
13 IN THE COMPLAINT; EXCEPT THAT THE EXECUTIVE DIRECTOR,
14 ADMINISTRATIVE LAW JUDGE, OR COURT MAY CANCEL THE STAY UPON
15 FINDING THAT THE CANCELLATION, TERMINATION, OR NONRENEWAL OF
16 THE FRANCHISE AGREEMENT WAS FOR ANY OF THE REASONS SPECIFIED IN
17 SECTION 12-6-120 (1)(d)(III). THE AUTOMATIC STAY MAINTAINS ALL
18 RIGHTS UNDER THE FRANCHISE AGREEMENT UNTIL THE FINAL
19 DETERMINATION, INCLUDING ALL APPEALS, OF THE ISSUES RAISED IN THE
20 VERIFIABLE COMPLAINT. THE MANUFACTURER, DISTRIBUTOR, OR
21 MANUFACTURER REPRESENTATIVE SHALL NOT NAME A REPLACEMENT
22 MOTOR VEHICLE DEALER FOR THE MARKET OR LOCATION UNTIL A FINAL,
23 NONAPPEALABLE ORDER IS ENTERED.

24 (3) ~~The cease-and-desist order remains in effect until the hearing~~
25 ~~required by section 12-6-105 (1)(f) is held. If a determination is made at~~
26 ~~the hearing required by section 12-6-105 (1)(f) that a violation occurred,~~
27 ~~the executive director shall make the cease-and-desist order permanent~~

1 ~~and take any actions authorized by section 12-6-104 (3). A motor vehicle~~
2 ~~dealer who appeals to the executive director maintains all rights under the~~
3 ~~franchise agreement until the later of the executive director issuing a~~
4 ~~decision or ninety days after the manufacturer, distributor, or~~
5 ~~manufacturer's representative provides the notice of termination unless~~
6 ~~the executive director finds that the termination, cancellation, or~~
7 ~~nonrenewal was for fraud, a misrepresentation, or committing a crime~~
8 ~~within the scope of the franchise agreement or in the operation of the~~
9 ~~dealership, in which case the franchise rights terminate immediately~~ IF A
10 VERIFIED COMPLAINT IS FILED WITH THE EXECUTIVE DIRECTOR, THE
11 EXECUTIVE DIRECTOR SHALL REFER THE COMPLAINT TO AN
12 ADMINISTRATIVE LAW JUDGE WITH THE OFFICE OF ADMINISTRATIVE
13 COURTS FOR FINAL AGENCY ACTION.

14 (4) IN RESOLVING A TERMINATION COMPLAINT, THE
15 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE HAS
16 THE BURDEN OF PROVING ANY CLAIM MADE THAT THE FACTORS LISTED IN
17 SECTION 12-6-120 (1)(d)(II) APPLY TO THE TERMINATION, CANCELLATION,
18 OR NONRENEWAL.

19 (5) A MOTOR VEHICLE DEALER THAT PREVAILS IN A CLAIM THAT A
20 TERMINATION, CANCELLATION, OR NONRENEWAL VIOLATES SECTION
21 12-6-120 (1)(d) OR (1)(w) IS ENTITLED TO RECOVER ATTORNEY FEES AND
22 COSTS, INCLUDING EXPERT WITNESS FEES, INCURRED IN THE TERMINATION
23 PROTEST.

24 **SECTION 4.** In Colorado Revised Statutes, **add** 12-6-132 as
25 follows:

26 **12-6-132. Manufacturer warranties.** (1) EACH MANUFACTURER
27 SHALL FULFILL ALL OF ITS NEW AND USED MOTOR VEHICLE WARRANTY,

1 CERTIFIED PREOWNED WARRANTY MAINTENANCE, SERVICE CONTRACT,
2 EXTENDED WARRANTY, RECALL, GOODWILL, SERVICE CAMPAIGN, AND
3 DELIVERY PREPARATION OBLIGATIONS OF REPAIRING AND SERVICING
4 MOTOR VEHICLES, INCLUDING ALL PARTS OR COMPONENTS OF A MOTOR
5 VEHICLE.

6 (2) EACH MANUFACTURER SHALL TIMELY COMPENSATE EACH OF
7 ITS MOTOR VEHICLE DEALERS FOR LABOR AND PARTS, INCLUDING THE
8 ENGINE AND TRANSMISSION, AND COMPONENTS USED TO REPAIR AND
9 SERVICE MOTOR VEHICLES IN ACCORDANCE WITH THE MANUFACTURER'S
10 OBLIGATIONS, SPECIFIED IN SUBSECTION (1) OF THIS SECTION, AT NOT LESS
11 THAN THE RATES CHARGED BY THE MOTOR VEHICLE DEALER TO RETAIL
12 CUSTOMERS FOR LABOR, PARTS, AND COMPONENTS FOR THE SAME WORK.

13 (3) A MOTOR VEHICLE DEALER, OTHER THAN A MOTOR VEHICLE
14 DEALER THAT DEALS IN RECREATIONAL VEHICLES, MAY ESTABLISH RATES
15 OF COMPENSATION FOR LABOR PERFORMED AND PARTS AND COMPONENTS
16 USED BY THE MOTOR VEHICLE DEALER TO DETERMINE REIMBURSEMENT
17 RATES TO BE PAID FOR REPAIRS IN ACCORDANCE WITH THIS SECTION AS
18 FOLLOWS:

19 (a) THE MOTOR VEHICLE DEALER SHALL SUBMIT TO THE
20 MANUFACTURER ONE OF THE FOLLOWING, DEPENDING ON WHICH
21 PRODUCES FEWER REPAIR ORDERS:

22 (I) ONE HUNDRED SEQUENTIAL NONWARRANTY SERVICE REPAIR
23 ORDERS FOR REPAIRS, INCLUDING A CUSTOMER-PAY REPAIR THAT IS
24 INCLUDED IN A REPAIR ORDER WITH NON-CUSTOMER-PAY REPAIRS, THAT
25 HAVE BEEN PAID BY A RETAIL CUSTOMER AND CLOSED BY THE TIME OF
26 SUBMISSION; OR

27 (II) ALL SERVICE REPAIR ORDERS FOR NONWARRANTY REPAIRS

1 THAT HAVE BEEN PAID BY A RETAIL CUSTOMER AND CLOSED BY THE TIME
2 OF SUBMISSION FOR A PERIOD OF NINETY CONSECUTIVE DAYS; OR

3 (III) A MOTOR VEHICLE DEALER MAY SUBMIT EITHER:

4 (A) A SINGLE SET OF REPAIR ORDERS UNDER SUBSECTION (3)(a)(I)
5 OR (3)(a)(II) OF THIS SECTION TO CALCULATE BOTH THE DEALER'S RETAIL
6 LABOR RATE AND RETAIL PARTS AND COMPONENT MARKUP PERCENTAGE;

7 (B) SEPARATE SETS OF REPAIR ORDERS AT THE SAME TIME UNDER
8 SUBSECTION (3)(a)(I) OR (3)(a)(II) OF THIS SECTION TO CALCULATE THE
9 DEALER'S RETAIL LABOR RATE AND RETAIL PARTS AND COMPONENT
10 MARKUP PERCENTAGE; OR

11 (C) A SET OF REPAIR ORDERS IN ACCORDANCE WITH SUBSECTION
12 (3)(a)(I) OR (3)(a)(II) OF THIS SECTION TO CALCULATE ONLY THE DEALER'S
13 RETAIL LABOR RATE OR TO CALCULATE ONLY THE DEALER'S RETAIL PARTS
14 AND COMPONENT MARKUP PERCENTAGE.

15 (b) THE REPAIR ORDERS UNDER SUBSECTION (3)(a) OF THIS
16 SECTION MUST OCCUR NOT MORE THAN ONE HUNDRED EIGHTY DAYS
17 BEFORE THE SUBMISSION IS RECEIVED BY THE MANUFACTURER.

18 (c) THE MOTOR VEHICLE DEALER MUST DETERMINE ITS RETAIL
19 LABOR RATE BY DIVIDING THE MOTOR VEHICLE DEALER'S TOTAL LABOR
20 SALES FROM THE NONWARRANTY REPAIRS SUBMITTED UNDER SUBSECTION
21 (3)(a) OF THIS SECTION BY THE TOTAL NUMBER OF BILLED LABOR HOURS
22 THAT GENERATED THOSE TOTAL LABOR SALES, EXCLUDING THE WORK
23 DESCRIBED IN SUBSECTION (3)(e) OF THIS SECTION, FROM THE
24 COMPUTATION. IF A REPAIR ORDER CONTAINS BOTH WARRANTY,
25 EXTENDED WARRANTY, CERTIFIED PREOWNED WARRANTY, MAINTENANCE,
26 RECALL, CAMPAIGN SERVICE, OR AUTHORIZED GOODWILL WORK AND A
27 RETAIL CUSTOMER REPAIR, ONLY THE RETAIL CUSTOMER REPAIR PORTION

1 OF THE REPAIR ORDER IS INCLUDED IN THE COMPUTATION.

2 (d) THE MOTOR VEHICLE DEALER SHALL DETERMINE ITS RETAIL
3 NONWARRANTY PARTS MARKUP PERCENTAGE BY DIVIDING THE MOTOR
4 VEHICLE DEALER'S TOTAL PARTS AND COMPONENT SALES FROM THE
5 REPAIRS SUBMITTED UNDER SUBSECTION (3)(a) OF THIS SECTION BY THE
6 AMOUNT OF THE MOTOR VEHICLE DEALER'S TOTAL COST FOR THOSE PARTS,
7 SUBTRACTING ONE FROM THAT AMOUNT, AND THEN MULTIPLYING THE
8 AMOUNT BY ONE HUNDRED. THE PARTS AND COMPONENT SALES FROM THE
9 WORK DESCRIBED IN SUBSECTION (3)(e) OF THIS SECTION ARE EXCLUDED
10 FROM THE COMPUTATION. IF A REPAIR ORDER CONTAINS BOTH WARRANTY,
11 EXTENDED WARRANTY, CERTIFIED PREOWNED WARRANTY, MAINTENANCE,
12 RECALL, CAMPAIGN SERVICE, OR AUTHORIZED GOODWILL WORK AND A
13 RETAIL CUSTOMER REPAIR, ONLY THE RETAIL CUSTOMER REPAIR PORTION
14 OF THE REPAIR ORDER IS INCLUDED IN THE COMPUTATION.

15 (e) IN CALCULATING THE RETAIL LABOR RATE IN SUBSECTION
16 (3)(c) OF THIS SECTION AND THE RETAIL PARTS MARKUP PERCENTAGE IN
17 SUBSECTION (3)(d) OF THIS SECTION, THE MOTOR VEHICLE DEALER SHALL
18 OMIT THE FOLLOWING REPAIRS, PARTS, AND COMPONENT SALES FROM THE
19 CALCULATION:

20 (I) MANUFACTURER OR DEALER SPECIAL EVENTS, SPECIALS, AND
21 PROMOTIONAL DISCOUNTS FOR RETAIL CUSTOMER REPAIRS;

22 (II) PARTS AND COMPONENTS SOLD, OR LABOR PERFORMED, AT
23 WHOLESALE;

24 (III) PARTS AND COMPONENTS USED OR LABOR PERFORMED FOR
25 ROUTINE MAINTENANCE, INCLUDING THE REPLACEMENT FLUIDS, FILTERS,
26 AND BELTS THAT ARE NOT PROVIDED IN THE COURSE OF OTHER REPAIRS;

27 (IV) PARTS AND COMPONENTS THAT DO NOT HAVE INDIVIDUAL

1 PART NUMBERS, SUCH AS NUTS, BOLTS, AND FASTENERS;
2 (V) PARTS AND COMPONENTS USED, OR LABOR PERFORMED, ON
3 VEHICLES OWNED BY THE MOTOR VEHICLE DEALER OR AN EMPLOYEE OF
4 THE DEALER;
5 (VI) MOTOR VEHICLE RECONDITIONING;
6 (VII) ACCESSORIES;
7 (VIII) REPAIRS OF DAMAGE CAUSED BY A COLLISION, A ROAD
8 HAZARD, THE FORCE OF THE ELEMENTS, VANDALISM, THEFT, OR OPERATOR
9 OR THIRD-PARTY NEGLIGENCE;
10 (IX) MOTOR VEHICLE EMISSION OR SAFETY INSPECTIONS REQUIRED
11 BY LAW;
12 (X) PARTS AND COMPONENTS USED, OR LABOR PERFORMED, FOR
13 WHICH VOLUME DISCOUNTS HAVE BEEN NEGOTIATED WITH GOVERNMENT
14 AGENCIES, INSURANCE CARRIERS, FLEET OPERATORS, OR OTHER
15 THIRD-PARTY PAYERS;
16 (XI) REPAIRS PERFORMED ON MOTOR VEHICLES OF A LINE-MAKE
17 OTHER THAN THAT FOR WHICH THE MOTOR VEHICLE DEALER IS
18 FRANCHISED BY THE MANUFACTURER, OR WITH AFTERMARKET EQUIPMENT
19 MANUFACTURER PARTS; AND
20 (XII) REPLACEMENT OF OR WORK ON TIRES, WHEELS, OR
21 ELEMENTS RELATED TO EITHER TIRES OR WHEELS, INCLUDING FRONT-END
22 ALIGNMENTS AND WHEEL AND TIRE ROTATIONS.
23 (f) NOTWITHSTANDING ANY OTHER REQUIREMENT, POLICY,
24 PROCEDURE, OR GUIDELINE ISSUED BY A MANUFACTURER, A MOTOR
25 VEHICLE DEALER MAY PROVIDE NOTICE OF THE DEALER'S DETERMINED
26 RETAIL LABOR RATE, RETAIL PARTS MARKUP PERCENTAGE, OR BOTH,
27 CALCULATED IN ACCORDANCE WITH THIS SECTION TO THE

1 MANUFACTURER. A MOTOR VEHICLE DEALER MAY REQUEST IN WRITING AN
2 INCREASE IN COMPENSATION FOR LABOR PERFORMED UNDER THIS SECTION
3 NOT MORE THAN TWICE PER CALENDAR YEAR. A MOTOR VEHICLE DEALER
4 MAY MAKE WRITTEN REQUEST FOR AN INCREASE IN COMPENSATION FOR
5 PARTS USED UNDER THIS SECTION NOT MORE THAN TWICE PER CALENDAR
6 YEAR. A MANUFACTURER SHALL NOT REVIEW OR FAIL TO PAY A MOTOR
7 VEHICLE DEALER FOR PARTS OR LABOR DETERMINED UNDER THIS SECTION
8 UNLESS THE MOTOR VEHICLE DEALER HAS REQUESTED AN INCREASE OR
9 UNLESS THE ACTION IS MADE IN ACCORDANCE WITH THE MANUFACTURER'S
10 WRITTEN, PREDETERMINED SCHEDULE FOR INCREASING PARTS OR LABOR
11 COMPENSATION AND DOES NOT CONFLICT WITH THIS SECTION.

12 (4) (a) A MANUFACTURER MAY CONTEST THE RETAIL LABOR RATE
13 OR RETAIL PARTS MARKUP PERCENTAGE THAT WAS CALCULATED BY THE
14 MOTOR VEHICLE DEALER IN ITS SUBMISSION UNDER SUBSECTION (3) OF
15 THIS SECTION BY SENDING A NOTICE TO THE MOTOR VEHICLE DEALER
16 WITHIN THIRTY DAYS AFTER RECEIVING THE SUBMISSION FROM THE MOTOR
17 VEHICLE DEALER. IF THE MANUFACTURER SEEKS TO CONTEST THE RETAIL
18 LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE, THE
19 MANUFACTURER MUST NOTIFY THE MOTOR VEHICLE DEALER THAT THE
20 MANUFACTURER BELIEVES THE CALCULATION OF THE RATE OR MARKUP
21 PERCENTAGE CONTAINED IN THE MOTOR VEHICLE DEALER'S SUBMISSION
22 IS MATERIALLY INACCURATE. THE MANUFACTURER MUST PROVIDE A FULL
23 AND DETAILED EXPLANATION OF THE REASONS FOR THE INACCURACY,
24 PROVIDE EVIDENCE SUBSTANTIATING THE MANUFACTURER'S POSITION,
25 AND PROPOSE AN ADJUSTMENT OF THE CONTESTED LABOR RATE OR PARTS
26 MARKUP PERCENTAGE. THE MANUFACTURER SHALL NOT MODIFY ITS
27 NOTICE TO THE MOTOR VEHICLE DEALER OR ITS GROUNDS FOR CONTESTING

1 THE LABOR RATE OR PARTS MARKUP PERCENTAGE AFTER SUBMITTING A
2 NOTICE TO THE MOTOR VEHICLE DEALER UNDER THIS SUBSECTION (4)(a).

3 (b) IF THE MANUFACTURER DOES NOT CONTEST THE MOTOR
4 VEHICLE DEALER'S LABOR RATE OR PARTS MARKUP PERCENTAGE, THE
5 UNCONTESTED LABOR RATE OR PARTS MARKUP PERCENTAGE TAKES
6 EFFECT THIRTY DAYS AFTER THE MANUFACTURER HAS RECEIVED THE
7 SUBMISSION FROM THE MOTOR VEHICLE DEALER. THE MANUFACTURER
8 SHALL THEN USE THE LABOR RATE AND PARTS MARKUP PERCENTAGE TO
9 DETERMINE COMPENSATION FOR ANY WORK AND SERVICE PERFORMED BY
10 THE MOTOR VEHICLE DEALER UNDER SUBSECTION (1) OF THIS SECTION
11 UNTIL THE LABOR RATE OR PARTS MARKUP PERCENTAGE IS MODIFIED.

12 (c) IF THE MANUFACTURER CONTESTS A LABOR RATE OR PARTS
13 MARKUP PERCENTAGE ESTABLISHED BY THE MOTOR VEHICLE DEALER
14 UNDER SUBSECTION (3) OF THIS SECTION WITHIN THIRTY DAYS, AND THE
15 MANUFACTURER AND MOTOR VEHICLE DEALER ARE UNABLE TO RESOLVE
16 THE DISAGREEMENT, THE MOTOR VEHICLE DEALER MAY SEEK A
17 DETERMINATION BY FILING A COMPLAINT WITH A COURT OF COMPETENT
18 JURISDICTION. IN THE CIVIL ACTION, THE MANUFACTURER HAS THE
19 BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT THE
20 SUBMITTED LABOR RATE OR PARTS MARKUP PERCENTAGE WAS
21 MATERIALLY INACCURATE. THE COURT SHALL AWARD DAMAGES AND
22 ATTORNEY FEES AND COSTS TO A PREVAILING MOTOR VEHICLE DEALER.
23 THE COURT MAY AWARD UP TO TWO TIMES ACTUAL DAMAGES IF THE
24 MANUFACTURER'S DENIAL WAS SHOWN TO BE IN BAD FAITH OR TO HINDER
25 OR DELAY THE NEW LABOR RATE OR PARTS MARKUP PERCENTAGE. THE
26 LABOR RATE OR PARTS AND COMPONENTS MARKUP PERCENTAGE
27 FACTUALLY DETERMINED BY A COURT UNDER THIS SECTION APPLY

1 RETROACTIVELY TO ALL REIMBURSEMENTS DUE FOR THE MOTOR VEHICLE
2 DEALER'S LABOR OR PARTS BEGINNING THIRTY DAYS AFTER THE MOTOR
3 VEHICLE DEALER'S SUBMISSION UNDER SUBSECTION (3) OF THIS SECTION
4 WAS RECEIVED BY THE MANUFACTURER.

5 (5) WHEN CALCULATING THE COMPENSATION THAT MUST BE
6 PROVIDED TO A MOTOR VEHICLE DEALER FOR PARTS AND COMPONENTS
7 USED AND LABOR PERFORMED TO FULFILL THE OBLIGATIONS SPECIFIED IN
8 SUBSECTION (1) OF THIS SECTION, ALL OF THE FOLLOWING APPLY:

9 (a) THE MANUFACTURER SHALL USE THE RETAIL LABOR RATE AND
10 RETAIL PARTS AND COMPONENTS MARKUP PERCENTAGE ESTABLISHED IN
11 ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION IN CALCULATING
12 COMPENSATION DUE TO THE MOTOR VEHICLE DEALER.

13 (b) IF THE MANUFACTURER FURNISHES AT NO COST A PART OR
14 COMPONENT TO A MOTOR VEHICLE DEALER TO USE TO PERFORM REPAIRS
15 UNDER A RECALL, CAMPAIGN SERVICE ACTION, OR WARRANTY REPAIR, THE
16 MANUFACTURER SHALL COMPENSATE THE MOTOR VEHICLE DEALER FOR
17 THE PART OR COMPONENT IN THE SAME MANNER AS WARRANTY PARTS
18 COMPENSATION UNDER THIS SECTION, LESS THE DEALER COST FOR THE
19 PART OR COMPONENT AS LISTED IN THE MANUFACTURER'S PRICE
20 SCHEDULE. A MANUFACTURER SHALL NOT REDUCE THE SUGGESTED RETAIL
21 OR LIST PRICE FOR ANY PART OR COMPONENT PRIMARILY FOR PURPOSES OF
22 PROVIDING LOWER COMPENSATION TO THE MOTOR VEHICLE DEALER THAN
23 AS CALCULATED IN SUBSECTION (3)(d) OF THIS SECTION.

24 (c) A MANUFACTURER SHALL NOT, DIRECTLY OR INDIRECTLY, IN
25 WHOLE OR IN PART, ASSESS PENALTIES, SURCHARGES, OR SIMILAR COSTS
26 TO A MOTOR VEHICLE DEALER, SHIFT OR ATTEMPT TO SHIFT ANY COSTS TO
27 A MOTOR VEHICLE DEALER, OR LIMIT ALLOCATION OF MOTOR VEHICLES OR

1 PARTS TO A MOTOR VEHICLE DEALER. A MANUFACTURER SHALL NOT
2 RECOVER OR ATTEMPT TO RECOVER, DIRECTLY OR INDIRECTLY, IN WHOLE
3 OR IN PART, ANY OF ITS COSTS FOR COMPENSATING A MOTOR VEHICLE
4 DEALER UNDER THIS SECTION. THIS SECTION DOES NOT PROHIBIT A
5 MANUFACTURER FROM INCREASING THE PRICE OF A MOTOR VEHICLE OR
6 MOTOR VEHICLE PART IN THE NORMAL COURSE OF BUSINESS.

7 (6) A MANUFACTURER SHALL NOT REQUIRE A MOTOR VEHICLE
8 DEALER TO ESTABLISH A RETAIL LABOR RATE OR RETAIL PARTS MARKUP
9 PERCENTAGE USING ANY METHOD NOT AUTHORIZED IN THIS SECTION, AND
10 SHALL COMPENSATE THE MOTOR VEHICLE DEALER FOR PERFORMING
11 REPAIRS OR OTHER WORK IN ACCORDANCE WITH SUBSECTION (1) OF THIS
12 SECTION ONLY AS CALCULATED AND DETERMINED IN THIS SECTION.

13 (7) A MANUFACTURER SHALL NOT REQUIRE A MOTOR VEHICLE
14 DEALER TO ESTABLISH A RETAIL LABOR RATE OR RETAIL PARTS MARKUP
15 PERCENTAGE USING ANY METHOD NOT AUTHORIZED IN THIS SECTION,
16 INCLUDING ANY METHOD THAT IS UNDULY BURDENSOME OR
17 TIME-CONSUMING, OR REQUIRE THE USE OF INFORMATION THAT IS UNDULY
18 BURDENSOME OR TIME-CONSUMING TO OBTAIN, INCLUDING PART-BY-PART
19 OR TRANSACTION-BY-TRANSACTION CALCULATIONS OR UTILIZATION OF
20 THE MOTOR VEHICLE DEALER'S, OR ANY OTHER MOTOR VEHICLE DEALER'S,
21 FINANCIAL STATEMENT. A MANUFACTURER SHALL NOT UNILATERALLY
22 CALCULATE A RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE
23 FOR A MOTOR VEHICLE DEALER, INCLUDING CALCULATING A RETAIL LABOR
24 RATE USING A SET OF REPAIR ORDERS SUBMITTED BY THE MOTOR VEHICLE
25 DEALER ONLY TO ESTABLISH A RETAIL PARTS MARKUP PERCENTAGE OR
26 CALCULATING A RETAIL PARTS MARKUP PERCENTAGE USING A SET OF
27 REPAIR ORDERS SUBMITTED BY THE MOTOR VEHICLE DEALER ONLY TO

1 ESTABLISH A RETAIL LABOR RATE.

2 (8) A MANUFACTURER SHALL NOT:

3 (a) ESTABLISH OR IMPLEMENT A SPECIAL PART OR COMPONENT

4 NUMBER FOR PARTS USED IN FULFILLING THE OBLIGATIONS SPECIFIED IN

5 SUBSECTION (1) OF THIS SECTION IF THE CHANGE RESULTS IN LOWER

6 COMPENSATION TO THE MOTOR VEHICLE DEALER THAN AS CALCULATED IN

7 SUBSECTION (3)(d) OF THIS SECTION;

8 (b) REQUIRE, INFLUENCE, OR ATTEMPT TO INFLUENCE A MOTOR

9 VEHICLE DEALER TO IMPLEMENT OR CHANGE THE PRICES FOR WHICH IT

10 SELLS PARTS OR LABOR IN NONWARRANTY REPAIRS;

11 (c) TAKE OR THREATEN TO TAKE ADVERSE ACTION AGAINST A

12 MOTOR VEHICLE DEALER WHO SEEKS TO OBTAIN COMPENSATION IN

13 ACCORDANCE WITH THIS SECTION, OR DISSUADE OR DISCOURAGE A MOTOR

14 VEHICLE DEALER FROM DOING SO BY ANY MEANS, INCLUDING:

15 (I) CREATING OR IMPLEMENTING AN OBSTACLE OR PROCESS THAT

16 IS INCONSISTENT WITH THE MANUFACTURER'S OBLIGATIONS TO THE MOTOR

17 VEHICLE DEALER UNDER THIS SECTION;

18 (II) FAILING TO ACT FAIRLY AND IN GOOD FAITH;

19 (III) HINDERING, DELAYING, OR REJECTING THE PROPER AND

20 TIMELY PAYMENT OF COMPENSATION DUE UNDER THIS SECTION TO A

21 MOTOR VEHICLE DEALER;

22 (IV) ESTABLISHING, IMPLEMENTING, ENFORCING, OR APPLYING

23 ANY POLICY, STANDARD, RULE, PROGRAM, OR INCENTIVE REGARDING

24 COMPENSATION DUE UNDER THIS SECTION OTHER THAN IN A UNIFORM AND

25 NONDISPARATE MANNER AMONG THE MANUFACTURER'S MOTOR VEHICLE

26 DEALERS IN THIS STATE;

27 (V) CONDUCTING OR THREATENING TO CONDUCT ANY WARRANTY

1 OR NONWARRANTY REPAIR OR OTHER SERVICE-RELATED AUDIT; OR

2 (VI) CHARGING BACK A MOTOR VEHICLE DEALER WARRANTY OR
3 OTHER CLAIM BECAUSE OF A MOTOR VEHICLE DEALER'S FAILURE TO
4 COMPLY WITH ALL OF THE MANUFACTURER'S REQUIREMENTS FOR
5 PROCESSING OR DESCRIBING A CLAIM;

6 (d) IMPLEMENT A POLICY AFFECTING A MOTOR VEHICLE DEALER
7 THAT VIOLATES THIS SECTION; OR

8 (e) ELIMINATE FLAT-RATE TIMES FROM, OR ESTABLISH AN UNFAIR
9 OR UNREASONABLE FLAT-RATE TIME IN, ITS WARRANTY REPAIR MANUAL,
10 WARRANTY TIME GUIDE, OR ANY OTHER SIMILAR DOCUMENT.

11 (9) A MANUFACTURER SHALL ESTABLISH FAIR AND REASONABLE
12 FLAT-RATE LABOR TIMES IN ITS WARRANTY REPAIR MANUALS AND
13 WARRANTY TIME GUIDES FOR CURRENT AND NEWLY INTRODUCED MODEL
14 MOTOR VEHICLES.

15 (10) FOR THE PURPOSES OF THIS SECTION:

16 (a) "MANUFACTURER" MEANS A MANUFACTURER, DISTRIBUTOR,
17 OR MANUFACTURER REPRESENTATIVE.

18 (b) "REPAIR", "WORK", AND "LABOR" INCLUDE REPAIRS, WORK,
19 AND LABOR PERFORMED WITH RESPECT TO THE SAME MODEL VEHICLE OR
20 MODEL YEAR AND PRIOR REPAIRS THAT RESEMBLE BUT ARE NOT IDENTICAL
21 TO THE REPAIR, WORK, OR LABOR FOR WHICH THE MOTOR VEHICLE DEALER
22 IS MAKING A CLAIM FOR COMPENSATION.

23 **SECTION 5. Act subject to petition - effective date -**
24 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
25 the expiration of the ninety-day period after final adjournment of the
26 general assembly (August 9, 2017, if adjournment sine die is on May 10,
27 2017); except that, if a referendum petition is filed pursuant to section 1

1 (3) of article V of the state constitution against this act or an item, section,
2 or part of this act within such period, then the act, item, section, or part
3 will not take effect unless approved by the people at the general election
4 to be held in November 2018 and, in such case, will take effect on the
5 date of the official declaration of the vote thereon by the governor.

6 (2) This act applies to acts committed on or after the applicable
7 effective date of this act.