

Alabama Motor Vehicle Franchise Act

Section 8-20-1

Short title.

This chapter may be cited as "The Motor Vehicle Franchise Act."

(Acts 1981, No. 81-390, p. 596, §1.)

Section 8-20-2

Declaration of purpose.

(a) The Legislature finds and declares that the distribution and sale of motor vehicles within this state vitally affect the general economy of the state and the public interest and the public welfare, and that in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate motor vehicle manufacturers, distributors, dealers, and their representatives and to regulate the dealings between manufacturers and distributors or wholesalers and their dealers in order to prevent fraud and other abuses upon the citizens of this state and to protect and preserve the investments and properties of the citizens of this state.

(b) This chapter shall not apply to any recreational vehicle manufacturer and dealer agreement to which Chapter 21C of this title applies.

(Acts 1981, No. 81-390, p. 596, §2; Act 2011-636, p. 1529, §12.)

Section 8-20-3

Definitions.

For the purpose of this chapter, the following terms shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) COERCE. The failure to act in good faith in performing or complying with any term or provision of the franchise or dealer agreement, except that recommendation, persuasion, urging, or argument shall not be deemed to constitute a lack of good faith.

(2) DEALER AGREEMENT or FRANCHISE. The written contract between any new motor vehicle manufacturer and any new motor vehicle dealer which purports to fix

the legal rights and liabilities of the parties to such agreement or contract, and pursuant to which the dealer purchases and resells the franchise product or leases or rents the dealership premises.

(3) DISTRIBUTOR or WHOLESALER. A person, whether a resident or a nonresident, other than a manufacturer, who sells or distributes motor vehicles to motor vehicle dealers or who maintains distributor representatives within the state.

(4) DISTRIBUTOR BRANCH. A branch office maintained by a distributor or wholesaler.

(5) DISTRIBUTOR REPRESENTATIVE. A representative employed by a distributor or wholesaler for the purpose of making or promoting the sale of the distributor's or wholesaler's new motor vehicles to motor vehicle dealers or for supervising or contracting the motor vehicle dealers or prospective motor vehicle dealers.

(6) FACTORY BRANCH. A branch office maintained by a manufacturer in order to direct and supervise the representatives of the manufacturer.

(7) FACTORY REPRESENTATIVE. A person employed by a manufacturer for the purpose of making or promoting the sale of the manufacturer's new motor vehicles to motor vehicle dealers or distributors or for supervising or contacting the motor vehicle dealers or prospective motor vehicle dealers.

(8) GOOD FAITH. Honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade as is defined and interpreted in paragraph (1)(b) of Section 7-2-103.

(9) LINE MAKE. A collection of models, series, or groups of motor vehicles manufactured by or for a particular manufacturer, distributor, or importer offered for sale, lease, or distribution pursuant to a common brand name or mark; provided, however:

1. Multiple brand names or marks may constitute a single line make, but only when included in a common dealer agreement and the manufacturer, distributor, or importer offers such vehicles bearing the multiple names or marks together only, and not separately, to its authorized dealers; and

2. Motor vehicles bearing a common brand name or mark may constitute separate line makes when pertaining to motor vehicles subject to separate dealer agreements or when such vehicles are intended for different types of use.

(10) MANUFACTURER. Any person engaged in the manufacturing or assembling of new motor vehicles as a regular business or any person who is controlled by the manufacturer.

(11) MOTOR VEHICLE. Every vehicle intended primarily for use and operation on the public highways which is self-propelled.

(12) MOTOR VEHICLE DEALER. A person operating under a dealer agreement from a manufacturer or distributor and who is engaged regularly in the business of buying, selling, or exchanging motor vehicles in this state and who has in this state an established place of business.

(13) NET COST. The price the dealer pays for new motor vehicles, supplies, parts, equipment, signs, furnishings, and special tools, including the freight costs to the dealer's location, minus any applicable discounts obtained by the dealer.

(14) NEW MOTOR VEHICLE. A vehicle which has been sold to a new motor vehicle dealer and which has not been used for other than demonstration purposes and on which the original title has not been issued from the new motor vehicle dealer. A new motor vehicle shall also mean an engine, transmission, or rear axle manufactured for installation in a vehicle having as its primary purpose the transport of a person or persons or property on a public highway and having a gross vehicle weight rating of more than 16,000 pounds, whether or not attached to a vehicle chassis.

(15) PERSON. An individual, firm, partnership, association, joint stock company, corporation, or other legal entity or a combination of legal entities.

(16) RELEVANT MARKET AREA. The area within a radius of 20 miles around an existing dealer or the area of responsibility defined in the franchise, whichever is greater; except that, where a manufacturer is seeking to establish an additional new motor vehicle dealer and there are one or more existing new motor vehicle dealers of the same line make within a 10-mile radius of the proposed dealer site, the relevant market area shall in all instances be the area within a radius of 10 miles around an existing dealer.

(Acts 1981, No. 81-390, p. 596, §3; Acts 1981, No. 81-776, p. 1338, §16; Act 2010-198, p. 300, §1.)

Section 8-20-4

Unfair and deceptive trade practices.

Notwithstanding the terms, provisions, or conditions of any dealer agreement or franchise or the terms or provisions of any waiver, prior to the termination,

cancellation, or nonrenewal of any dealer agreement or franchise, the following acts or conduct shall constitute unfair and deceptive trade practices:

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

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

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

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

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

e. To refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products; provided that

the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and that the new motor vehicle dealer remains in substantial compliance with the terms and conditions of the franchise.

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

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

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

(ii) To require the use of a vendor of goods or services selected by the manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, or distributor representative for construction or substantial alterations if the dealer, with approval of the manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, or distributor representative selects an alternative vendor of goods and services that are of the same design, quality, and kind. This section shall not be construed to eliminate, impair, damage, or otherwise limit a manufacturer's intellectual property, trademark, or trade dress rights in any way. This paragraph shall not apply to goods or services paid for entirely by a manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, or distributor representative nor to their initial design or architectural review service.

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

3. This paragraph is not intended to prohibit a manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, or distributor representative from continuing a facility improvement program that is in effect as of March 12, 2018, with more than one new vehicle dealer in the state nor to any

modification or renewal of the program or providing program payments to assist a new vehicle dealer in making agreed upon facility improvements, construction, or substantial alterations, including signage or an image element, or from enforcing a voluntary agreement between a new vehicle dealer and manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, or distributor representative where separate and valuable consideration has been offered and accepted.

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

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

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

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

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

(3) For any manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, or distributor representative to do any of the following:

- a. To adopt, change, establish, or implement a plan or system for the allocation and distribution of new or used motor vehicles to motor vehicle dealers which is arbitrary, capricious, or unreasonably discriminatory or to modify an existing plan so as to cause the same to be arbitrary, capricious, or unreasonably discriminatory.
- b. To fail or refuse to advise or disclose to any motor vehicle dealer having a franchise or dealer agreement, upon written request therefor, the basis upon which new motor vehicles of the same line make are allocated or distributed to motor vehicle dealers in the state and the basis upon which the current allocation or distribution is being made or will be made to such motor vehicle dealer.
- c. To refuse to deliver to a motor vehicle dealer in reasonable quantities and within a reasonable time after receipt of the motor vehicle dealer's order any such motor vehicles as are covered by a franchise or dealer agreement and specifically publicly advertised in the state by such manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, or distributor representative to be available for immediate delivery; provided, however, that the failure to deliver any motor vehicle shall not be considered a violation of this chapter if such failure is due to an act of God, a work stoppage or delay due to a strike or labor difficulty, a shortage of materials, a lack of available manufacturing capacity, a freight embargo, or other cause over which the manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, or distributor representative shall have no control.
- d. To cancel or terminate the franchise or dealer agreement of a motor vehicle dealer other than as hereinafter provided.
- e. To fail or refuse to extend the franchise or dealer agreement of a motor vehicle dealer upon its expiration other than as hereinafter provided.
- f. To offer a renewal, replacement, or succeeding franchise or dealer agreement containing terms and provisions the effect of which is to substantially change or modify the sales and service obligations or capital requirements of the motor vehicle dealer other than as hereinafter provided.
- g. To offer to sell or lease, or to sell or lease, any new motor vehicle to any motor vehicle dealer at a lower actual price therefor than the actual price offered to any other motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device including, but not limited to, sales promotion plans or programs which result in such lesser actual price and which are not offered to dealers of vehicles of the same line make; provided, however, that the provisions of this paragraph shall not apply to

sale to a motor vehicle dealer for resale to any unit of the United States government, the state, or any of its political subdivisions.

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

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

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

k. To refuse to give effect to or prevent or attempt to prevent by contract or otherwise any motor vehicle dealer or any officer, partner, or stockholder of any motor vehicle dealer from selling or transferring any part of the interest of any of them to any other person unless such sale or transfer is to a transferee who would not otherwise qualify for a new motor vehicle dealer's license issued by the State of Alabama or a political subdivision thereof or unless such sale or transfer is to a person who is not of good moral character or who does not meet the manufacturer's or wholesaler's or

distributor's existing and reasonable capital standards and, with consideration given to the volume of sales and service of the dealership, uniformly applied minimum business experience standards in the market area; provided, however, that where such a rejection of a transfer is made, the manufacturer or distributor or wholesaler shall give written notice of his or her reasons to the motor vehicle dealer within 60 days of notice to the manufacturer or wholesaler or distributor by the dealer of the proposed transfer, accompanied by information reflecting the identity of the new owner or owners, their business experience and affiliations, and the pro forma balance sheet and source of investment funds of the proposed new dealership. A manufacturer or distributor may exercise a contractual right of first refusal with respect to the sale or transfer of the interest of the dealer only if each of the following requirements are met:

1. The sale or transfer is not to a family member of an owner of the dealership, nor a managerial employee of the dealership owning 15 percent or more of the dealership, nor a corporation, partnership, or other legal entity owned by the existing owners of the dealership. For purposes of this subparagraph, a "family member" means the spouse of an owner of the dealership, the child, grandchild, brother, sister, or parent of an owner, or a spouse of one of those family members.
2. The manufacturer or distributor notifies the dealer in writing within 60 days after receipt of the completed application forms and related information generally used by a manufacturer or distributor to conduct its review and a copy of all agreements regarding the proposed transfer of its intent to exercise its right of first refusal or its rejection of the proposed transfer. If the manufacturer or distributor fails to notify the dealer of its exercise of the right of first refusal or its rejection of the proposed transferee within the 60-day period, the effect of such failure shall constitute approval of the proposed sale or transfer. If the manufacturer or distributor exercises a right of first refusal under this section, the transfer shall be deemed to be rejected.
3. The exercise of the right of first refusal provides to the dealer the same compensation as, or greater compensation than, the dealer had negotiated to receive from the proposed buyer or transferee.
4. The manufacturer or distributor agrees to pay the reasonable expenses, including reasonable attorneys' and accountants' fees that do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients incurred by the proposed buyer or transferee before the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the sale or transfer. The proposed buyer or transferee shall provide to the manufacturer or distributor a written itemization of the expenses incurred within 30 days of the receipt by the proposed buyer or transferee of a written request from the manufacturer or

distributor for an accounting of the expenses. The manufacturer or distributor shall make payment of these expenses within 30 days of exercising the right of first refusal.

1. To unreasonably and without notice to existing motor vehicle dealers, as hereinafter provided, enter into a franchise with an additional motor vehicle dealer who intends to conduct its dealership operations from a place of business situated within the relevant market area of an existing motor vehicle dealer or motor vehicle dealers representing the same line make. The appointment of a successor motor vehicle dealer at the same location as its predecessor or within a two-mile radius therefrom within two years from the date on which its predecessor ceased operations or was terminated, whichever occurred later, shall not be construed as the entering into of an additional franchise. Any manufacturer, distributor, or wholesaler, factory branch, factory representative, distributor branch, or distributor representative which intends to enter into an additional franchise shall, at least 60 days prior to granting such franchise, give written notice of its intention to do so to each motor vehicle dealer of the same line make within the relevant market area. Such notice shall state the date on or after which such proposed franchise shall be granted or entered into. Prior to the date set forth in the notice on or after which such franchise will be entered into, any such motor vehicle dealer may petition a court of competent jurisdiction to determine whether such appointment or proposed appointment is unreasonable in which action the manufacturer, wholesaler, or distributor shall have the burden of proof that such action is not unreasonable. No bond shall be required as a precondition to entry of an injunction enjoining appointment of an additional franchise. Such petition shall be entitled to a speedy trial. In determining whether such proposed appointment is unreasonable, the court shall consider all pertinent circumstances. These may include but are not limited to:

1. Whether the establishment of such additional franchise is warranted by economic and marketing conditions including anticipated future changes.
2. The past, present, and anticipated retail sales and service business transacted by the objecting motor vehicle dealer or dealers and other motor vehicle dealers of the same line make with a place of business in the relevant market area.
3. The investment made and obligations incurred by the objecting motor vehicle dealer or dealers and other motor vehicle dealers of the same line make with a place of business in the relevant market area.
4. Whether it is beneficial or injurious to the public welfare for an additional franchise to be established.

m. To prospectively assent to a release, assignment, novation, agreement, waiver, or estoppel that does any of the following:

1. Relieves any person from any liability or obligation under this chapter.
2. Requires any controversy between a new motor vehicle dealer and a manufacturer to be referred to any person other than the duly constituted courts of this state or the United States, if the referral would be binding on the new motor vehicle dealer.
3. Limits the entitlement to recover damages under this chapter or other Alabama law.
4. Specifies the jurisdiction or venues in which disputes arising with respect to the franchise shall or shall not be submitted for resolution or otherwise prohibits a dealer from bringing an action in the courts of Alabama.
5. Waives the right to trial by jury.

n. To prevent or refuse to give effect to the succession to the ownership or management control of a dealership upon the death or incapacity of a motor vehicle dealer to any legatee or devisee under the will of a dealer or to an heir under the laws of descent and distribution of this state unless the successor is a person who is not of good moral character or who does not meet the manufacturer's or distributor's or wholesaler's existing and reasonable capital standards and, with consideration given to the volume of the sales and service of the dealership, uniformly applied minimum business experience standards in the market area; provided, however, that where such a rejection of succession is made, the manufacturer or distributor or wholesaler shall give written notice of his or her reasons to the proposed successor within 60 days of notice to the manufacturer or wholesaler or distributor by the proposed successor of his or her intent to succeed to the ownership or management of the dealership, accompanied by information reflecting the identity of the new owner or owners, their business experience and affiliation, and the pro forma balance sheet and source of investment funds of the proposed new dealership. This section does not preclude the owner of a new motor vehicle dealer from designating any person as his or her successor by written instrument filed with the manufacturer or distributor and, in the event there is a conflict between such written instrument and the provisions of this section, the written instrument shall govern.

o. To fail to indemnify and hold harmless its motor vehicle dealers against any losses, including, but not limited to, court costs and reasonable attorneys' fees, or damages arising out of complaints, claims, or lawsuits, including, but not limited to, strict liability, negligence, misrepresentation, warranty (express or implied), or rescission of the sale where the complaint, claim, or lawsuit relates to any of the following:

1. The manufacture, assembly, or design of new motor vehicles, parts, or accessories.

2. A defect in any forms furnished to the dealer or in the written instructions for the completion of such forms by the manufacturer, an affiliate of the manufacturer, or person controlled by the manufacturer used in connection with the sale, lease, or financing of a vehicle and associated products, unless the dealer improperly completes the forms or makes misrepresentations contrary either to the terms of the forms or the written instructions for their completion.

3. Other functions by the manufacturer, beyond the control of the dealer, including, without limitation, the selection by the manufacturer of parts or components for the vehicle, or any damages to merchandise occurring in transit to the dealer where the carrier is designated by the manufacturer.

p. To increase prices of new motor vehicles which the new motor vehicle dealer had ordered for retail consumers prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a retail consumer shall constitute evidence of each such order; provided that the vehicle is in fact delivered to that customer. In the event of manufacturer price reductions or cash rebates, the amount of any such reduction or rebate received by a dealer shall be passed on to the retail consumer by the dealer if the retail price was negotiated on the basis of the previous higher price to the dealer. Price reductions shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. Price differences applicable to new model or series motor vehicles at the time of the introduction of new models or series shall not be considered a price increase or price decrease. Price changes caused by any of the following shall not be subject to the provisions of this paragraph:

1. The addition to a motor vehicle of required or optional equipment pursuant to state or federal law.

2. Revaluation of the United States dollar, in the case of foreign-made vehicles or components.

3. An increase in transportation charges due to increased rates imposed by common or contract carriers.

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

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

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

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

2. The manufacturer's or distributor's participation is in a bona fide relationship with an independent person who satisfies both of the following:

(i) Is required to make significant investment in the new motor vehicle dealership or warranty repair center subject to loss.

(ii) Operates the dealership or warranty repair center and may reasonably be expected to acquire full ownership of the dealership or warranty repair center within a reasonable time and under reasonable terms and conditions.

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

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

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

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

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

(i) Manufactures or distributes engines for installation in a vehicle having as its primary purpose the transport of a person or persons or property on a public highway and having a gross vehicle weight rating of more than 16,000 pounds, provided that the manufacturer does not otherwise manufacture motor vehicles.

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

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

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

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

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

u. To fail to pay or otherwise compensate its new motor vehicle dealers for sales incentives, service incentives, rebates, or other forms of incentive compensation earned by the dealer as a consequence of incentive programs of the manufacturer. The manufacturer shall have the right to audit any such incentive payments made to the dealer and to charge back the dealer for any fraudulent claims for incentive payments made to the dealer for a period not to exceed 12 months from the date the claim was

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

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

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

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

y. To condition the sale, transfer, relocation, or renewal of a franchise or dealer agreement or to condition sales, service, parts, or finance incentives upon site control or an agreement to renovate or make substantial improvements to a facility; provided, however, that voluntary and non-coerced acceptance of such conditions by the dealer

in writing, including, but not limited to, a written agreement for which the dealer has accepted separate and valuable consideration, shall not constitute a violation.

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

(Acts 1981, No. 81-390, p. 596, §4; Acts 1991, No. 91-212, p. 398, §1; Act 2000-267, p. 415, §1; Act 2010-198, p. 300, §1; Act 2016-357, p. 879, §1; Act 2018-188, §1.)

Section 8-20-4.1

Obligation to act in good faith and deal fairly.

Every dealer agreement entered into under Act 2010-198 shall impose on the parties the obligation to act in good faith and to deal fairly.

(Act 2010-198, p. 300, §2.)

Section 8-20-5

Limitations on cancellations, modifications, terminations, and nonrenewals of franchise relationships.

(a) Notwithstanding the terms, provisions, or conditions of any agreement or franchise or notwithstanding the terms or provisions of any waiver, no manufacturer shall cancel, terminate, modify, fail to renew, or refuse to continue any franchise relationship with a licensed new motor vehicle dealer unless the manufacturer has:

(1) Satisfied the notice requirement of this section.

(2) Acted in good faith as defined in this chapter.

(3) Has good cause for the cancellation, termination, modification, nonrenewal, or noncontinuance.

(b) Notwithstanding the terms, provisions, or conditions of any agreement or franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation, modification, nonrenewal, or noncontinuance when:

(1) There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the

franchise relationship, provided that the manufacturer first acquired actual or constructive knowledge of such failure not more than 180 days prior to the date on which notification is given by the manufacturer pursuant to the requirements of this section.

(2) If the failure by the new motor vehicle dealer to comply with a provision of the franchise relates to the performance of the dealer in sales or service, then good cause shall be defined as the failure of the dealer to substantially comply with the reasonable performance provisions of the franchise if:

a. The new motor vehicle dealer was apprised by the manufacturer in writing of such failure and each of the following occur:

1. The notification stated that notice was provided of failure of performance pursuant to this chapter.

2. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than six months, to exert good faith efforts to carry out such provisions.

3. The new motor vehicle dealer did not demonstrate substantial compliance with the manufacturer's performance standards during such period and that the failure to demonstrate such compliance was not due to factors which were beyond the control of such dealer.

b. Such failure thereafter continued within the period which began not more than 180 days before the date notification of termination, cancellation, modification, or nonrenewal was given pursuant to this section.

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

(d) If a dealer brings an action in a court of competent jurisdiction to challenge the cancellation, termination, or nonrenewal of a franchise or dealer agreement by a manufacturer under this section, such franchise or dealer agreement shall remain in full force and effect and such dealer shall retain all rights and remedies pursuant to the terms and conditions of such franchise or dealer agreement, including, but not limited to, the right to sell or transfer the dealer's ownership interest, until a final determination by a court of competent jurisdiction, including appeal, unless extended by the court for good cause. This subsection shall not apply to a cancellation,

termination, or nonrenewal of a franchise or dealer agreement based upon any of the reasons set forth in subsection (e)(2).

(e) Notwithstanding the terms, provisions, or conditions of any agreement or franchise or the terms or provisions of any waiver, prior to the termination, cancellation, modification, or nonrenewal of any franchise or dealer agreement, the manufacturer shall furnish notification of such termination, cancellation, modification, or nonrenewal to the new motor vehicle dealer as follows:

(1) In the manner described in subsection (f).

(2) Not less than 90 days prior to the effective date of such termination, cancellation, modification, or nonrenewal or not less than 30 days prior to the effective date of such termination, cancellation, or nonrenewal with respect to any of the following:

a. Filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law.

b. Willful or intentional misrepresentation made by the new motor vehicle dealer with the express intent to defraud the manufacturer or distributor.

c. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days.

d. Final conviction (including appeal) of the new motor vehicle dealer, principal owner, or principal executive manager of any felony.

(f) Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:

(1) A statement of intention to terminate the franchise, cancel the franchise, modify the franchise, or not to renew the franchise.

(2) A statement of the reasons for the termination, cancellation, modification, or nonrenewal.

(3) The date on which such termination, cancellation, modification, or nonrenewal takes effect.

(g) Upon the termination, cancellation, or nonrenewal by the manufacturer of any franchise or dealer agreement for good cause, the new motor vehicle dealer shall be paid fair and reasonable compensation by the manufacturer for the:

(1) New motor vehicle inventory of the current and previous model year which has been acquired from the manufacturer. Any new and unused motor vehicle repurchased by the manufacturer shall be repurchased at the net cost to the dealer.

(2) Supplies and parts acquired by the new motor vehicle dealer from the manufacturer, its approved sources, or original manufacturer supplies and parts acquired from other dealers in the ordinary course of business, within seven years prior to the effective date of the termination, cancellation, or nonrenewal. Supplies and parts shall be repurchased by the manufacturer at the net cost to the dealer without any restocking fees or other fees.

(3) Equipment, signs, and furnishings acquired by the new motor vehicle dealer from the manufacturer or its approved sources. The dealer shall be paid either the fair market value of the equipment, signs, and furnishings as of the date of termination or the value of the equipment, signs, and furnishings based on a six-year straight line schedule of depreciation, whichever is greater.

(4) Special tools and automotive service equipment that were required and designated as special tools or equipment by the manufacturer. The dealer shall be paid either the fair market value of the special tools and automotive service equipment as of the date of termination or the value of the special tools and automotive service equipment based on a six-year straight line schedule of depreciation, whichever is greater.

(5) The net cost of any upgrades or alterations made by the dealer to the dealership facilities which were recommended in writing by the manufacturer and made within two years prior to the effective date of termination.

(6) Dealership facilities, if the facilities were required to be purchased or constructed as a precondition to obtaining the franchise or to its renewal by the manufacturer. The manufacturer shall use its best efforts to locate a purchaser who will offer to purchase the facilities at a reasonable price. If the manufacturer does not locate a purchaser within a reasonable time, the manufacturer will pay the dealer an amount equivalent to the reasonable rental value of such facilities for three years during which time the manufacturer shall be entitled to possession of the facilities. If the facilities were leased from a lessor other than the manufacturer and the facilities were required as a precondition to obtaining the franchise or to its renewal by the manufacturer, then the manufacturer shall use its best efforts to locate a lessee who will offer to lease the premises for a reasonable term at a reasonable rent. If the manufacturer does not locate a lessee within a reasonable time, the manufacturer shall pay such rent for three years or the remainder of the term of the lease, whichever is less and the manufacturer shall have the option to succeed to the rights of the dealer under the lease. If the dealership facility is used for more than one line make, the rental payment by the

manufacturer shall be prorated for each line make based on the floor space allocated to each line make.

(h) Upon the termination, cancellation, or nonrenewal by the manufacturer of any franchise without good cause, the new motor vehicle dealer shall be paid fair and reasonable compensation by the manufacturer for the items described in subdivisions (g)(1) through (g)(6) and for the dealership facilities, if the facilities were required to be purchased or constructed as a precondition to obtain the franchise or to its renewal by the manufacturer. If the facilities were leased and the lease was required as a precondition to obtaining the franchise or to its renewal by the manufacturer, then the manufacturer shall be liable for payment of the rent for the remainder of the term of the lease during which time the manufacturer shall be entitled to possession of the facilities. If the dealership facility is used for more than one line make, the rental payment by the manufacturer shall be prorated based on the floor space allocated to each line make. The manufacturer shall also pay the dealer fair and reasonable compensation for the value of the dealership within six months after the date of termination, cancellation, or nonrenewal.

(i) Upon the termination, cancellation, or nonrenewal by the manufacturer of any franchise as a result of willful or intentional misrepresentations made by the new motor vehicle dealer with the express intent to defraud the manufacturer or distributor or upon the termination, cancellation, or nonrenewal by the motor vehicle dealer, the new motor vehicle dealer shall be paid fair and reasonable compensation by the manufacturer for the items described in subdivisions (g)(1) through (g)(6).

(j)(1) Upon the termination, cancellation, or nonrenewal by the manufacturer occurring as a result of the cessation of a line make or as a result of the manufacturer's selling or otherwise transferring some or all of the assets essential to the manufacture or distribution of the line make, the new motor vehicle dealer shall be paid fair and reasonable compensation by the manufacturer for the items described in subdivisions (g)(1) through (g)(6). The manufacturer shall also compensate the dealer in an amount equal to the greater of:

a. The actual pecuniary loss that the dealer suffered as a result of the termination, cancellation, or nonrenewal.

b. The fair market value of the franchise determined as of:

1. The date the manufacturer announces the action that results in termination, cancellation, or nonrenewal.

2. The date the action that resulted in the termination, cancellation, or nonrenewal first became general knowledge.

3. The day 12 months prior to the date on which the notice of termination, cancellation, or nonrenewal is issued, whichever is greater.

(2) If, as a result of the circumstances described above, an entity other than the original manufacturer of a line make becomes the manufacturer of the line make and intends to distribute motor vehicles of that line make in Alabama, the entity shall honor the franchise agreements of the original manufacturer and its dealers or offer those dealers a new franchise agreement for the line make on substantially similar terms and conditions. A dealer which elects to remain a dealer with the new entity or which enters into a new franchise agreement with this entity shall not be entitled to the compensation set forth in subdivision (1).

(3) This subsection shall not apply in the event of a termination or cessation of a line make by a recreational vehicle manufacturer.

(k) The fair and reasonable compensation to the dealer shall be paid by the manufacturer within 90 days after tender by the dealer of the items in subdivisions (g)(1) through (g)(4) at the dealership premises, provided the new motor vehicle dealer has clear title to the inventory and other items and is in a position to convey that title to the manufacturer.

(l) Subsections (g) through (k) shall not apply upon the termination, cancellation, or nonrenewal of a franchise by a motor home or motorcycle dealer.

(Acts 1981, No. 81-390, p. 596, §5; Acts 1991, No. 91-212, p. 398, §1; Act 2010-198, p. 300, §1.)

Section 8-20-6

Predelivery obligations.

Every manufacturer or wholesaler or distributor, factory branch, factory representative, distributor branch or distributor representative shall specify to the motor vehicle dealer the delivery and preparation obligations of its motor vehicle dealers prior to delivery of new motor vehicles to retail buyers. A copy of the delivery and preparation obligations of its motor vehicle dealers and a schedule of the compensation to be paid to its motor vehicle dealers for the work and services they shall be required to perform in connection with such delivery and preparation obligations shall be presented to the dealer and the obligations specified therein shall constitute any such dealer's only predelivery obligations as between such dealer and

such manufacturer or wholesaler or distributor. The compensation as set forth on said schedule shall be reasonable.

(Acts 1981, No. 81-390, p. 596, §6.)

Section 8-20-7

Warranty obligations to dealers.

THIS SECTION WAS AMENDED BY ACT 2022-104 IN THE 2022 REGULAR SESSION, EFFECTIVE JUNE 1, 2022. THIS IS NOT IN THE CURRENT CODE SUPPLEMENT.

(a) For purposes of this section, the following words have the following meanings:

(1) PRE-DELIVERY SERVICE. All work and services, except warranty work, performed on a new motor vehicle by a motor vehicle dealer at the direction of the warrantor prior to the delivery of the vehicle to the first retail consumer.

(2) REPAIR ORDER. An invoice, paid by a retail customer, and closed as of the time of submission, encompassing one or more repairs to a motor vehicle, and reflecting, in the case of a parts markup submission, the cost of each part and the sale price thereof, and in the case of a labor rate submission, the total charges for labor and the total number of hours that produced the charges, which invoice may be submitted in electronic form.

(3) QUALIFIED REPAIR. A repair to a motor vehicle paid by a retail customer, which would have come within the warrantor's new motor vehicle warranty, but for the motor vehicle having exceeded the chronological or mileage limit of such warranty, and which does not constitute any of the work encompassed by subdivision (f)(5).

(4) QUALIFIED REPAIR ORDER. A repair order which encompasses, in whole or in part, a qualified repair or repairs.

(5) WARRANTOR. A manufacturer, distributor, or wholesaler, factory branch, factory representative, distributor branch, or distributor representative.

(6) WARRANTY WORK. All labor, including that of a diagnostic character, performed, and all parts, including original or replacement parts, and components, including engine, transmission, and other parts assemblies, installed by motor vehicle dealers on motor vehicles which are reasonably incurred by motor vehicle dealers, other than the incidental expenses incurred in performing labor and installing parts on

motor vehicles, in fulfilling a warrantor's obligations under a new motor vehicle warranty, a recall, or a certified pre-owned warranty, to consumers, including, but not limited to, the expense of shipping or returning defective parts to the warrantor, when required by the warrantor.

(b) Every warrantor shall specify in writing to each of its motor vehicle dealers the dealer's obligation for pre-delivery service and warranty service on its products, shall compensate the motor vehicle dealer for the service required of the dealer by the warrantor, and shall provide the dealer the schedule of compensation to be paid the dealer for parts, work, and service in connection with the services, and the time allowance for the performance of such work and service.

(c) In no event shall the schedule of compensation fail to include reasonable compensation for diagnostic work, service, labor, and parts. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In no event shall such compensation of a dealer for warranty services including labor and parts, be less than the rates or prices charged by the dealer for like service to retail customers for nonwarranty service, repairs, and parts, provided that such prices and rates are not unreasonable. This subsection does not apply to compensation for parts, systems, fixtures, appliances, furnishings, accessories, and features of a motor home that are designed, used, and maintained primarily for non-vehicular residential purposes, or parts related to motorcycle repairs.

(d) It is a violation of this section for any warrantor to fail to perform any warranty obligations under the motor vehicle manufacturer's warranty, or to fail to include in written notices of factory recalls to dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of such defects, or to fail to compensate any of the motor vehicle dealers for repairs effected by the recall.

(e) All claims made by new motor vehicle dealers pursuant to this section for such labor and parts shall be paid within 30 days following their approval; provided, however, that the warrantor retains the right to audit such claims and to charge back the dealer for any fraudulent claims for a period not to exceed 12 months from the date the claim was paid. All such claims shall be either approved or disapproved within 30 days after their receipt on forms and in the manner specified by the warrantor, and any claim not specifically disapproved in writing within 30 days after the receipt shall be construed to be approved and payment must follow within 30 days. A warrantor shall not disapprove claims for which the dealer has received preauthorization from the warrantor or its representative nor shall the warrantor unreasonably disapprove a claim solely based on the dealer's incidental failure to comply with a specific claim processing requirement that results only in a clerical

error or administrative error; rather a claim denial must be based upon a material defect and deviation from the reasonable written claim submission requirements of the manufacturer. In the event of neglect, oversight, or mistake by the dealer, a dealer may submit an amended claim, or may submit a claim not submitted within the time required by the warrantor, for labor and parts up to 120 days from the date on which the claim was first submitted or could have been submitted.

(f)(1) For the purposes of this section, reasonable compensation shall be determined as provided in this subsection.

(2) The markup customarily charged by the dealer for parts or its labor rate may be established at the election of the dealer by the dealer submitting to the warrantor, either by electronic transmission or tangible delivery, all consecutive repair orders that include 100 sequential repair orders reflecting qualified repairs, or all repair orders closed during any period of 90 consecutive days, whichever produces the fewer number of repair orders, covering repairs made no more than 180 days before the submission and declaring the parts markup or labor rate.

(3) The dealer shall calculate its labor rate by determining the total charges for labor from the qualified repairs submitted and dividing that amount by the total number of hours that produced the charges. The dealer shall calculate its parts markup by determining the total charges for parts from the qualified repairs submitted, dividing that amount by its total cost of the purchase of the parts, subtracting one from that amount, and multiplying by 100 to produce a percentage.

(4) A motor vehicle dealer seeking to establish or modify its warranty reimbursement labor rate, parts markup, or both, not more frequently than once per 12-month period, shall submit to the warrantor one of the following:

a. A single set of repair orders for purposes of calculating both its labor rate and parts markup.

b. A set of repair orders for purposes of calculating only its labor rate or for purposes of calculating only its parts markup.

(5) In calculating the rate customarily charged by the dealer for parts and labor for purposes of this subsection, the following shall not be included in the calculation of the rate:

a. Repairs that are the subject of manufacturer or distributor discounts, such as special events, specials, promotions, coupons, or service campaigns.

- b. Repairs of motor vehicles owned by the dealer.
- c. Routine maintenance, including, but not limited to, replacements of fluids, filters, batteries, bulbs, belts, nuts, bolts, or fasteners, unless provided in the course of, and related to, an otherwise qualified repair.
- d. Installations of accessories.
- e. Replacements of or work on tires, wheels, including alignments, wheel or tire rotations, or replacements of brake drums, rotors, shoes, or pads.
- f. Vehicle reconditioning.
- g. Safety or emission inspections required by law.
- h. Repairs for which volume discounts have been negotiated with government agencies.
- i. Body shop repairs, including repairs covered by insurance, for conditions caused by collision, road hazard, the force of the elements, vandalism, theft, or the negligence or deliberate act of the owner, operator, or a third party.
- j. Parts that do not have individual part numbers.
- k. Warrantor approved and reimbursed goodwill repairs or reimbursements.
- l. Window replacement, window etching, window tint, protective film, or other masking products.

(6) a. The submitted parts markup or labor rate shall go into effect 45 days after the warrantor's receipt of its submission, unless, within that period, the warrantor reasonably substantiates that the submission is materially incomplete, materially inaccurate, or is materially unreasonable and provides a full explanation of any reasons that the submitted markup or rate is materially incomplete, materially inaccurate, or materially unreasonable, evidence validating each reason, a copy of all calculations used by the warrantor demonstrating any material inaccuracy, and a proposed adjusted markup or rate provided that the dealer's submission is materially accurate based upon the qualified repair orders submitted by the dealer. In that event, the warrantor may submit only one rebuttal to the dealer, and may not thereafter add to, expand, supplement, or otherwise modify any element thereof, including, but not limited to, the warrantor's grounds for contesting the parts markup or labor rate, unless the warrantor did not possess the information at the time of its rebuttal, or if the

information is used for the purpose of rebutting the dealer's response to the warrantor's rebuttal.

b. If a warrantor determines from any set of repair orders submitted under this subsection that the labor rate or parts markup calculated under this subsection is substantially higher or lower than the rate currently on record with the warrantor for labor or parts, or both, the warrantor, in accordance with this subsection, may request additional repair orders for a period of 60 days prior to or 60 days subsequent to the time period for which the repair orders were submitted for purposes of an alteration, and shall have 45 days from receiving the additional repair orders to rebut the presumption that the dealer's proposed markup and labor rates are reasonable.

(7) If the dealer and the warrantor do not agree on the parts markup or labor rate, the dealer may file an action in a court having jurisdiction in this state within 120 days of receiving the warrantor's written rejection of the dealer's proposed parts markup or labor rate. In that action, the warrantor shall have the burden of proving by a preponderance of the evidence that the dealer's submitted parts markup or labor rate, or both, was materially incomplete, materially inaccurate, or materially unreasonable. Upon a court decision in favor of the dealer finding that the labor or parts rate shall be more than proposed by the warrantor, any increase in the dealer's parts markup or labor rate arising from the proceeding shall be effective retroactively to the date 45 days following the warrantor's receipt of the original submission to the dealer or to the warrantor.

(8) In the determination of what constitutes materially unreasonable compensation under this section, relevant factors include, but are not limited to, the prevailing wage rates paid by similarly situated dealers in the state.

(Acts 1981, No. 81-390, p. 596, §7; Acts 1991, No. 91-212, p. 398, §1; Act 2000-267, p. 415, §1; Act 2010-198, p. 300, §1; Act 2022-104, §1.)

Section 8-20-7.1

Compensation of dealers for recall repairs.

(a) For the purposes of this section, the following words have the following meanings:

(1) MANUFACTURER. A manufacturer, distributor or wholesaler, factory branch, or distributor branch.

(2) STOP-SALE ORDER. A notification issued by a manufacturer to its franchised new motor vehicle dealers stating that certain used vehicles in inventory shall not be

sold or leased, at either retail or wholesale, due to a federal safety recall for a defect or a noncompliance, or a federal emissions recall.

(b) A manufacturer shall compensate its new motor vehicle dealers for all labor and parts required by the manufacturer to perform recall repairs. Compensation for recall repairs shall be reasonable. If parts or a remedy are not reasonably available to perform a recall service or repair on a used vehicle held for sale by a dealer authorized to sell and service new vehicles of the same line-make within 30 days of the manufacturer issuing the initial notice of recall, and the manufacturer has issued a Stop-Sale or Do-Not-Drive order on the vehicle, the manufacturer shall compensate the dealer at a prorated rate of at least one percent of the value of the vehicle per month beginning on the date that is 30 days after the date on which the Stop-Sale or Do-Not-Drive order was provided to the dealer until the earlier of either of the following:

(1) The date the recall or remedy parts are made available.

(2) The date the dealer sells, trades, or otherwise disposes of the affected used motor vehicle.

(c) The value of a used vehicle shall be the average trade-in value for used vehicles as indicated in an independent third party guide for the year, make, and model of the recalled vehicle.

(d) This section shall apply only to used vehicles subject to safety or emissions recalls pursuant to and recalled in accordance with federal law and regulations adopted thereunder and where a Stop-Sale or Do-Not-Drive order has been issued and repair parts or remedy remain unavailable for 30 days or longer. This section further shall apply only to new motor vehicle dealers holding an affected used vehicle for sale:

(1) In inventory at the time the Stop-Sale or Do-Not-Drive order was issued; or

(2) Which was taken in the used vehicle inventory of the dealer as a consumer trade-in incident to the purchase of a new vehicle from the dealer after the Stop-Sale or Do-Not-Drive order was issued; and

(3) That is a line-make that the dealer is franchised to sell or on which the dealer is authorized to perform recall repairs.

(e) Subject to the audit provisions of subsection (d) of Section 8-20-7, it shall be a violation of this section for a manufacturer to reduce the amount of compensation otherwise owed to an individual new motor vehicle dealer, whether through a

chargeback, removal of the individual dealer from an incentive program, or reduction in amount owed under an incentive program solely because the new motor vehicle dealer has submitted a claim for reimbursement under this section. This subsection shall not apply to an action by a manufacturer that is applied uniformly among all dealers of the same line-make in the state.

(f) All reimbursement claims made by new motor vehicle dealers pursuant to this section for recall remedies or repairs, or for compensation where no part or repair is reasonably available and the vehicle is subject to a Stop-Sale or Do-Not-Drive order, shall be subject to the same limitations and requirements as a warranty reimbursement claim made under subsection (d) of Section 8-20-7. In the alternative, a manufacturer may compensate its franchised dealers under a national recall compensation program, provided the compensation under the program is equal to or greater than that provided under subsection (b) or as the manufacturer and dealer otherwise agree.

(g) A manufacturer may direct the manner and method in which a dealer must demonstrate the inventory status of an affected used motor vehicle to determine eligibility under this section, provided that the manner and method may not be unduly burdensome and may not require information that is unduly burdensome to provide.

(h) Nothing in this section shall require a manufacturer to provide total compensation to a dealer which would exceed the total average trade-in value of the affected used motor vehicle as originally determined under subsection (c).

(i) Any remedy provided to a dealer under this section is exclusive and may not be combined with any other state or federal recall compensation remedy.

(Act 2017-148, §1.)

Section 8-20-9

Transportation damages.

(a) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, the new motor vehicle dealer is solely liable for damages to new motor vehicles occurring after acceptance of the new motor vehicle from the carrier and before delivery to the ultimate purchaser.

(b) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, the manufacturer is liable for all damages to motor vehicles occurring before delivery to a carrier or transporter. If a new motor vehicle dealer determines the method of transportation, the risk of loss passes to the dealer upon delivery of the vehicle to the carrier. In every other instance, the risk of loss remains with the

manufacturer until such time as the new motor vehicle dealer or his designee accepts the vehicle from the carrier.

(c) With respect to new or used vehicles sold or otherwise transferred by the manufacturer to a new motor vehicle dealer, the manufacturer shall notify in writing the new motor vehicle dealer of all damage and repairs made to such vehicle which is known to the manufacturer.

(Acts 1981, No. 81-390, p. 596, §9; Acts 1991, No. 91-212, p. 398, §1.)

Section 8-20-10

Dealer's right of free association with other dealers.

Every motor vehicle dealer shall have the right of free association with other motor vehicle dealers for any lawful purpose.

(Acts 1981, No. 81-390, p. 596, §10.)

Section 8-20-11

Remedies.

Notwithstanding the terms, provisions, or conditions of any dealer agreement or franchise or the terms or provisions of any waiver, and notwithstanding any other legal remedies available, any person who is injured in his business or property by a violation of this chapter by the commission of any unfair and deceptive trade practices, or because he refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of this chapter, may bring a civil action in a court of competent jurisdiction in this state to enjoin further violations, to recover the damages sustained by him together with the costs of the suit, including a reasonable attorney's fee.

(Acts 1981, No. 81-390, p. 596, §11.)

Section 8-20-12

Time limitation on bringing of civil actions; time of accrual of cause of action.

Except as otherwise provided in paragraph 1. of subdivision (3) of Section 8-20-4, any civil action commenced under the provisions of this chapter must be brought within four years after the cause of action has accrued. The cause of action shall not accrue until the discovery by the aggrieved party of the fact or facts constituting a violation of the provisions of this chapter.

(Acts 1981, No. 81-390, p. 596, §12.)

Section 8-20-13

Procedure, protection, and remedies available to motor vehicle distributors.

All procedures, protections, and remedies afforded to a motor vehicle dealer under Sections 8-20-1 through 8-20-12 of this chapter shall be available to a motor vehicle distributor whose distributor agreement is terminated, canceled, not renewed, modified or replaced by a manufacturer or an importer.

(Acts 1991, No. 91-567, p. 1048, §1.)

Section 8-20-14

Applicability of chapter.

This chapter shall apply to all franchise or dealer agreements in force and effect on March 9, 2010, and to all franchise or dealer agreements, amendments, and renewals to dealer agreements made after March 9, 2010. The Motor Vehicle Franchise Act and Act 2010-198, shall supersede and control all provisions of any franchise or dealer agreement inconsistent with Act 2010-198 or the Motor Vehicle Franchise Act. Act 2010-198 and the Motor Vehicle Franchise Act shall not be modified or superseded by a choice of law clause in any franchise or dealer agreement, waiver, or other written instrument. These provisions shall apply to all written agreements between a manufacturer and dealer including, but not limited to, the franchise offering, the franchise agreement, sales of goods, services or advertising, leases or deeds of trust of real or personal property, promises to pay, security interests, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts, and other agreements between a dealer and a manufacturer.

(Act 2010-198, p. 300, §3.)

Automobile Dealers Association of Alabama, Inc.
November, 2022