



General Assembly

January Session, 2009

Raised Bill No. 6648

LCO No. 4355

04355_____TRA

Referred to Committee on Transportation

Introduced by:
(TRA)

AN ACT MAKING REVISIONS TO CHAPTER 739 OF THE GENERAL STATUTES WITH RESPECT TO AUTOMOBILE MANUFACTURERS, DISTRIBUTORS, FRANCHISES AND DEALERSHIPS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 42-133r of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 As used in sections 42-133r to 42-133ee, inclusive, as amended by
4 this act, unless the context indicates a different meaning:

5 (1) "Manufacturer" means any person who manufactures or
6 assembles new motor vehicles, or imports motor vehicles for
7 distribution to dealers or through distributors, or factory branches.

8 (2) "Distributor" means any person who offers for sale, sells or
9 distributes any new motor vehicle to dealers or who maintains factory
10 representatives or who controls any person, firm, association, joint
11 venture corporation or trust, who offers for sale, sells or distributes
12 any new motor vehicle to dealers.

13 (3) "Factory branch" means a branch office maintained by a

14 manufacturer for the purpose of selling, or offering for sale, motor
15 vehicles to a distributor or dealer, or for directing or supervising
16 factory or distributor representatives.

17 (4) "Owner" means any person holding an ownership interest in a
18 business entity operating as a dealer or under a franchise as defined in
19 this section either as a corporation, partnership or sole proprietorship.
20 To the extent that the rights of any owner under sections 42-133r to 42-
21 133ee, inclusive, as amended by this act, conflict with the rights of any
22 other owner, such rights shall accrue in priority order based on the
23 percentage of ownership interest held by each owner with the owner
24 having the greatest ownership interest having first priority and
25 succeeding priority accruing to other owners in the descending order
26 of their percentage of ownership interest.

27 (5) "Dealership facilities" means real estate, buildings, fixtures and
28 improvements which are used in the course of business under a
29 franchise by a new motor vehicle dealer.

30 (6) "Dealer" means any person engaged in the business of selling,
31 offering to sell, soliciting or advertising the sale of new motor vehicles
32 and who holds a valid sales and service agreement, franchise or
33 contract, granted by a manufacturer or distributor for the retail sale of
34 the manufacturer's or distributor's new motor vehicles.

35 (7) "Motor vehicle" means a self-propelled vehicle intended
36 primarily for use and operation on the public highways, other than a
37 farm tractor or other machinery or tools used in the production,
38 harvesting and care of farm products.

39 (8) "New motor vehicle" means a motor vehicle which has been sold
40 to a new motor vehicle dealer and which has not been used for other
41 than demonstration purposes and on which the original title has not
42 been issued from the new motor vehicle dealer.

43 (9) "Established place of business" means a permanent, commercial

44 building easily accessible and open to the public at reasonable times
45 and at which the business of a new motor vehicle dealer, including the
46 display and repair of vehicles, may be lawfully carried on.

47 (10) "Franchise" means a written agreement or contract between a
48 manufacturer or distributor and a dealer which purports to fix the
49 legal rights and liabilities of the parties to such agreement or contract,
50 [and pursuant to which the dealer purchases and resells the franchise
51 product or leases or rents the dealership premises.]

52 (11) "Good faith" means honesty in fact and the observance of
53 reasonable commercial standards of fair dealing in the trade.

54 (12) "Designated family member" means the spouse, child,
55 grandchild, parent, brother or sister of an owner who, in the case of the
56 owner's death, is entitled to inherit the ownership interest in the dealer
57 under the terms of the owner's will, or who has been nominated in any
58 other written instrument, or who, in the case of an incapacitated owner
59 of a dealer, has been appointed by a court as the legal representative of
60 the dealer's property.

61 (13) "Person" means a natural person, partnership, corporation,
62 limited liability company, association, trust, estate or any other legal
63 entity.

64 (14) "Relevant market area" means the area within a radius of
65 fourteen miles around an existing dealer or the area of responsibility
66 defined in a franchise, whichever is greater.

67 (15) "Commissioner" means the Commissioner of Motor Vehicles.

68 Sec. 2. Section 42-133s of the general statutes is repealed and the
69 following is substituted in lieu thereof (*Effective October 1, 2009*):

70 (a) Each manufacturer or distributor shall specify in writing to each
71 of its dealers licensed in this state, the dealer's obligations for
72 predelivery preparation and warranty service on its products, and

73 shall compensate the dealer for such preparation and service, [and
74 shall provide the dealer with a schedule of compensation to be paid
75 the dealer for parts and labor in connection with such preparation and
76 service, and the time allowance for the labor.] Compensation for parts
77 used in warranty service shall not be less than the retail rate
78 customarily charged by the dealer for like parts that are not provided
79 in satisfaction of a warranty, as determined by methods described in
80 subsection (b) of this section. Compensation for labor used in warranty
81 service shall not be less than the retail rate customarily charged by the
82 dealer for like labor that is not provided in satisfaction of a warranty,
83 as determined by methods set forth in subsection (c) of this section.

84 (b) The retail rate customarily charged by the dealer for parts shall
85 be established by the dealer submitting to the manufacturer or
86 distributor one hundred sequential nonwarranty customer-paid
87 service repair orders which contain warranty-like parts, or sixty
88 consecutive days of nonwarranty customer-paid service repair orders
89 which contain warranty-like parts, whichever is less, covering repairs
90 made no more than one hundred eighty days before the submission
91 and declaring the average percentage markup. The average of the
92 markup rates shall be the declared retail rate, which goes into effect
93 thirty days following the declaration, subject to audit of the submitted
94 repair orders by the franchisor and adjustment of the average
95 percentage markup based on that audit.

96 (c) The retail rate customarily charged by the dealer for labor may
97 be established by submitting to the manufacturer or distributor all
98 nonwarranty customer-paid service repair orders covering repairs
99 made during the month prior to the submission and dividing the
100 amount of the dealer's total labor sales by the number of total labor
101 hours that generated those sales. The average markup so declared is
102 the retail rate, which goes into effect thirty days following the
103 declaration, subject to audit of the submitted repair orders by the
104 franchisor and adjustment of the average percentage markup based on
105 that audit.

106 (d) In calculating the retail rate customarily charged by the dealer
107 for parts and labor, the following work shall not be included in the
108 calculation: (1) Repairs discounted by a dealer for repairs made in
109 group, fleet, insurance, governmental or other third-party payer
110 service work; (2) repairs for special events, specials, or promotional
111 discounts for retail customer repairs; (3) parts sold at wholesale; (4)
112 internal repairs; (5) engine assemblies and transmission assemblies; (6)
113 routine maintenance not covered under any warranty, such as fluids,
114 filters and belts for retail customers not provided in the course of
115 repairs; (7) nuts, bolts, fasteners, and similar items that do not have an
116 individual part number; (8) tires; and (9) vehicle reconditioning.

117 (e) A manufacturer or distributor may not require a dealer to
118 establish the average percentage markup by an unduly burdensome or
119 time consuming method or by requiring information that is unduly
120 burdensome or time consuming to provide, including, but not limited
121 to, part-by-part or transaction-by-transaction calculations. A dealer
122 may not declare an average percentage markup more than twice in one
123 calendar year.

124 (f) A manufacturer or distributor may not otherwise recover its costs
125 for reimbursing a dealer for parts and labor pursuant to this section.

126 ~~[(b)]~~ (g) [Such schedule of compensation shall include reasonable
127 compensation for diagnostic work, as well as repair service and labor.]
128 Time allowances for the diagnosis and performance of warranty work
129 and service shall be reasonable and adequate for the work to be
130 performed. [In the determination of what constitutes reasonable
131 compensation under this section, the principal factor considered shall
132 be the prevailing wage rates being paid by dealers in the community in
133 which the dealer is doing business. In no event shall the hourly labor
134 rate paid to a dealer for warranty service be less than the rate charged
135 by such dealer for like service to nonwarranty customers, provided
136 that the rate charged to nonwarranty customers is reasonable.]

137 ~~[(c)]~~ (h) Each manufacturer or distributor shall perform all warranty

138 obligations, include in written notices of factory recalls to owners and
139 dealers the expected date by which necessary parts and equipment will
140 be available to dealers for the correction of such defects and
141 compensate dealers for repairs necessitated by such recall.

142 [(d)] (i) All claims by dealers under this section for [such labor and
143 parts] warranty work and all claims for compensation relative to any
144 sales incentive programs shall be [paid within thirty days following
145 approval by the manufacturer or distributor, provided that
146 manufacturers or distributors retain the right to audit such claims and
147 to charge-back the dealer for false or unsubstantiated claims for a
148 period of two years following payment. If there is evidence of fraud,
149 the provisions of this subsection shall not limit the right of a
150 manufacturer or distributor to audit a dealer for longer periods of time
151 and charge-back the dealer for any fraudulent claim. Dealers shall be
152 required to maintain defective parts for a period of not longer than
153 ninety days following submission of claims. All such claims shall be]
154 either approved or disapproved within thirty days after their receipt
155 on forms [.] and in the manner reasonably specified by, the
156 manufacturer or distributor. Any claim not disapproved in writing or
157 by means of electronic transmission within thirty days after receipt
158 shall be deemed approved and payment shall be made within thirty
159 days.

160 (j) A manufacturer or distributor retains the right to audit such
161 claims by dealers and to charge-back the dealer for materially false or
162 unsubstantiated claims for a period of one year following payment of
163 such claims. If there is evidence of fraud, the provisions of this
164 subsection shall not limit the right of a manufacturer or distributor to
165 audit a dealer for longer periods of time and to charge-back the dealer
166 for any fraudulent claim. Dealers shall be required to maintain
167 defective parts for a period of not longer than ninety days following
168 submission of claims.

169 (k) A manufacturer or distributor shall not charge-back a dealer

170 subsequent to the payment of a warranty or sales incentive claim
171 unless a representative of the franchisor has (1) met with such dealer at
172 the dealership, (2) spoken with such dealer by telephone, or (3) has
173 met at such dealership or spoken by telephone with an officer or
174 employee of the dealer designated by such dealer, and has explained
175 in detail the basis for each proposed charge-back and thereafter given
176 the dealer or such dealer's designee a reasonable opportunity, during
177 such meeting or telephone conversation, to explain the dealer's
178 position relating to each proposed charge-back. In the event the dealer
179 has been selected for audit or review on the basis that some or all of
180 the dealer's claims were viewed by the manufacturer or distributor as
181 excessive in comparison to average, mean or aggregate data
182 accumulated by the manufacturer or distributor, or in relation to
183 claims submitted by a group of other dealers, the manufacturer or
184 distributor shall provide such dealer or such dealer's designee, prior to
185 or during such meeting, or prior to such telephone call, with a written
186 statement containing the basis or methodology upon which the dealer
187 was selected for audit or review.

188 (l) A manufacturer or distributor shall not deny or charge-back a
189 payment for warranty work claimed by the dealer unless the
190 franchisor satisfies its burden of proof that the dealer did not make a
191 good-faith effort to comply with the reasonable written procedures of
192 the manufacturer or distributor, or that the dealer did not actually
193 perform the work.

194 (m) A manufacturer or distributor shall not deny or charge-back a
195 sales incentive payment made to a dealer unless the claim was
196 materially false or fraudulent or the dealer failed to reasonably
197 substantiate the claim in accordance with the manufacturer's
198 reasonable procedures.

199 (n) After all internal dispute resolution processes provided through
200 the manufacturer or distributor have been resolved, the manufacturer
201 or distributor shall give notice to the dealer of the final amount of a

202 proposed warranty or sales incentive charge-back. If the dealer does
203 not agree with the final amount, the dealer may file a protest with the
204 commissioner within thirty days of receipt of the notice of the final
205 proposed charge-back. If such a protest is filed, the commissioner shall
206 inform the manufacturer or distributor that a timely protest has been
207 filed, and that the manufacturer or distributor shall not levy the
208 charge-back unless the commissioner has (1) held a hearing, and (2)
209 determined that such charge-back is in compliance with the provisions
210 of this section. In any hearing held pursuant to this subsection, the
211 manufacturer or distributor shall have the burden of proving that such
212 manufacturer or distributor has complied with the provisions of this
213 section.

214 Sec. 3. Section 42-133v of the general statutes is repealed and the
215 following is substituted in lieu thereof (*Effective October 1, 2009*):

216 (a) Notwithstanding the terms, provisions or conditions of any
217 franchise agreement and notwithstanding the terms or provisions of
218 any waiver, no manufacturer or distributor shall cancel, terminate or
219 fail to renew any franchise with a licensed dealer unless the
220 manufacturer or distributor has satisfied the notice requirement of
221 subsection (d) of this section, has good cause for cancellation,
222 termination or nonrenewal and has acted in good faith.

223 (b) Notwithstanding the terms, provisions or conditions of any
224 franchise or the terms or provisions of any waiver, good cause exists
225 for the purposes of a termination, cancellation or nonrenewal if:

226 (1) There is a failure by the dealer to comply with a provision of the
227 franchise which is both reasonable and of material significance to the
228 franchise relationship, provided that the dealer has been notified in
229 writing of the failure within one hundred eighty days after the
230 manufacturer or distributor first acquired knowledge of such failure;

231 (2) If the failure by the dealer, defined in subdivision (1) of this
232 subsection, relates to the performance of the dealer in sales or service,

233 then good cause shall be defined as the failure of the dealer to comply
234 with reasonable performance criteria established by the manufacturer
235 or distributor if the dealer was apprised by the manufacturer or
236 distributor in writing of such failure; and: (A) The notification stated
237 that notice was provided of failure of performance under this section;
238 (B) the dealer was afforded a reasonable opportunity, for a period of
239 not less than six months, to comply with such criteria; and (C) the
240 dealer did not demonstrate substantial progress towards compliance
241 with the manufacturer's or distributor's performance criteria during
242 such period.

243 (c) Any communication to the public or to dealers by a
244 manufacturer or distributor that a franchise will be canceled,
245 terminated or nonrenewed by virtue of the present or future
246 discontinuance of one or more vehicle brands held pursuant to that
247 franchise, shall be considered a cancellation, termination or
248 nonrenewal without good cause under this section.

249 [(c)] (d) The manufacturer or distributor shall have the burden of
250 proof under this section.

251 [(d)] (e) Notwithstanding the terms, provisions or conditions of any
252 franchise, prior to the termination, cancellation or nonrenewal of any
253 franchise, the manufacturer or distributor shall furnish notification of
254 such termination, cancellation or nonrenewal to the dealer as follows:
255 (1) In the manner described in subsection [(e)] (f) of this section; and (2)
256 not less than ninety days prior to the effective date of such termination,
257 cancellation or nonrenewal; or (3) not less than fifteen days prior to the
258 effective date of such termination, cancellation or nonrenewal with
259 respect to: (A) Insolvency of the dealer, or filing of any petition by or
260 against the dealer under any bankruptcy or receivership law; (B)
261 failure of the dealer to conduct customary sales and service operations
262 during business hours for seven consecutive business days, except in
263 circumstances beyond the direct control of the dealer; (C) conviction of
264 the dealer, or any owner thereof, of any felony which is punishable by

265 imprisonment; (D) suspension or revocation of any license which the
266 new motor vehicle dealer is required to have to operate a dealership;
267 or (E) a fraudulent misrepresentation by the dealer to the manufacturer
268 or distributor which is material to the franchise; (4) not less than one
269 hundred eighty days prior to the effective date of such termination or
270 cancellation if the manufacturer or distributor is discontinuing the sale
271 of the product line.

272 ~~[(e)]~~ (f) Notice under this section shall be in writing, sent by certified
273 mail or personally delivered to the dealer; and shall contain: (1) A
274 statement of intention to terminate, cancel or not to renew the
275 franchise; (2) a statement of the reasons for the termination,
276 cancellation or nonrenewal; and (3) the date on which such
277 termination, cancellation or nonrenewal takes effect.

278 ~~[(f)]~~ (g) No manufacturer or distributor shall terminate, cancel or fail
279 to renew a dealer's franchise for the failure or refusal of the dealer to
280 do any of the following: (1) Failure to meet sales quotas suggested by
281 the manufacturer or distributor; (2) refusal to sell any product at a
282 price suggested by the manufacturer or distributor; (3) refusal to keep
283 the premises open and operating during those hours which are
284 documented by the dealer to be unprofitable to the dealer or to
285 preclude the dealer from establishing his own hours of operation
286 beyond the hour of 10:00 p.m. and prior to 6:00 a.m.; (4) refusal to meet
287 unreasonable minimum standards and marketing guides, which
288 include, but are not limited to, capital, inventory, facility and
289 personnel requirements; (5) refusal to give the manufacturer or
290 distributor financial records of the operation of the franchise which are
291 not related or necessary to the dealer's obligations under the franchise
292 agreement. Subdivisions (1) to (5), inclusive, shall not be deemed good
293 cause under subsection (b) of this section.

294 ~~[(g)]~~ (h) If a franchisee brings an action in a court of competent
295 jurisdiction to challenge the cancellation, termination or nonrenewal of
296 a franchise agreement by a manufacturer or distributor under this

297 section, such franchise agreement shall remain in full force and effect
298 and such franchisee shall retain all rights and remedies pursuant to the
299 terms and conditions of such franchise agreement, including, but not
300 limited to, the right to sell or transfer such franchisee's ownership
301 interest, for a period of six months following a final determination by
302 the court of competent jurisdiction, unless extended by the court of
303 competent jurisdiction for good cause. This subsection shall not apply
304 to a cancellation, termination or nonrenewal of a franchise agreement
305 based upon any of the reasons set forth in subdivision (3) of subsection
306 (d) of this section.

307 Sec. 4. Section 42-133w of the general statutes is repealed and the
308 following is substituted in lieu thereof (*Effective October 1, 2009*):

309 (a) Upon the termination, nonrenewal or cancellation of any
310 franchise under sections 42-133r to 42-133ee, inclusive, as amended by
311 this act, (1) initiated by the manufacturer, the distributor or the dealer;
312 and (2) whether or not for good cause and in good faith, the dealer
313 shall be allowed fair and reasonable compensation by the
314 manufacturer or distributor for: [(1)] (A) The new current model and
315 one prior model year motor vehicle inventory, [acquired from the
316 manufacturer or distributor] limited to vehicles in such inventory that
317 are (i) unaltered, except for the addition of customary accessories, and
318 (ii) undamaged; [(2)] (B) all new, unused and undamaged parts listed
319 in the current parts catalog acquired from a manufacturer or
320 distributor or its approved or recommended sources at the dealer price
321 listed in such catalog, less applicable allowances plus five per cent of
322 the catalog price of the part for the cost of packing and returning the
323 parts to the manufacturer or distributor; [(3)] (C) supplies and
324 furnishings if purchased from the manufacturer or distributor or its
325 approved sources; and [(4)] (D) any special tools or equipment offered
326 for sale during the three years preceding termination, nonrenewal or
327 cancellation and each trademark or trade name bearing sign which
328 was recommended or required by the manufacturer or distributor at
329 fair market value at the time of notice of termination.

330 (b) Compensation under subsection (a) of this section shall be paid
331 by the manufacturer or distributor within ninety days of the effective
332 date of termination, cancellation or nonrenewal if the dealer has title to
333 the vehicle inventory and other items and is able to convey title to the
334 manufacturer or distributor.

335 Sec. 5. Section 42-133x of the general statutes is repealed and the
336 following is substituted in lieu thereof (*Effective October 1, 2009*):

337 (a) In the event of a termination, cancellation or nonrenewal under
338 subdivision (2) of subsection (b) of section 42-133v, as amended by this
339 act:

340 (1) If the dealer is leasing the dealership facilities from a lessor other
341 than the manufacturer or distributor, or owns the dealership facilities,
342 the manufacturer or distributor shall pay a reasonable rent to the
343 dealer in accordance with and subject to subdivision (2) of this
344 subsection.

345 (2) Such reasonable rent shall be paid only to the extent that the
346 dealership premises are recognized in the franchise and only if they
347 are: (A) Used solely for performance in accordance with the franchise,
348 and (B) not substantially in excess of those facilities recommended by
349 the manufacturer or distributor.

350 (3) If the facilities are owned by the dealer, the manufacturer or
351 distributor will either: (A) Locate a purchaser who will offer to
352 purchase the dealership facilities at a reasonable price, or (B) locate a
353 lessee who will offer to lease the premises for a reasonable term at a
354 reasonable rent, or (C) failing the foregoing, lease the dealership
355 facilities at a reasonable rent for two years.

356 (4) If the facilities are leased by the dealer, the manufacturer or
357 distributor will either: (A) Locate a tenant satisfactory to the lessor,
358 who will sublet or assume the balance of the lease, or (B) arrange with
359 the lessor for the cancellation of the lease without penalty to the dealer,

360 or (C) failing the foregoing, lease the dealership facilities at a
361 reasonable rate for two years.

362 (5) The manufacturer or distributor shall not be obligated to provide
363 assistance under this section if the dealer: (A) Fails to accept a bona
364 fide offer from a prospective purchaser, sublessee or assignee, or (B)
365 refuses to execute a settlement agreement with the lessor if such
366 agreement would be without cost to the dealer, or (C) fails to make a
367 written request for assistance under this section within one month of
368 the termination, cancellation or nonrenewal.

369 (b) In the event of a termination, cancellation or nonrenewal under
370 subdivision (2) of subsection (b) of section 42-133v, as amended by this
371 act, and in addition to all other compensation and repurchase
372 obligations contained in section 42-133w, as amended by this act, and
373 this section, the manufacturer or distributor shall pay the fair market
374 value of the goodwill of the franchise, as of the date immediately
375 preceding the communication to the public or to dealers, that a brand
376 will be presently, or in the future, discontinued. Payment under this
377 subsection shall be made within thirty days.

378 ~~[(b)]~~ (c) If, in any action for damages under this section, the
379 manufacturer or distributor fails to prove that the manufacturer or
380 distributor has acted in good faith or that there was good cause for the
381 franchise termination, cancellation or nonrenewal, then the
382 manufacturer or distributor may terminate, cancel or fail to renew the
383 franchise upon payment to the motor vehicle dealer of an amount
384 equal to the value of the dealership as an ongoing business location as
385 agreed by the parties or, lacking agreement, as determined by the
386 court.

387 Sec. 6. Section 42-133bb of the general statutes is repealed and the
388 following is substituted in lieu thereof (*Effective October 1, 2009*):

389 No manufacturer or distributor shall require that a dealer:

390 (1) Order or accept delivery of any new motor vehicle, part or
391 accessory, equipment or any other commodity not required by law in
392 connection with warranty service or a recall campaign or voluntarily
393 ordered by the dealer, except that the provisions of this subdivision
394 shall not affect terms or provisions of a franchise requiring dealers to
395 market a representative line of motor vehicles which the manufacturer
396 or distributor is publicly advertising;

397 (2) Order or accept delivery of any new motor vehicle with special
398 features, accessories or equipment not included in the list price of such
399 motor vehicles as publicly advertised by the manufacturer or
400 distributor;

401 (3) Pay all or part of the cost of an advertising campaign or contest,
402 or purchase any promotional materials, training material, showroom
403 or other display decorations or materials at the expense of the new
404 motor vehicle dealer without the consent of the new motor vehicle
405 dealer;

406 (4) Enter into any agreement with the manufacturer or distributor or
407 do any other act prejudicial to the dealer under threat of termination or
408 cancellation of a franchise or agreement between the dealer and the
409 manufacturer or distributor, except that this subdivision shall not
410 preclude the manufacturer or distributor from insisting on compliance
411 with the reasonable terms or provisions of the franchise or agreement,
412 and notice in good faith to any dealer of the dealer's violation of such
413 terms or provisions shall not constitute a violation of sections 42-133r
414 to 42-133ee, inclusive, as amended by this act;

415 (5) Change the capital structure of the dealer or the means by which
416 the dealer finances the operation of the dealership provided that the
417 dealer meets reasonable capital standards established by the
418 manufacturer or distributor in accordance with uniformly applied
419 criteria, and provided further that no change in the capital structure
420 shall cause a change in the principal management or have the effect of
421 a sale of the franchise without the consent of the manufacturer or

422 distributor and such consent shall not be unreasonably withheld;

423 (6) Refrain from participation in the management of, investment in,
424 or acquisition of any other line of new motor vehicles or related
425 products, provided that this subdivision shall not apply unless the
426 dealer maintains a reasonable line of credit for each line make of new
427 motor vehicle, the dealer remains in compliance with any reasonable
428 facilities requirements of the manufacturer or distributor, and no
429 change is made in the principal management of the dealer;

430 (7) Prospectively assent to a release, assignment, novation, waiver
431 or estoppel which would relieve any person from liability to be
432 imposed by sections 42-133r to 42-133ee, inclusive, as amended by this
433 act, or require any controversy between a dealer and a manufacturer or
434 distributor, to be referred to any forum other than the Superior Court
435 or the United States District Court.

436 (8) Construct, renovate or make substantial alterations to the
437 dealer's facilities unless the manufacturer or distributor can
438 demonstrate that such construction, renovation or alteration
439 requirements are reasonable and justifiable in light of current and
440 reasonably foreseeable projections of economic conditions, financial
441 expectations, availability of additional vehicle allocation and such
442 dealer's market for the sale of vehicles.

443 Sec. 7. Section 42-133cc of the general statutes is repealed and the
444 following is substituted in lieu thereof (*Effective October 1, 2009*):

445 No manufacturer or distributor shall:

446 (1) (A) Delay, refuse or fail to deliver new motor vehicles or parts or
447 accessories in a reasonable time, and in reasonable quantity relative to
448 the dealer's facilities and sales potential in the dealer's relevant market
449 area, after acceptance of an order from a dealer having a franchise for
450 the retail sale of any new motor vehicle sold or distributed by the
451 manufacturer or distributor, any new motor vehicle, parts or

452 accessories for new vehicles as are covered by such franchise, if such
453 vehicle, parts or accessories are publicly advertised as being available
454 for delivery or actually being delivered; (B) withhold any new motor
455 vehicle from distribution except a vehicle which is part of a
456 demonstration fleet or withhold or delay distribution of new motor
457 vehicles to induce dealers to order additional parts or accessories, to
458 order new motor vehicles that are difficult to sell, to relocate the
459 dealer's place of business or to [build] construct a new building. This
460 subdivision shall not apply to a failure caused by acts or causes
461 beyond the control of the manufacturer or distributor;

462 (2) (A) Refuse to disclose to any dealer, handling the same line
463 make, the manner and mode of distribution of that line make within
464 the relevant market area or (B) if a line make is allocated among
465 dealers, refuse to disclose to any dealer, handling the same line make,
466 the system of allocation, including but not limited to, a complete
467 breakdown by model, color, equipment and other items or terms, a
468 concise listing of dealerships and an explanation of the derivation of
469 the allocation system, including its mathematical formula, in a clear
470 and comprehensible form;

471 (3) Obtain money, goods, service or any other benefit from any
472 other person with whom the dealer does business, on account of, or in
473 relation to, the transaction between the dealer and such other person,
474 other than for compensation for services rendered, unless such benefit
475 is promptly accounted for, and transmitted to, the dealer;

476 (4) Increase prices of new motor vehicles which the dealer had
477 ordered for private retail consumers prior to the dealer's receipt of the
478 written official price increase notification. A sales contract signed by a
479 private retail consumer shall constitute evidence of each such order,
480 provided [that the] such vehicle is in fact delivered to [that customer]
481 such private retail consumer. In the event of manufacturer or
482 distributor price reductions or cash rebates paid to the dealer, the
483 amount of any such reduction or rebate received by a dealer shall be

484 passed on to the private retail consumer by the dealer. Price reductions
485 shall apply to all vehicles in the dealer's inventory which were subject
486 to the price reduction. Price differences applicable to new models or
487 series shall not be considered a price increase or price decrease. Price
488 changes caused by (A) the addition to a motor vehicle of required or
489 optional equipment, [or] (B) revaluation of the dollar, in the case of
490 foreign-make vehicles or components, or (C) an increase in
491 transportation charges due to increased rates imposed by common
492 carriers or transporters, shall not be subject to the provisions of this
493 subdivision;

494 (5) Offer refunds or other types of inducements to any person for
495 the purchase of new motor vehicles of a certain line make to be sold to
496 the state or any political subdivision thereof without making the same
497 offer available upon request to all other dealers in the same line make
498 within the relevant market area;

499 (6) Release to any outside party, except under subpoena or as
500 otherwise required by law or in an administrative, judicial or
501 arbitration proceeding involving the manufacturer or distributor or
502 dealer, any business, financial or personal information which may be
503 from time to time provided by the dealer to the manufacturer or
504 distributor, without the express written consent of the dealer;

505 (7) Deny any dealer the right of free association with any other
506 dealer for any lawful purpose;

507 (8) Unfairly compete with a dealer in the same line make operating
508 under an agreement or franchise from such manufacturer or
509 distributor in the relevant market area. A manufacturer or distributor
510 shall not, however, be deemed to be competing when operating a
511 dealership for a temporary period not to exceed one year, or such
512 additional period of time as may be permitted by the Commissioner of
513 Motor Vehicles, in accordance with the provisions of section 14-52b, or
514 in a bona fide retail operation which is for sale to any qualified person
515 at a fair and reasonable price, or in a bona fide relationship in which an

516 independent person has made a significant investment subject to loss
517 in the dealership and can reasonably expect to acquire full ownership
518 of such dealership on reasonable terms and conditions;

519 (9) Unfairly discriminate among its new motor vehicle dealers with
520 respect to warranty reimbursement;

521 (10) Unreasonably withhold consent to the sale, transfer or exchange
522 of the franchise to a qualified buyer capable of being licensed as a
523 dealer;

524 (11) Fail to respond in writing to a request for consent under
525 subdivision (10) of this section within sixty days of receipt of such
526 request. Such failure to respond shall be deemed to be consent to the
527 request;

528 (12) Unfairly prevent a dealer from receiving fair and reasonable
529 compensation for the value of its dealership;

530 (13) Engage in any predatory practice against a dealer;

531 (14) Terminate any franchise solely because of the death or
532 incapacity of an owner who is not listed in the franchise as one on
533 whose expertise and abilities the manufacturer or distributor relied in
534 the granting of the franchise;

535 (15) Withhold payment of money which the franchisor owes to a
536 dealer for more than thirty days after the date of approval of the
537 request for reimbursement;

538 (16) Own, operate or control, either directly or indirectly, a facility
539 for the performance of motor vehicle warranty service work. Nothing
540 contained in this subsection shall prohibit a motor vehicle
541 manufacturer, factory branch, distributor or distributor branch from
542 performing service for reasons of compliance with an order of a court
543 of competent jurisdiction;

544 (17) Provide in any franchise agreement that in any administrative
545 or judicial proceeding arising from any dispute with respect to such
546 agreement, the prevailing party shall be entitled to recover its costs,
547 reasonable attorney's fees and other expenses of litigation from the
548 other party;

549 (18) Unreasonably deny, limit or restrict a dealer's request to
550 relocate a sales or service operation to a new location, regardless of
551 whether the new location is occupied by the operations of another
552 motor vehicle franchise, unless the manufacturer or distributor can
553 demonstrate that such denial, limitation, or restriction is justified by
554 consideration of reasonable facility and financial requirements. The
555 manufacturer or distributor must accept or deny the dealer's request to
556 relocate within sixty days of receipt of the initial request;

557 (19) Sell or offer to sell any new motor vehicle to a dealer at a lower
558 actual price than the actual price offered to any other franchised motor
559 vehicle dealer for the same model vehicle similarly equipped, or to
560 utilize any device, including, but not limited to, sales promotion plans,
561 funds or financing to upgrade facilities, discounts or programs that
562 result in such lesser actual price, provided the provisions of this
563 subdivision shall not apply to sales to a dealer for: (A) Resale to any
564 unit of government; or (B) donation or use by said dealer in a driver
565 education or other special events program. This subdivision shall not
566 be construed to prevent the offering of sales incentives or discount
567 programs, provided such incentives or discounts are reasonably and
568 practically available to all dealers in this state on a proportionally
569 equal basis;

570 (20) Coerce or attempt to coerce a dealer, directly or by withholding
571 a benefit available to other same line-make dealers in this state, to
572 participate in any program, plan or sale of any item apart from what is
573 directly necessary to meet the dealer's obligations under the franchise
574 to sell and service new vehicles.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	42-133r
Sec. 2	<i>October 1, 2009</i>	42-133s
Sec. 3	<i>October 1, 2009</i>	42-133v
Sec. 4	<i>October 1, 2009</i>	42-133w
Sec. 5	<i>October 1, 2009</i>	42-133x
Sec. 6	<i>October 1, 2009</i>	42-133bb
Sec. 7	<i>October 1, 2009</i>	42-133cc

Statement of Purpose:

To make revisions to the automobile franchise statutes in order to promote fair competition.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]