

1 SENATE BILL 27

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

4 Clemente Sanchez and William H. Payne

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10 AN ACT

11 RELATING TO MOTOR VEHICLE DEALERS; ALPHABETIZING THE
12 DEFINITIONS OF CHAPTER 57, ARTICLE 16 NMSA 1978 AND ADDING FOUR
13 NEW DEFINITIONS; PROSCRIBING UNLAWFUL ACTS OF MANUFACTURERS AND
14 DISTRIBUTORS; REQUIRING COMPENSATION FOR REPAIRS TO A VEHICLE
15 SUBJECT TO RECALL, A DO NOT DRIVE ORDER OR STOP SALE ORDER;
16 REQUIRING A MANUFACTURER TO PROVIDE A FRANCHISE DEALER WITH THE
17 PARTS NECESSARY TO REPAIR A USED MOTOR VEHICLE SUBJECT TO A DO
18 NOT DRIVE ORDER OR STOP SALE ORDER; PROHIBITING THE DENIAL OF
19 CLAIMS BASED ON TECHNICAL ERRORS; PRESCRIBING REMEDIES.

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

22 SECTION 1. Section 57-16-3 NMSA 1978 (being Laws 1973,
23 Chapter 6, Section 3, as amended by Laws 2010, Chapter 38,
24 Section 1 and by Laws 2010, Chapter 40, Section 1) is amended
25 to read:

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1 "57-16-3. DEFINITIONS.--As used in Chapter 57, Article 16
2 NMSA 1978:

3 ~~[A. "motor vehicle" means every self-propelled~~
4 ~~vehicle, having two or more wheels, by which a person or~~
5 ~~property may be transported on a public highway and includes~~
6 ~~recreational vehicles;~~

7 ~~B. "motor vehicle dealer" or "dealer" means any~~
8 ~~person who sells or solicits or advertises the sale of new or~~
9 ~~used motor vehicles. "Motor vehicle dealer" or "dealer" shall~~
10 ~~not include:~~

11 ~~(1) receivers, trustees, administrators,~~
12 ~~executors, guardians or other persons appointed by or acting~~
13 ~~under judgment, decree or order of any court;~~

14 ~~(2) public officers while performing their~~
15 ~~duties as such officers;~~

16 ~~(3) persons making casual sales of their own~~
17 ~~vehicles duly registered and licensed to them by the state; or~~

18 ~~(4) finance companies, banks and other lending~~
19 ~~institutions covering sales of repossessed vehicles;~~

20 ~~C. "person" means every natural person,~~
21 ~~partnership, corporation, association, trust, estate or any~~
22 ~~other legal entity;~~

23 ~~D. "prospective purchaser" means a person who has a~~
24 ~~bona fide written agreement to purchase a franchise;~~

25 ~~E. "manufacturer" means any person who manufactures~~

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1 ~~or assembles new motor vehicles either within or outside of~~
2 ~~this state and may include a predecessor manufacturer or a~~
3 ~~successor manufacturer;~~

4 F. ~~"distributor" means any person who distributes~~
5 ~~or sells new or used motor vehicles to dealers and who is not a~~
6 ~~manufacturer;~~

7 G. ~~"representative" means any person who is or acts~~
8 ~~as an agent, employee or representative of a manufacturer or~~
9 ~~distributor and who performs any duties in this state relating~~
10 ~~to promoting the distribution or sale of new or used motor~~
11 ~~vehicles or contacts dealers in this state on behalf of a~~
12 ~~manufacturer or distributor;~~

13 H. ~~"franchise" means an oral or written arrangement~~
14 ~~for a definite or indefinite period in which a manufacturer,~~
15 ~~distributor or representative grants to a motor vehicle dealer~~
16 ~~a license to use a trade name, service mark or related~~
17 ~~characteristic and in which there is a community of interest in~~
18 ~~the marketing of motor vehicles or services related to~~
19 ~~marketing, service or repair of motor vehicles at wholesale,~~
20 ~~retail, leasing or otherwise;~~

21 I. ~~"fraud" includes, in addition to its normal~~
22 ~~legal connotation, the following:~~

23 (1) ~~a misrepresentation in any manner, whether~~
24 ~~intentionally false or due to gross negligence, of a material~~
25 ~~fact;~~

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1 ~~(2) a promise or representation not made~~
2 ~~honestly and in good faith; and~~

3 ~~(3) an intentional failure to disclose a~~
4 ~~material fact;~~

5 J. ~~"sale" includes:~~

6 ~~(1) the issuance, transfer, agreement for~~
7 ~~transfer, exchange, pledge, hypothecation or mortgage in any~~
8 ~~form, whether by transfer in trust or otherwise, of any motor~~
9 ~~vehicle or interest therein or of any franchise related~~
10 ~~thereto; and~~

11 ~~(2) any option, subscription or other contract~~
12 ~~or solicitation looking to a sale or offer or attempt to sell~~
13 ~~in any form, whether spoken or written. A gift or delivery of~~
14 ~~any motor vehicle or franchise with respect thereto with, or~~
15 ~~as, a bonus on account of the sale of anything shall be deemed~~
16 ~~a sale of such motor vehicle or franchise;~~

17 K. ~~"motorcycle" means any motor vehicle used on or~~
18 ~~off a public highway that has an unladen weight of less than~~
19 ~~one thousand five hundred pounds;~~

20 L. ~~"recreational vehicle" means any motor vehicle~~
21 ~~with a camping body that either has its own motive power or is~~
22 ~~drawn by another vehicle;~~

23 M. ~~"designated family member" means a spouse,~~
24 ~~child, grandchild, parent, brother or sister of a deceased or~~
25 ~~incapacitated dealer who is entitled to inherit the dealer's~~

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1 ~~ownership interest in the dealership under the terms of a will~~
2 ~~or the laws of intestate succession in this state. In the case~~
3 ~~of an incapacitated dealer, the term means the person appointed~~
4 ~~by a court as the legal representative of the dealer's~~
5 ~~property. The term also includes the appointed and qualified~~
6 ~~personal representative and the testamentary trustee of a~~
7 ~~deceased dealer. However, the term shall be limited to mean~~
8 ~~only that individual designated by a dealer in a written~~
9 ~~document filed with the manufacturer, distributor or~~
10 ~~representative in the event that such a document has been~~
11 ~~filed;~~

12 N. ~~"current price" means an amount equal to the~~
13 ~~price listed in the manufacturer's or distributor's printed~~
14 ~~price list in effect when the franchise is terminated, less~~
15 ~~applicable trade and cash discounts;~~

16 O. ~~"dealer cost" means an amount equal to the sum~~
17 ~~of the original invoice price that the dealer paid for~~
18 ~~inventory and the cost of the delivery of the inventory from~~
19 ~~the manufacturer or distributor to the dealer, less applicable~~
20 ~~discounts;~~

21 P. ~~"inventory" means new or unused motorcycles,~~
22 ~~motor vehicles, motorcycle attachments and motorcycle and motor~~
23 ~~vehicle repair parts that are provided by a manufacturer or~~
24 ~~distributor to a dealer under a franchise agreement and that~~
25 ~~are purchased within thirty-six months of the termination of~~

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1 ~~the franchise or are listed in the manufacturer's or~~
2 ~~distributor's current sales manual or price list at the time~~
3 ~~that the franchise is terminated;~~

4 Q. ~~"relevant market area" means an area of a size~~
5 ~~specified in this subsection around an existing motor vehicle~~
6 ~~dealer's place of business. The size of the area shall be the~~
7 ~~greater of the area of responsibility specified in the dealer's~~
8 ~~franchise or a circle with a center at the dealer's place of~~
9 ~~business and a radius of:~~

10 (1) ~~seven miles, if the population of the~~
11 ~~county in which the dealership is located is two hundred fifty~~
12 ~~thousand or more;~~

13 (2) ~~fifteen miles, if the population of the~~
14 ~~county in which the dealership is located is less than two~~
15 ~~hundred fifty thousand but is thirty-five thousand or more; or~~

16 (3) ~~twenty miles in all other cases.~~

17 ~~If the existing and proposed dealerships are in different~~
18 ~~counties, the lesser of the applicable mileage limitations~~
19 ~~shall be used. For purposes of this subsection, the population~~
20 ~~of any area shall be determined in accordance with the most~~
21 ~~recent decennial census or the most recent population update~~
22 ~~from the national planning data corporation or other similar~~
23 ~~recognized source, whichever is later;~~

24 R. ~~"successor manufacturer" means a motor vehicle~~
25 ~~manufacturer that, on or after January 1, 2010, acquires,~~

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1 ~~succeeds to or assumes any part of the business of a~~
2 ~~predecessor manufacturer as the result of:~~

3 ~~(1) a change in ownership, operation or~~
4 ~~control of the predecessor manufacturer;~~

5 ~~(2) the termination, suspension or cessation~~
6 ~~of all or a part of the business operation of the predecessor~~
7 ~~manufacturer;~~

8 ~~(3) the discontinuance of the sale of a~~
9 ~~product line; or~~

10 ~~(4) a change in the distribution system by the~~
11 ~~predecessor manufacturer, whether through a change in~~
12 ~~distributor or the predecessor manufacturer's decision to cease~~
13 ~~conducting business through a distributor;~~

14 ~~S. "predecessor manufacturer" means a manufacturer~~
15 ~~that is acquired, succeeded by or assumed by a successor~~
16 ~~manufacturer; and~~

17 ~~F. "former franchisee":~~

18 ~~(1) means a dealer that has entered into a~~
19 ~~franchise agreement with a manufacturer and that has:~~

20 ~~(a) entered into a termination agreement~~
21 ~~or deferred termination agreement with the manufacturer related~~
22 ~~to the franchise; or~~

23 ~~(b) has had the franchise canceled,~~
24 ~~terminated or otherwise ended; and~~

25 ~~(2) includes the designated successor of the~~

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1 ~~former franchisee in the event the former franchisee is~~
2 ~~deceased or disabled]~~

3 A. "current price" means an amount equal to the
4 price listed in the manufacturer's or distributor's printed
5 price list in effect when the franchise is terminated, less
6 applicable trade and cash discounts;

7 B. "dealer cost" means an amount equal to the sum
8 of the original invoice price that the dealer paid for
9 inventory and the cost of the delivery of the inventory from
10 the manufacturer or distributor to the dealer, less applicable
11 discounts;

12 C. "designated family member" means a spouse,
13 child, grandchild, parent, brother or sister of a deceased or
14 incapacitated dealer who is entitled to inherit the dealer's
15 ownership interest in the dealership under the terms of a will
16 or the laws of intestate succession in this state. In the case
17 of an incapacitated dealer, the term means the person appointed
18 by a court as the legal representative of the dealer's
19 property. The term also includes the appointed and qualified
20 personal representative and the testamentary trustee of a
21 deceased dealer. However, the term shall be limited to mean
22 only that individual designated by a dealer in a written
23 document filed with the manufacturer, distributor or
24 representative in the event that such a document has been
25 filed;

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1 D. "distributor" means any person who distributes
2 or sells new or used motor vehicles to dealers and who is not a
3 manufacturer;

4 E. "do not drive order" means a notice issued by
5 the federal government or a manufacturer advising a motor
6 vehicle dealer or an owner of a motor vehicle not to drive the
7 vehicle until the vehicle has been repaired because the vehicle
8 has a safety defect, fails to comply with a federal motor
9 vehicle safety standard or fails to comply with an emissions
10 standard;

11 F. "former franchisee":

12 (1) means a dealer that has entered into a
13 franchise agreement with a manufacturer and that has:

14 (a) entered into a termination agreement
15 or deferred termination agreement with the manufacturer related
16 to the franchise; or

17 (b) has had the franchise canceled,
18 terminated or otherwise ended; and

19 (2) includes the designated successor of the
20 former franchisee in the event the former franchisee is
21 deceased or disabled;

22 G. "franchise" means an oral or written arrangement
23 for a definite or indefinite period in which a manufacturer,
24 distributor or representative grants to a motor vehicle dealer
25 a license to use a trade name, service mark or related

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1 characteristic and in which there is a community of interest in
2 the marketing of motor vehicles or services related to
3 marketing, service or repair of motor vehicles at wholesale,
4 retail, leasing or otherwise;

5 H. "fraud" includes, in addition to its normal
6 legal connotation, the following:

7 (1) a misrepresentation in any manner, whether
8 intentionally false or due to gross negligence, of a material
9 fact;

10 (2) a promise or representation not made
11 honestly and in good faith; and

12 (3) an intentional failure to disclose a
13 material fact;

14 I. "inventory" means new or unused motorcycles,
15 motor vehicles, motorcycle attachments and motorcycle and motor
16 vehicle repair parts that are provided by a manufacturer or
17 distributor to a dealer under a franchise agreement and that
18 are purchased within thirty-six months of the termination of
19 the franchise or are listed in the manufacturer's or
20 distributor's current sales manual or price list at the time
21 that the franchise is terminated;

22 J. "manufacturer" means any person who manufactures
23 or assembles new motor vehicles either within or outside of
24 this state and may include a predecessor manufacturer or a
25 successor manufacturer;

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1 K. "motorcycle" means any motor vehicle used on or
2 off a public highway that has an unladen weight of less than
3 one thousand five hundred pounds;

4 L. "motor vehicle" means every self-propelled
5 vehicle, having two or more wheels, by which a person or
6 property may be transported on a public highway and includes
7 recreational vehicles;

8 M. "motor vehicle dealer" or "dealer" means a
9 person who sells or solicits or advertises the sale of new or
10 used motor vehicles and is licensed as a dealer pursuant to the
11 Motor Vehicle Code. "Motor vehicle dealer" or "dealer" shall
12 not include:

13 (1) receivers, trustees, administrators,
14 executors, guardians or other persons appointed by or acting
15 under judgment, decree or order of any court;

16 (2) public officers while performing their
17 duties as such officers;

18 (3) persons making casual sales of their own
19 vehicles duly registered and licensed to them by the state; or

20 (4) finance companies, banks and other lending
21 institutions covering sales of repossessed vehicles;

22 N. "person" means every natural person,
23 partnership, corporation, association, trust, estate or any
24 other legal entity;

25 O. "predecessor manufacturer" means a manufacturer

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1 that is acquired, succeeded by or assumed by a successor
2 manufacturer;

3 P. "prospective purchaser" means a person who has a
4 bona fide written agreement to purchase a franchise;

5 Q. "recall claim" includes a claim for
6 reimbursement for the parts and labor required for a dealer to
7 repair a motor vehicle subject to a do not drive order or stop
8 sale order;

9 R. "recreational vehicle" means any motor vehicle
10 with a camping body that either has its own motive power or is
11 drawn by another vehicle;

12 S. "relevant market area" means an area of a size
13 specified in this subsection around an existing motor vehicle
14 dealer's place of business. The size of the area shall be the
15 greater of the area of responsibility specified in the dealer's
16 franchise or a circle with a center at the dealer's place of
17 business and a radius of:

18 (1) seven miles, if the population of the
19 county in which the dealership is located is two hundred fifty
20 thousand or more;

21 (2) fifteen miles, if the population of the
22 county in which the dealership is located is less than two
23 hundred fifty thousand but is thirty-five thousand or more; or

24 (3) twenty miles in all other cases.

25 If the existing and proposed dealerships are in different

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1 counties, the lesser of the applicable mileage limitations
2 shall be used. For purposes of this subsection, the population
3 of any area shall be determined in accordance with the most
4 recent decennial census or the most recent population update
5 from the national planning data corporation or other similar
6 recognized source, whichever is later;

7 T. "representative" means any person who is or acts
8 as an agent, employee or representative of a manufacturer or
9 distributor and who performs any duties in this state relating
10 to promoting the distribution or sale of new or used motor
11 vehicles or contacts dealers in this state on behalf of a
12 manufacturer or distributor;

13 U. "sale" includes:

14 (1) the issuance, transfer, agreement for
15 transfer, exchange, pledge, hypothecation or mortgage in any
16 form, whether by transfer in trust or otherwise, of any motor
17 vehicle or interest therein or of any franchise related
18 thereto; and

19 (2) any option, subscription or other contract
20 or solicitation looking to a sale or offer or attempt to sell
21 in any form, whether spoken or written. A gift or delivery of
22 any motor vehicle or franchise with respect thereto with, or
23 as, a bonus on account of the sale of anything shall be deemed
24 a sale of such motor vehicle or franchise;

25 V. "stop sale order" means a notice issued by the

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1 federal government or a manufacturer prohibiting a motor
2 vehicle dealer from leasing or selling and delivering at
3 wholesale or retail a motor vehicle in the inventory of the
4 dealer until the vehicle has been repaired because the vehicle
5 has a safety defect, fails to comply with a federal motor
6 vehicle safety standard or fails to comply with an emissions
7 standard;

8 W. "successor manufacturer" means a motor vehicle
9 manufacturer that, on or after January 1, 2010, acquires,
10 succeeds to or assumes any part of the business of a
11 predecessor manufacturer as the result of:

12 (1) a change in ownership, operation or
13 control of the predecessor manufacturer;

14 (2) the termination, suspension or cessation
15 of all or a part of the business operation of the predecessor
16 manufacturer;

17 (3) the discontinuance of the sale of a
18 product line; or

19 (4) a change in the distribution system by the
20 predecessor manufacturer, whether through a change in
21 distributor or the predecessor manufacturer's decision to cease
22 conducting business through a distributor; and

23 X. "value of the used motor vehicle" means the
24 average trade-in value indicated in an independent third party
25 guide for a used motor vehicle of the same year, make, model

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1 and mileage."

2 SECTION 2. Section 57-16-5 NMSA 1978 (being Laws 1973,
3 Chapter 6, Section 5, as amended) is amended to read:

4 "57-16-5. UNLAWFUL ACTS--MANUFACTURERS--DISTRIBUTORS--
5 REPRESENTATIVES.--It is unlawful for a manufacturer,
6 distributor or representative to:

7 A. coerce or attempt to coerce a dealer to order or
8 accept delivery of a motor vehicle, appliances, equipment,
9 parts or accessories therefor or any other commodity that the
10 motor vehicle dealer has not voluntarily ordered;

11 B. coerce or attempt to coerce a dealer to order or
12 accept delivery of a motor vehicle with special features,
13 appliances, accessories or equipment not included in the list
14 price of the motor vehicles as publicly advertised by the
15 manufacturer;

16 C. coerce or attempt to coerce a dealer to order
17 for any person any parts, accessories, equipment, machinery,
18 tools, appliances or any commodity whatsoever;

19 D. refuse to deliver, in reasonable quantities and
20 within a reasonable time after receipt of dealer's order, to a
21 motor vehicle dealer having a franchise or contractual
22 arrangement for the retail sale of motor vehicles sold or
23 distributed by the manufacturer, distributor or representative,
24 those motor vehicles, parts or accessories covered by the
25 franchise or contract specifically publicly advertised by the

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1 manufacturer, distributor or representative to be available for
2 immediate delivery; provided, however, the failure to deliver a
3 motor vehicle, parts or accessories shall not be considered a
4 violation of Chapter 57, Article 16 NMSA 1978 if the failure is
5 due to an act of God, work stoppage or delay due to a strike or
6 labor difficulty, shortage of materials, freight embargo or
7 other cause over which the manufacturer, distributor or
8 representative or an agent thereof has no control;

9 E. coerce or attempt to coerce a motor vehicle
10 dealer to enter into an agreement with the manufacturer,
11 distributor or representative or to do any other act
12 prejudicial to the dealer by threatening to cancel a franchise
13 or a contractual agreement existing between the manufacturer,
14 distributor or representative and the dealer; provided,
15 however, that notice in good faith to a motor vehicle dealer of
16 the dealer's violation of the terms or provisions of the
17 franchise or contractual agreement does not constitute a
18 violation of Chapter 57, Article 16 NMSA 1978;

19 F. terminate or cancel the franchise or selling
20 agreement of a dealer without due cause. "Due cause" means a
21 material breach by a dealer, due to matters within the dealer's
22 control, of a lawful provision of a franchise or selling
23 agreement. As used in this subsection, "material breach" means
24 a contract violation that is substantial and significant. In
25 determining whether due cause exists under this subsection, the

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1 court shall take into consideration only the dealer's sales in
2 relation to the business available to the dealer; the dealer's
3 investment and obligations; injury to the public welfare; the
4 adequacy of the dealer's sales and service facilities,
5 equipment and parts; the qualifications of the management,
6 sales and service personnel to provide the consumer with
7 reasonably good service and care of new motor vehicles; the
8 dealer's failure to comply with the requirements of the
9 franchise; and the harm to the manufacturer or distributor.
10 The nonrenewal of a franchise or selling agreement, without due
11 cause, shall constitute an unfair termination or cancellation
12 regardless of the terms or provisions of the franchise or
13 selling agreement. The manufacturer, distributor or
14 representative shall notify a motor vehicle dealer in writing
15 by registered mail of the termination or cancellation of the
16 franchise or selling agreement of the dealer at least sixty
17 days before the effective date thereof, stating the specific
18 grounds for termination or cancellation; and the manufacturer,
19 distributor or representative shall notify a motor vehicle
20 dealer in writing by registered mail at least sixty days before
21 the contractual term of the dealer's franchise or selling
22 agreement expires that it will not be renewed, stating the
23 specific grounds for nonrenewal in those cases where there is
24 no intention to renew, and in no event shall the contractual
25 term of a franchise or selling agreement expire without the

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1 written consent of the motor vehicle dealer involved prior to
2 the expiration of at least sixty days following the written
3 notice. During the sixty-day period, either party may in
4 appropriate circumstances petition a district court to modify
5 the sixty-day stay or to extend it pending a final
6 determination of proceedings on the merits. The court may
7 grant preliminary and final injunctive relief;

8 G. use false, deceptive or misleading advertising
9 in connection with the manufacturer's, distributor's or
10 representative's business;

11 H. offer to sell or to sell a motor vehicle to a
12 motor vehicle dealer in this or any other state of the United
13 States at a lower actual price than the actual price offered to
14 any other motor vehicle dealer in this state for the same model
15 vehicle similarly equipped or to utilize devices, including
16 sales promotion plans or programs that result in a lesser
17 actual price; provided, however, the provisions of this
18 subsection do not apply to sales to a motor vehicle dealer for
19 resale to a unit of the United States government, the state or
20 its political subdivisions; and provided, further, the
21 provisions of this subsection do not apply to sales to a motor
22 vehicle dealer of a motor vehicle ultimately sold, donated or
23 used by the dealer in a driver education program; and provided,
24 further, that the provisions of this subsection do not apply if
25 a manufacturer, distributor or representative offers to sell or

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1 sells new motor vehicles to all motor vehicle dealers at an
2 equal price. As used in this section, "actual price" means the
3 price to be paid by the dealer less any incentive paid by the
4 manufacturer, distributor or representative, whether paid to
5 the dealer or the ultimate purchaser of the vehicle. This
6 provision does not apply to sales by the manufacturer,
7 distributor or representatives to the United States government
8 or its agencies. The provisions of this subsection dealing
9 with vehicle prices in another state and defining actual price
10 do not apply to a manufacturer or distributor if all of the
11 manufacturer's or distributor's dealers within fifty miles of a
12 neighboring state are given all cash or credit incentives
13 available in the neighboring state, whether the incentives are
14 offered by the manufacturer or distributor or a finance
15 subsidiary of either, affecting the price or financing terms of
16 a vehicle;

17 I. willfully discriminate, either directly or
18 indirectly, in price between different purchasers of a
19 commodity of like grade or quality where the effect of the
20 discrimination may be to lessen substantially competition or
21 tend to create a monopoly or to injure or destroy the business
22 of a competitor;

23 J. offer to sell or to sell parts or accessories to
24 a motor vehicle dealer for use in the dealer's own business for
25 the purpose of repairing or replacing the same or a comparable

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1 part or accessory at a lower actual price than the actual price
2 charged to any other motor vehicle dealer for similar parts or
3 accessories for use in the dealer's own business; provided,
4 however, in those cases where motor vehicle dealers have a
5 franchise to operate and serve as wholesalers of parts and
6 accessories to retail outlets or other dealers, whether or not
7 the dealer is regularly designated as a wholesaler, nothing in
8 this section prevents a manufacturer, distributor or
9 representative from selling to the motor vehicle dealer who
10 operates and serves as a wholesaler of parts and accessories
11 such parts and accessories as may be ordered by the motor
12 vehicle dealer for resale to retail outlets at a lower actual
13 price than the actual price charged a motor vehicle dealer who
14 does not operate or serve as a wholesaler of parts and
15 accessories;

16 K. prevent or attempt to prevent by contract or
17 otherwise a motor vehicle dealer from changing the capital
18 structure of the dealer's dealership or the means by or through
19 which the dealer finances the operation of the dealership, if
20 the dealer at all times meets any reasonable capital standards
21 agreed to between the dealer and the manufacturer, distributor
22 or representative, and if the change by the dealer does not
23 result in a change in the executive management control of the
24 dealership;

25 L. prevent or attempt to prevent by contract or

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1 otherwise a motor vehicle dealer or an officer, partner or
2 stockholder of a motor vehicle dealer from selling or
3 transferring a part of the interest of any of them to any other
4 person or party; provided, however, that no dealer, officer,
5 partner or stockholder shall have the right to sell, transfer
6 or assign the franchise or power of management or control
7 thereunder without the consent of the manufacturer, distributor
8 or representative except that the manufacturer, distributor or
9 representative shall not withhold consent to the sale, transfer
10 or assignment of the franchise to a qualified buyer capable of
11 being licensed in New Mexico and who meets the manufacturer's
12 or distributor's uniformly applied requirement for appointment
13 as a dealer. Uniform application shall not prevent the
14 application of a separate standard of consent for sale,
15 transfer or assignment to minority or women dealer candidates,
16 and shall not require the application of an identical standard
17 to all persons in all situations. The requirement of uniform
18 application shall be met if the manufacturer applies the same
19 set of standards, which takes into account business performance
20 and experience, financial qualifications, facility requirements
21 and other relevant characteristics; provided that, if two
22 dealers, persons or situations are identical, given the
23 characteristics considered in the standards, the two dealers,
24 persons or situations shall be treated identically, except as
25 provided in this subsection. Upon request, a manufacturer or

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1 distributor shall provide its dealer with a copy of the
2 standards that are normally relied upon by the manufacturer or
3 distributor to evaluate a proposed sale, transfer or
4 assignment. A manufacturer, distributor or representative
5 shall send a letter by certified mail approving or withholding
6 consent within sixty calendar days of receiving the completed
7 application forms and related information requested by a
8 manufacturer or distributor as provided below. A manufacturer,
9 distributor or representative shall send its existing motor
10 vehicle dealer the necessary application forms and identify the
11 related information required within twenty calendar days of
12 receiving written notice from the existing motor vehicle dealer
13 of the proposed sale or transfer. No manufacturer, distributor
14 or representative shall require any information not requested
15 in the twenty-day period, and submission of the information
16 requested within that period together with a completed form of
17 the application provided shall constitute a completed
18 application form. A request for consent shall be deemed
19 granted, and the manufacturer, distributor or representative
20 shall be estopped from denying the consent, if the consent has
21 not been expressly withheld during the applicable sixty-day
22 period;

23 M. obtain money, goods, services, anything of value
24 or any other benefit from any other person with whom the motor
25 vehicle dealer does business on account of or in relation to

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1 the transactions between the dealer and the other person,
2 unless the benefit is promptly accounted for and transmitted to
3 the motor vehicle dealer;

4 N. require a motor vehicle dealer to assent to a
5 release, assignment, novation, waiver or estoppel that would
6 relieve a person from liability imposed by Chapter 57, Article
7 16 NMSA 1978;

8 O. require a motor vehicle dealer to provide
9 installment financing with a specified financial institution;

10 P. establish an additional franchise, including any
11 franchise for a warranty or service facility outside of the
12 relevant market area of the dealer establishing the facility,
13 but excluding the relocation of existing franchises, for the
14 same line-make in a relevant market area where the same line-
15 make is presently being served by an existing motor vehicle
16 dealer if such addition would be inequitable to the existing
17 dealer; provided, however, that the sales and service needs of
18 the public shall be given due consideration in determining the
19 equities of the existing dealer. The sole fact that the
20 manufacturer, distributor or representative desires further
21 penetration of the market is not grounds for establishing an
22 additional franchise; provided, further, that the manufacturer,
23 distributor or representative shall give a ninety-day written
24 notice by registered mail to all same line-make dealers in a
25 relevant market area of its intention to establish an

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1 additional franchise;

2 Q. offer to sell or lease or to sell or lease a new
3 motor vehicle to a person, except a distributor, at a lower
4 actual price therefor than the actual price offered and charged
5 to a motor vehicle dealer for the same model vehicle similarly
6 equipped or to utilize any device that results in a lower
7 actual price;

8 R. sell, lease or provide motorcycles, parts or
9 accessories to a person not a dealer or distributor for the
10 line-make sold, leased or provided. The provisions of this
11 subsection do not apply to sales, leases or provisions of motor
12 vehicles, parts or accessories by a manufacturer, distributor
13 or representative to the United States government or its
14 agencies or the state or its political subdivisions;

15 S. offer a finance program, either directly or
16 through an affiliate, based on the physical location of the
17 selling dealer or the residence of the buyer. The provisions
18 of this subsection do not apply to a manufacturer or
19 distributor that has no dealer within fifty miles of a state
20 line or if all of the manufacturer's or distributor's dealers
21 within that fifty miles are given all cash or credit incentives
22 available in the neighboring state, whether the incentives are
23 offered by the manufacturer or the distributor or a finance
24 subsidiary of either, affecting the price or financing terms of
25 a vehicle;

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1 T. force a dealer to sell or relocate a franchise
2 with another manufacturer located at the same physical location
3 or consider the existence of another line-make at a dealership
4 for product allocation, successorship, location approval and
5 capitalization; provided that a manufacturer or distributor may
6 require that the dealer:

7 (1) meet the manufacturer's capitalization
8 requirements;

9 (2) meet the manufacturer's facilities
10 requirements; and

11 (3) not have committed fraudulent acts;

12 U. enforce a right of first refusal or option to
13 purchase the dealership by a manufacturer or distributor or to
14 require a dealer to grant a right or option to a manufacturer
15 or distributor;

16 V. be licensed as a dealer or perform warranty or
17 other service or own an interest, directly or indirectly, in a
18 person licensed as a dealer or performing warranty or other
19 service; provided that a manufacturer or distributor may own a
20 person licensed as a dealer for a reasonable time in order to
21 dispose of an interest acquired as a secured party or as part
22 of a dealer development program;

23 W. fail to recognize and approve the transfer of a
24 dealership to a person named as a successor, donee, beneficiary
25 or devisee in a valid testamentary or trust instrument;

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1 provided that a manufacturer or distributor may impose
2 standards or criteria used in a transfer;

3 X. impose capitalization requirements not necessary
4 to assure that the dealer can meet its financial obligations;

5 Y. compel a dealer through a finance subsidiary of
6 the manufacturer or distributor to agree to unreasonable
7 operating requirements or directly or indirectly to terminate a
8 dealer, except as allowed by Subsection F of this section,
9 through the actions of a finance subsidiary of the manufacturer
10 or distributor. This subsection shall not limit the right of a
11 financing entity to engage in business practices in accordance
12 with the usage of the trade in which it is engaged;

13 Z. require a dealer or the dealer's successor to:

14 (1) construct a new dealership, require the
15 relocation of an existing dealership or substantially change,
16 alter or remodel a dealer's facility except as necessary to
17 comply with health or safety laws or to comply with technology
18 requirements necessary to sell or service vehicles; or

19 (2) construct a new dealership, require
20 relocation of an existing dealership or substantially change,
21 alter or remodel an existing dealership before the tenth
22 anniversary of the date that the construction or change,
23 alteration or remodel of the dealership at that location was
24 completed if the construction was in substantial compliance
25 with standards or plans provided by a manufacturer, distributor

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1 or representative; [~~or~~]

2 AA. unreasonably withhold approval for a dealer to
3 purchase substantially similar goods or services related to the
4 construction, alteration, remodel or renovation of a dealership
5 facility from vendors of the dealer's choice. This subsection
6 shall not be construed to allow a dealer or vendor to infringe
7 upon or impair a manufacturer's trademark rights or to erect or
8 maintain a sign that does not conform to the manufacturer's
9 reasonable fabrication specifications and trademark usage
10 guidelines;

11 BB. discriminate, directly or indirectly, or to use
12 an unreasonable, arbitrary or unfair sales or other performance
13 standard in determining a franchise motor vehicle dealer's
14 compliance with a franchise agreement. The manufacturer has
15 the burden of proving the reasonableness of its performance
16 standards by clear and convincing evidence;

17 CC. fail to compensate a motor vehicle dealer for
18 reconditioning expenses or for labor and parts required for a
19 dealer to repair a new or used vehicle that is subject to a
20 recall, do not drive order or stop sale order, if the dealer
21 holds a franchise of the same line-make as the vehicle;

22 DD. fail to compensate a motor vehicle dealer as
23 prescribed by Chapter 57, Article 16 NMSA 1978 for a delay in
24 delivering parts or equipment needed to repair a used motor
25 vehicle that is subject to a do not drive order or stop sale

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1 order, if the dealer holds a franchise of the same line-make as
2 the vehicle;

3 EE. reduce compensation to a motor vehicle dealer,
4 process a charge back to a dealer, reduce the amount that the
5 manufacturer owes a dealer under an incentive program or remove
6 a dealer from an incentive program in response to the dealer
7 submitting a claim or receiving compensation for a claim. This
8 subsection does not prohibit a manufacturer from modifying or
9 discontinuing an incentive program prospectively or from making
10 ordinary business decisions; or

11 FF. use any data, calculations or statistical
12 determinations of the sales performance of a motor vehicle
13 dealer for any purpose for any period of time during which the
14 dealer has at least three percent of its total new and used
15 motor vehicle inventory subject to a stop sale order or do not
16 drive order."

17 SECTION 3. Section 57-16-7 NMSA 1978 (being Laws 1973,
18 Chapter 6, Section 7, as amended by Laws 2011, Chapter 111,
19 Section 1 and by Laws 2011, Chapter 118, Section 1) is amended
20 to read:

21 "57-16-7. WARRANTY AND RECALL CLAIMS--PAYMENT.--

22 A. Each manufacturer shall specify in its franchise
23 agreement, or in a separate written agreement, with each of its
24 dealers licensed in this state, the dealer's obligation to
25 perform warranty work or service on the manufacturer's

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1 products.

2 B. Each manufacturer shall provide each of its
3 dealers with a schedule of compensation to be paid to the
4 dealer for [~~any~~] recall claims or warranty work or service,
5 including parts, labor and diagnostic work, required of the
6 dealer by the manufacturer in connection with the
7 manufacturer's products. The schedule of compensation for a
8 recall or warranty claim shall not be less than the rates
9 charged by the dealer for similar service to retail customers
10 for nonwarranty service and repairs and shall not be less than
11 the schedule of compensation for an existing dealer as of July
12 1, 2011.

13 ~~[B.]~~ C. The rates charged by the dealer for
14 nonwarranty service or work for parts means the price paid by
15 the dealer for those parts, including all shipping and other
16 charges, increased by the franchisee's average percentage
17 markup. A dealer shall establish and declare the dealer's
18 average percentage markup by submitting to the manufacturer one
19 hundred sequential customer-paid service repair orders or
20 ninety days of customer-paid service repair orders, whichever
21 is less, covering repairs made no more than one hundred eighty
22 days before the submission. A change in a dealer's established
23 average percentage markup takes effect thirty days following
24 the submission. A manufacturer shall not require a dealer to
25 establish average percentage markup by another methodology. A

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1 manufacturer shall not require information that the dealer
2 believes is unduly burdensome or time-consuming to provide,
3 including [~~but not limited to~~] part-by-part or transaction-by-
4 transaction calculations.

5 [~~G.~~] D. A manufacturer shall compensate a dealer
6 for labor and diagnostic work pursuant to a recall or warranty
7 claim at the rates charged by the dealer to its retail
8 customers for such work. If a manufacturer can demonstrate
9 that the rates unreasonably exceed those of all other
10 franchised motor vehicle dealers in the same relevant market
11 area offering the same or a competitive motor vehicle line, the
12 manufacturer is not required to honor the rate increase
13 proposed by the dealer. If the manufacturer is not required to
14 honor the rate increase proposed by the dealer, the dealer is
15 entitled to resubmit a new proposed rate for labor and
16 diagnostic work.

17 [~~D.~~] E. A dealer shall not be granted an increase
18 in the average percentage markup or labor and diagnostic work
19 rate more than twice in one calendar year.

20 [~~E.~~] F. All recall or warranty claims [~~for warranty~~
21 ~~work~~] for parts and labor made by dealers under this section
22 shall be submitted to the manufacturer within one year of the
23 date the work was performed. All claims submitted must be paid
24 by the manufacturer within thirty days following receipt,
25 provided that the claim has been approved by the manufacturer.

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1 The manufacturer has the right to audit claims [~~for warranty~~
2 ~~work~~] and to charge the dealer for any unsubstantiated,
3 incorrect or false claims for a period of six months following
4 payment. However, the manufacturer may audit and charge the
5 dealer for any fraudulent claims during any period for which an
6 action for fraud may be commenced under applicable state law.

7 [~~F.~~] G. All claims submitted by dealers on the
8 forms and in the manner specified by the manufacturer shall be
9 either approved or disapproved within thirty days following
10 their receipt. The manufacturer shall notify the dealer in
11 writing of any disapproved claim and shall set forth the
12 reasons why the claim was not approved. Any claim not
13 specifically disapproved in writing within thirty days
14 following receipt is approved, and the manufacturer is required
15 to pay that claim within thirty days of receipt of the claim.

16 [~~G.~~] H. A manufacturer may not [~~otherwise~~] recover
17 [~~all or any portion of~~] its costs for compensating its dealers
18 licensed in this state for a recall or warranty [~~parts and~~
19 ~~service~~] claim either by reduction in the amount due to the
20 dealer or by separate charge, surcharge or other imposition.

21 I. A manufacturer, distributor or representative
22 shall not deny a claim by a dealer for performing a covered
23 warranty repair or required recall, do not drive order or stop
24 sale order repair on a motor vehicle if the dealer discovered
25 the need for the repair during the course of a separate repair

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1 request by the customer.

2 [H.] J. The provisions of this section shall not
3 apply to recreational travel trailers or to parts of systems,
4 fixtures, appliances, furnishings, accessories and features of
5 motor homes."

6 SECTION 4. A new section of Chapter 57, Article 16 NMSA
7 1978 is enacted to read:

8 "[NEW MATERIAL] PROHIBITION ON DENIAL OF CLAIMS BASED ON
9 TECHNICAL ERRORS.--A manufacturer, distributor or
10 representative shall not deny an element of a paid claim,
11 customer or dealer incentive, recall claim or warranty claim
12 based on a dealer's incidental failure to comply with a claim
13 requirement or a clerical error or other technicality, as long
14 as the dealer corrects the clerical error or other technicality
15 according to licensee guidelines. This section applies to a
16 successor manufacturer or distributor."

17 SECTION 5. A new section of Chapter 57, Article 16 NMSA
18 1978 is enacted to read:

19 "[NEW MATERIAL] USED VEHICLES--DO NOT DRIVE OR STOP SALE
20 ORDERS--DUTY TO PROVIDE PARTS OR EQUIPMENT--COMPENSATION FOR
21 DELAY.--

22 A. If a manufacturer, a distributor or the federal
23 government issues a stop sale order or do not drive order on a
24 used motor vehicle that is part of a franchise motor vehicle
25 dealer's inventory, the manufacturer or distributor immediately

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1 shall give to the dealer the part or equipment needed to make
2 the vehicle comply with the motor vehicle standards or to
3 correct the defect.

4 B. If a remedy or part necessary to repair a used
5 motor vehicle subject to a stop sale order or do not drive
6 order is not available within thirty days of the issuance of
7 the order, the manufacturer shall compensate a franchise motor
8 vehicle dealer for each affected used motor vehicle in the
9 dealer's inventory at a prorated rate of at least one and one-
10 half percent of the value of the used motor vehicle per month,
11 commencing on the thirtieth day after the order was issued and
12 ending on the date that the remedy or all parts necessary to
13 repair or service the used motor vehicle are made available to
14 the dealer. A manufacturer is not required to compensate a
15 motor vehicle dealer for more than the total value of the used
16 motor vehicle.

17 C. For the purposes of this section, a used motor
18 vehicle is part of the franchise motor vehicle dealer's
19 inventory if the used motor vehicle is in the possession of the
20 dealer on the date the do not drive order or stop sale order is
21 issued or if the dealer obtains the used motor vehicle as a
22 result of trade-in, lease return or purchase after the date
23 that the order is issued but before the remedy and all parts
24 necessary to repair the used motor vehicle are made available
25 to the dealer. The manufacturer may establish the method by

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1 which a dealer demonstrates that an affected motor vehicle is
2 part of the dealer's inventory. The method may not be
3 unreasonable, be unduly burdensome or require the dealer to
4 provide information to the manufacturer that is not necessary
5 for payment."

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