

1 AN ACT

2 RELATING TO MOTOR VEHICLE DEALERS; ALPHABETIZING THE
3 DEFINITIONS OF CHAPTER 57, ARTICLE 16 NMSA 1978 AND ADDING
4 FOUR NEW DEFINITIONS; PROSCRIBING UNLAWFUL ACTS OF
5 MANUFACTURERS AND DISTRIBUTORS; REQUIRING COMPENSATION FOR
6 REPAIRS TO A VEHICLE SUBJECT TO RECALL, A DO NOT DRIVE ORDER
7 OR STOP SALE ORDER; REQUIRING A MANUFACTURER TO PROVIDE A
8 FRANCHISE DEALER WITH THE PARTS NECESSARY TO REPAIR A USED
9 MOTOR VEHICLE SUBJECT TO A DO NOT DRIVE ORDER OR STOP SALE
10 ORDER; PROHIBITING THE DENIAL OF CLAIMS BASED ON TECHNICAL
11 ERRORS; PRESCRIBING REMEDIES; DECLARING AN EMERGENCY.

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

18 "57-16-3. DEFINITIONS.--As used in Chapter 57, Article
19 16 NMSA 1978:

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

24 B. "dealer cost" means an amount equal to the sum
25 of the original invoice price that the dealer paid for

1 inventory and the cost of the delivery of the inventory from
2 the manufacturer or distributor to the dealer, less
3 applicable discounts;

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

18 D. "distributor" means any person who distributes
19 or sells new or used motor vehicles to dealers and who is not
20 a manufacturer;

21 E. "do not drive order" means a notice advising a
22 motor vehicle dealer or an owner of a motor vehicle not to
23 drive the vehicle until the vehicle has been repaired because
24 the vehicle has a safety defect, fails to comply with a
25 federal motor vehicle safety standard or fails to comply with

1 a federal requirement;

2 F. "former franchisee":

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

5 (a) entered into a termination
6 agreement or deferred termination agreement with the
7 manufacturer related to the franchise; or

8 (b) has had the franchise canceled,
9 terminated or otherwise ended; and

10 (2) includes the designated successor of the
11 former franchisee in the event the former franchisee is
12 deceased or disabled;

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

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

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

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 I. "inventory" means new or unused motorcycles,
6 motor vehicles, motorcycle attachments and motorcycle and
7 motor vehicle repair parts that are provided by a
8 manufacturer or distributor to a dealer under a franchise
9 agreement and that are purchased within thirty-six months of
10 the termination of the franchise or are listed in the
11 manufacturer's or distributor's current sales manual or price
12 list at the time that the franchise is terminated;

13 J. "manufacturer" means any person who
14 manufactures or assembles new motor vehicles either within or
15 outside of this state and may include a predecessor
16 manufacturer or a successor manufacturer;

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. "motor vehicle" means every self-propelled
21 vehicle, having two or more wheels, by which a person or
22 property may be transported on a public highway and includes
23 recreational vehicles;

24 M. "motor vehicle dealer" or "dealer" means a
25 person who sells or solicits or advertises the sale of new or

1 used motor vehicles and is licensed as a dealer pursuant to
2 the Motor Vehicle Code. "Motor vehicle dealer" or "dealer"
3 shall not include:

4 (1) receivers, trustees, administrators,
5 executors, guardians or other persons appointed by or acting
6 under judgment, decree or order of any court;

7 (2) public officers while performing their
8 duties as such officers;

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

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

14 N. "person" means every natural person,
15 partnership, corporation, association, trust, estate or any
16 other legal entity;

17 O. "predecessor manufacturer" means a manufacturer
18 that is acquired, succeeded by or assumed by a successor
19 manufacturer;

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

22 Q. "recall claim" includes a claim for
23 reimbursement for the parts and labor required for a dealer
24 to repair a motor vehicle subject to a do not drive order or
25 stop sale order;

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

4 S. "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
7 the greater of the area of responsibility specified in the
8 dealer's franchise or a circle with a center at the dealer's
9 place of 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
12 fifty 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;
16 or

17 (3) twenty miles in all other cases.

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

25 T. "representative" means any person who is or

1 acts as an agent, employee or representative of a
2 manufacturer or distributor and who performs any duties in
3 this state relating to promoting the distribution or sale of
4 new or used motor vehicles or contacts dealers in this state
5 on behalf of a manufacturer or distributor;

6 U. "sale" includes:

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

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

19 V. "stop sale order" means a notice prohibiting a
20 motor vehicle dealer from leasing or selling and delivering
21 at wholesale or retail a used motor vehicle in the inventory
22 of the dealer until the vehicle has been repaired because the
23 vehicle has a safety defect, fails to comply with a federal
24 motor vehicle safety standard or fails to comply with a
25 federal requirement;

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

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

7 (2) the termination, suspension or cessation
8 of all or a part of the business operation of the predecessor
9 manufacturer;

10 (3) the discontinuance of the sale of a
11 product line; or

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

16 X. "value of the used motor vehicle" means the
17 average trade-in value indicated in an independent third
18 party guide for a used motor vehicle of the same year, make
19 and model."

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

22 "57-16-5. UNLAWFUL ACTS--MANUFACTURERS--DISTRIBUTORS--
23 REPRESENTATIVES.--It is unlawful for a manufacturer,
24 distributor or representative to:

25 A. coerce or attempt to coerce a dealer to order

1 or accept delivery of a motor vehicle, appliances, equipment,
2 parts or accessories therefor or any other commodity that the
3 motor vehicle dealer has not voluntarily ordered;

4 B. coerce or attempt to coerce a dealer to order
5 or accept delivery of a motor vehicle with special features,
6 appliances, accessories or equipment not included in the list
7 price of the motor vehicles as publicly advertised by the
8 manufacturer;

9 C. coerce or attempt to coerce a dealer to order
10 for any person any parts, accessories, equipment, machinery,
11 tools, appliances or any commodity whatsoever;

12 D. refuse to deliver, in reasonable quantities and
13 within a reasonable time after receipt of dealer's order, to
14 a motor vehicle dealer having a franchise or contractual
15 arrangement for the retail sale of motor vehicles sold or
16 distributed by the manufacturer, distributor or
17 representative, those motor vehicles, parts or accessories
18 covered by the franchise or contract specifically publicly
19 advertised by the manufacturer, distributor or representative
20 to be available for immediate delivery; provided, however,
21 the failure to deliver a motor vehicle, parts or accessories
22 shall not be considered a violation of Chapter 57, Article 16
23 NMSA 1978 if the failure is due to an act of God, work
24 stoppage or delay due to a strike or labor difficulty,
25 shortage of materials, freight embargo or other cause over

1 which the manufacturer, distributor or representative or an
2 agent thereof has no control;

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

13 F. terminate or cancel the franchise or selling
14 agreement of a dealer without due cause. "Due cause" means a
15 material breach by a dealer, due to matters within the
16 dealer's control, of a lawful provision of a franchise or
17 selling agreement. As used in this subsection, "material
18 breach" means a contract violation that is substantial and
19 significant. In determining whether due cause exists under
20 this subsection, the court shall take into consideration only
21 the dealer's sales in relation to the business available to
22 the dealer; the dealer's investment and obligations; injury
23 to the public welfare; the adequacy of the dealer's sales and
24 service facilities, equipment and parts; the qualifications
25 of the management, sales and service personnel to provide the

1 consumer with reasonably good service and care of new motor
2 vehicles; the dealer's failure to comply with the
3 requirements of the franchise; and the harm to the
4 manufacturer or distributor. The nonrenewal of a franchise
5 or selling agreement, without due cause, shall constitute an
6 unfair termination or cancellation regardless of the terms or
7 provisions of the franchise or selling agreement. The
8 manufacturer, distributor or representative shall notify a
9 motor vehicle dealer in writing by registered mail of the
10 termination or cancellation of the franchise or selling
11 agreement of the dealer at least sixty days before the
12 effective date thereof, stating the specific grounds for
13 termination or cancellation; and the manufacturer,
14 distributor or representative shall notify a motor vehicle
15 dealer in writing by registered mail at least sixty days
16 before the contractual term of the dealer's franchise or
17 selling agreement expires that it will not be renewed,
18 stating the specific grounds for nonrenewal in those cases
19 where there is no intention to renew, and in no event shall
20 the contractual term of a franchise or selling agreement
21 expire without the written consent of the motor vehicle
22 dealer involved prior to the expiration of at least sixty
23 days following the written notice. During the sixty-day
24 period, either party may in appropriate circumstances
25 petition a district court to modify the sixty-day stay or to

1 extend it pending a final determination of proceedings on the
2 merits. The court may grant preliminary and final injunctive
3 relief;

4 G. use false, deceptive or misleading advertising
5 in connection with the manufacturer's, distributor's or
6 representative's business;

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

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

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

20 J. offer to sell or to sell parts or accessories
21 to a motor vehicle dealer for use in the dealer's own
22 business for the purpose of repairing or replacing the same
23 or a comparable part or accessory at a lower actual price
24 than the actual price charged to any other motor vehicle
25 dealer for similar parts or accessories for use in the

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

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

22 L. prevent or attempt to prevent by contract or
23 otherwise a motor vehicle dealer or an officer, partner or
24 stockholder of a motor vehicle dealer from selling or
25 transferring a part of the interest of any of them to any

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

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

21 M. obtain money, goods, services, anything of
22 value or any other benefit from any other person with whom
23 the motor vehicle dealer does business on account of or in
24 relation to the transactions between the dealer and the other
25 person, unless the benefit is promptly accounted for and

1 transmitted to the motor vehicle dealer;

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

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

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

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

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

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

25 T. force a dealer to sell or relocate a franchise

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

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

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

10 (3) not have committed fraudulent acts;

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

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

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

1 impose standards or criteria used in a transfer;

2 X. impose capitalization requirements not
3 necessary to assure that the dealer can meet its financial
4 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
8 a dealer, except as allowed by Subsection F of this section,
9 through the actions of a finance subsidiary of the
10 manufacturer or distributor. This subsection shall not limit
11 the right of a financing entity to engage in business
12 practices in accordance with the usage of the trade in which
13 it is engaged;

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

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

21 (2) construct a new dealership, require
22 relocation of an existing dealership or substantially change,
23 alter or remodel an existing dealership before the tenth
24 anniversary of the date that the construction or change,
25 alteration or remodel of the dealership at that location was

1 completed if the construction was in substantial compliance
2 with standards or plans provided by a manufacturer,
3 distributor or representative;

4 AA. unreasonably withhold approval for a dealer to
5 purchase substantially similar goods or services related to
6 the construction, alteration, remodel or renovation of a
7 dealership facility from vendors of the dealer's choice.

8 This subsection shall not be construed to allow a dealer or
9 vendor to infringe upon or impair a manufacturer's trademark
10 rights or to erect or maintain a sign that does not conform
11 to the manufacturer's reasonable fabrication specifications
12 and trademark usage guidelines;

13 BB. use an unreasonable, arbitrary or unfair sales
14 or other performance standard in determining a franchise
15 motor vehicle dealer's compliance with a franchise agreement.
16 The manufacturer has the burden of proving the reasonableness
17 of its performance standards;

18 CC. fail to compensate a motor vehicle dealer for
19 labor and parts required for a dealer to perform necessary
20 repairs on an affected new or used motor vehicle pursuant to
21 a recall, do not drive order or stop sale order, if the
22 dealer holds a franchise of the same line-make as the subject
23 vehicle;

24 DD. fail to compensate a motor vehicle dealer as
25 prescribed by Chapter 57, Article 16 NMSA 1978 for a delay in

1 delivering parts or equipment needed to perform
2 recall-related repairs on an affected used motor vehicle
3 in the dealer's inventory that is subject to a do not drive
4 order or stop sale order, if the dealer holds a franchise
5 of the same line-make as the vehicle;

6 EE. subject to the manufacturer's audit rights
7 provided in Section 57-16-7 NMSA 1978, reduce compensation to
8 a motor vehicle dealer, process a charge back to a dealer,
9 reduce the amount of compensation that the manufacturer
10 otherwise owes to an individual dealer under an incentive
11 program or remove an individual dealer from an incentive
12 program solely because the motor vehicle dealer submitted a
13 claim or received compensation for a claim. This subsection
14 does not prohibit a manufacturer from modifying or
15 discontinuing an incentive program prospectively or from
16 making ordinary business decisions; or

17 FF. use data, calculations or statistical
18 determinations of the sales performance of a motor vehicle
19 dealer to take adverse action against the motor vehicle
20 dealer for any period of time during which the dealer has at
21 least five percent of its total new and used motor vehicle
22 inventory subject to a stop sale order or do not drive order;
23 provided that the motor vehicle dealer's performance, as
24 reflected in the data, calculations or statistical
25 determinations, is adversely affected by the stop sale order

1 or do not drive order."

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

6 "57-16-7. WARRANTY AND RECALL CLAIMS--PAYMENT.--

7 A. Each manufacturer shall specify in its
8 franchise agreement, or in a separate written agreement, with
9 each of its dealers licensed in this state, the dealer's
10 obligation to perform warranty work or service on the
11 manufacturer's products.

12 B. Each manufacturer shall provide each of its
13 dealers with a schedule of compensation to be paid to the
14 dealer for recall or warranty repairs, work or service,
15 including parts, labor and diagnostic work, required of the
16 dealer by the manufacturer in connection with the
17 manufacturer's products. The schedule of compensation for a
18 recall or warranty repair shall not be less than the rates
19 charged by the dealer for similar service to retail customers
20 for nonwarranty service and repairs.

21 C. The rates charged by the dealer for nonwarranty
22 service or work for parts means the price paid by the dealer
23 for those parts, including all shipping and other charges,
24 increased by the franchisee's average percentage markup. A
25 dealer shall establish and declare the dealer's average

1 percentage markup by submitting to the manufacturer one
2 hundred sequential customer-paid service repair orders or
3 ninety days of customer-paid service repair orders, whichever
4 is less, covering repairs made no more than one hundred
5 eighty days before the submission. A change in a dealer's
6 established average percentage markup takes effect thirty
7 days following the submission. A manufacturer shall not
8 require a dealer to establish average percentage markup by
9 another methodology. A manufacturer shall not require
10 information that is unduly burdensome or time-consuming to
11 provide, including part-by-part or transaction-by-transaction
12 calculations.

13 D. A manufacturer shall compensate a dealer for
14 labor and diagnostic work for recall or warranty repairs at
15 the rates charged by the dealer to its retail customers for
16 such work. A dealer shall establish and declare the dealer's
17 average customer pay labor rate by submitting to the
18 manufacturer the lesser of one hundred sequential
19 customer-paid service repair orders or ninety days of
20 customer-paid service repair orders covering repairs made no
21 more than one hundred eighty days before the submission.

22 E. If a manufacturer can demonstrate that the
23 rates under Subsection C or D of this section were
24 incorrectly calculated by a dealer or unreasonably exceed
25 those of all other franchised motor vehicle dealers in the

1 same relevant market area offering the same or a competitive
2 motor vehicle line, the manufacturer is not required to honor
3 the rate increase proposed by the dealer. If the
4 manufacturer is not required to honor the rate increase
5 proposed by the dealer, the dealer is entitled to resubmit a
6 new proposed rate for labor and diagnostic work.

7 F. A dealer shall not be granted an increase in
8 the average percentage markup or labor and diagnostic work
9 rate more than twice in one calendar year.

10 G. All recall or warranty claims for parts and
11 labor made by dealers under this section shall be submitted
12 to the manufacturer within one year of the date the work was
13 performed. All claims submitted must be paid by the
14 manufacturer within thirty days following receipt, provided
15 that the claim has been approved by the manufacturer. The
16 manufacturer has the right to audit claims and to charge the
17 dealer for any unsubstantiated, incorrect or false claims for
18 a period of six months following payment. However, the
19 manufacturer may audit and charge the dealer for any
20 fraudulent claims during any period for which an action for
21 fraud may be commenced under applicable state law.

22 H. All claims submitted by dealers on the forms
23 and in the manner specified by the manufacturer shall be
24 either approved or disapproved within thirty days following
25 their receipt. The manufacturer shall notify the dealer in

1 writing of any disapproved claim and shall set forth the
2 reasons why the claim was not approved. Any claim not
3 specifically disapproved in writing within thirty days
4 following receipt is approved, and the manufacturer is
5 required to pay that claim within thirty days of receipt of
6 the claim.

7 I. A manufacturer may not recover its costs for
8 compensating its dealers licensed in this state for a recall
9 or warranty claim either by reduction in the amount due to
10 the dealer or by separate charge, surcharge or other
11 imposition.

12 J. A manufacturer, distributor or representative
13 shall not deny a claim by a dealer for performing a covered
14 warranty repair or required recall, do not drive order or
15 stop sale order repair on a motor vehicle if the dealer
16 discovered the need for the repair during the course of a
17 separate repair request by the customer; provided that the
18 dealer provides the required documentation, which shall not
19 be unreasonably burdensome, demonstrating the need for the
20 repair.

21 K. The provisions of this section shall not apply
22 to recreational travel trailers or to parts of systems,
23 fixtures, appliances, furnishings, accessories and features
24 of motor homes."

25 SECTION 4. A new section of Chapter 57, Article 16

1 NMSA 1978 is enacted to read:

2 "PROHIBITION ON DENIAL OF CLAIMS BASED ON TECHNICAL
3 ERRORS.--A manufacturer, distributor or representative shall
4 not charge back an element of a paid claim, customer or
5 dealer incentive, recall claim or warranty claim based on a
6 dealer's incidental failure to comply with a claim
7 requirement or a clerical error or other technicality, as
8 long as the dealer corrects the clerical error or other
9 technicality according to licensee guidelines within ninety
10 days of learning of the clerical error or other technicality
11 and provides appropriate documentation to demonstrate the
12 need for the repair. This section applies to a successor
13 manufacturer or distributor."

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

16 "USED VEHICLES--DO NOT DRIVE OR STOP SALE ORDERS--DUTY
17 TO PROVIDE PARTS OR EQUIPMENT--COMPENSATION FOR DELAY.--

18 A. If a manufacturer, a distributor or the federal
19 government issues a stop sale order or do not drive order on
20 a used motor vehicle that is part of a franchise motor
21 vehicle dealer's inventory, the manufacturer or distributor
22 upon availability shall immediately provide to the dealer the
23 part or equipment needed to make the vehicle comply with the
24 motor vehicle standards or to correct the defect.

25 B. If a remedy or part necessary to repair a used

1 motor vehicle subject to a stop sale order or do not drive
2 order is not available within thirty days of the issuance of
3 the order, upon request of a franchise motor vehicle dealer,
4 the manufacturer shall compensate its franchise motor vehicle
5 dealer for each affected used motor vehicle of the same
6 line-make as new vehicles that the dealer is authorized to
7 sell or service in the dealer's inventory at a prorated rate
8 of at least one percent of the value of the used motor
9 vehicle per month, commencing on the thirtieth day after the
10 order was issued and ending on the earlier of the date that a
11 remedy or all parts necessary to repair or service the
12 affected used motor vehicle are made available to the dealer
13 or the dealer sells, trades or otherwise disposes of the
14 affected used motor vehicle. Alternatively, a manufacturer
15 may compensate a motor vehicle dealer under a recall
16 compensation program if the motor vehicle dealer agrees to be
17 compensated under the program. A manufacturer is not
18 required to compensate a motor vehicle dealer for more than
19 the total value of the used motor vehicle.

20 C. Compensation provided to a franchise motor
21 vehicle dealer under Subsection B of this section is
22 exclusive and shall not be combined with any other recall
23 compensation remedy under state or federal law.

24 D. For the purposes of this section, a used motor
25 vehicle is part of the franchise motor vehicle dealer's

1 inventory if the used motor vehicle is held for sale and in
2 the possession of the dealer on the date the do not drive
3 order or stop sale order is issued or if the dealer obtains
4 the used motor vehicle as a result of trade-in pursuant to
5 the purchase of a new or used motor vehicle or a lease return
6 contract after the date that the order is issued but before
7 the remedy and all parts necessary to repair the used motor
8 vehicle are made available to the dealer. The manufacturer
9 may establish the method by which a dealer demonstrates that
10 an affected motor vehicle is part of the dealer's inventory.
11 The method may not be unreasonable, be unduly burdensome or
12 require the dealer to provide information to the manufacturer
13 that is not necessary to validate payment."

14 SECTION 6. EMERGENCY.--It is necessary for the public
15 peace, health and safety that this act take effect
16 immediately.

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