

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 46

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

AN ACT

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

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

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

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underscored material = new
[bracketed material] = delete

1 to read:

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

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

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

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

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

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

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

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

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1 E. ~~"manufacturer" means any person who manufactures~~
2 ~~or assembles new motor vehicles either within or outside of~~
3 ~~this state and may include a predecessor manufacturer or a~~
4 ~~successor manufacturer;~~

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

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

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

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

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

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1 fact;

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

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

6 J. ~~"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 contract~~
13 ~~or solicitation looking to a sale or offer or attempt to sell~~
14 ~~in any form, whether spoken or written. A gift or delivery of~~
15 ~~any motor vehicle or franchise with respect thereto with, or~~
16 ~~as, a bonus on account of the sale of anything shall be deemed~~
17 ~~a sale of such motor vehicle or franchise;~~

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

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

24 M. ~~"designated family member" means a spouse,~~
25 ~~child, grandchild, parent, brother or sister of a deceased or~~

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

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

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

22 P. ~~"inventory" means new or unused motorcycles,~~
 23 ~~motor vehicles, motorcycle attachments and motorcycle and motor~~
 24 ~~vehicle repair parts that are provided by a manufacturer or~~
 25 ~~distributor to a dealer under a franchise agreement and that~~

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1 ~~are purchased within thirty-six months of the termination of~~
2 ~~the franchise or are listed in the manufacturer's or~~
3 ~~distributor's current sales manual or price list at the time~~
4 ~~that the franchise is terminated;~~

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

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

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

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

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

25 R. ~~"successor manufacturer" means a motor vehicle~~

1 ~~manufacturer that, on or after January 1, 2010, acquires,~~
 2 ~~succeeds to or assumes any part of the business of a~~
 3 ~~predecessor manufacturer as the result of:~~

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

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

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

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

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

18 ~~T. "former franchisee":~~

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

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

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

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1 ~~(2) includes the designated successor of the~~
2 ~~former franchisee in the event the former franchisee is~~
3 ~~deceased or disabled]~~

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

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

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

1 filed;

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

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

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;

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

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 prohibiting a

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

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

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

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

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

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

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

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

3 "57-16-5. UNLAWFUL ACTS--MANUFACTURERS--DISTRIBUTORS--
4 REPRESENTATIVES.--It is unlawful for a manufacturer,
5 distributor or representative to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 L. prevent or attempt to prevent by contract or
25 otherwise a motor vehicle dealer or an officer, partner or

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

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

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

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1 unless the benefit is promptly accounted for and transmitted to
2 the motor vehicle dealer;

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

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

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

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1 Q. offer to sell or lease or to sell or lease a new
2 motor vehicle to a person, except a distributor, at a lower
3 actual price therefor than the actual price offered and charged
4 to a motor vehicle dealer for the same model vehicle similarly
5 equipped or to utilize any device that results in a lower
6 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 motor
11 vehicles, parts or accessories by a manufacturer, distributor
12 or representative to the United States government or its
13 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 incentives
21 available in the neighboring state, whether the incentives are
22 offered by the manufacturer or the distributor or a finance
23 subsidiary of either, affecting the price or financing terms of
24 a vehicle;

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

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

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

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1 standards or criteria used in a transfer;

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

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

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

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

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

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

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

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

20 DD. fail to compensate a motor vehicle dealer as
21 prescribed by Chapter 57, Article 16 NMSA 1978 for a delay in
22 delivering parts or equipment needed to perform recall-related
23 repairs on an affected used motor vehicle in the dealer's
24 inventory that is subject to a do not drive order or stop sale
25 order, if the dealer holds a franchise of the same line-make as

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1 the vehicle;

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

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

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

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1 "57-16-7. WARRANTY AND RECALL CLAIMS--PAYMENT.--

2 A. Each manufacturer shall specify in its franchise
3 agreement, or in a separate written agreement, with each of its
4 dealers licensed in this state, the dealer's obligation to
5 perform warranty work or service on the manufacturer's
6 products.

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

18 ~~B.]~~ C. The rates charged by the dealer for
19 nonwarranty service or work for parts means the price paid by
20 the dealer for those parts, including all shipping and other
21 charges, increased by the franchisee's average percentage
22 markup. A dealer shall establish and declare the dealer's
23 average percentage markup by submitting to the manufacturer one
24 hundred sequential customer-paid service repair orders or
25 ninety days of customer-paid service repair orders, whichever

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1 is less, covering repairs made no more than one hundred eighty
2 days before the submission. A change in a dealer's established
3 average percentage markup takes effect thirty days following
4 the submission. A manufacturer shall not require a dealer to
5 establish average percentage markup by another methodology. A
6 manufacturer shall not require information that [~~the dealer~~
7 ~~believes~~] is unduly burdensome or time-consuming to provide,
8 including [~~but not limited to~~] part-by-part or transaction-by-
9 transaction calculations.

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

19 E. If a manufacturer can demonstrate that the rates
20 under Subsection C or D of this section were incorrectly
21 calculated by a dealer or unreasonably exceed those of all
22 other franchised motor vehicle dealers in the same relevant
23 market area offering the same or a competitive motor vehicle
24 line, the manufacturer is not required to honor the rate
25 increase proposed by the dealer. If the manufacturer is not

1 required to honor the rate increase proposed by the dealer, the
2 dealer is entitled to resubmit a new proposed rate for labor
3 and diagnostic work.

4 ~~[D.]~~ F. A dealer shall not be granted an increase
5 in the average percentage markup or labor and diagnostic work
6 rate more than twice in one calendar year.

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

19 ~~[F.]~~ H. All claims submitted by dealers on the
20 forms and in the manner specified by the manufacturer shall be
21 either approved or disapproved within thirty days following
22 their receipt. The manufacturer shall notify the dealer in
23 writing of any disapproved claim and shall set forth the
24 reasons why the claim was not approved. Any claim not
25 specifically disapproved in writing within thirty days

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1 following receipt is approved, and the manufacturer is required
2 to pay that claim within thirty days of receipt of the claim.

3 ~~[G.]~~ I. A manufacturer may not ~~[otherwise]~~ recover
4 ~~[all or any portion of]~~ its costs for compensating its dealers
5 licensed in this state for a recall or warranty ~~[parts and~~
6 ~~service]~~ claim either by reduction in the amount due to the
7 dealer or by separate charge, surcharge or other imposition.

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

16 ~~[H.]~~ K. The provisions of this section shall not
17 apply to recreational travel trailers or to parts of systems,
18 fixtures, appliances, furnishings, accessories and features of
19 motor homes."

20 **SECTION 4.** A new section of Chapter 57, Article 16 NMSA
21 1978 is enacted to read:

22 "[NEW MATERIAL] PROHIBITION ON DENIAL OF CLAIMS BASED ON
23 TECHNICAL ERRORS.--A manufacturer, distributor or
24 representative shall not charge back an element of a paid
25 claim, customer or dealer incentive, recall claim or warranty

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1 claim based on a dealer's incidental failure to comply with a
 2 claim requirement or a clerical error or other technicality, as
 3 long as the dealer corrects the clerical error or other
 4 technicality according to licensee guidelines within ninety
 5 days of learning of the clerical error or other technicality
 6 and provides appropriate documentation to demonstrate the need
 7 for the repair. This section applies to a successor
 8 manufacturer or distributor."

9 SECTION 5. A new section of Chapter 57, Article 16 NMSA
 10 1978 is enacted to read:

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

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

21 B. If a remedy or part necessary to repair a used
 22 motor vehicle subject to a stop sale order or do not drive
 23 order is not available within thirty days of the issuance of
 24 the order, upon request of a franchise motor vehicle dealer,
 25 the manufacturer shall compensate its franchise motor vehicle

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

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

19 D. For the purposes of this section, a used motor
20 vehicle is part of the franchise motor vehicle dealer's
21 inventory if the used motor vehicle is held for sale and in the
22 possession of the dealer on the date the do not drive order or
23 stop sale order is issued or if the dealer obtains the used
24 motor vehicle as a result of trade-in pursuant to the purchase
25 of a new or used motor vehicle or a lease return contract after

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1 the date that the order is issued but before the remedy and all
2 parts necessary to repair the used motor vehicle are made
3 available to the dealer. The manufacturer may establish the
4 method by which a dealer demonstrates that an affected motor
5 vehicle is part of the dealer's inventory. The method may not
6 be unreasonable, be unduly burdensome or require the dealer to
7 provide information to the manufacturer that is not necessary
8 to validate payment."

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

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