

## **57-16-6.2. Recreational vehicles; franchise agreements.**

A. Every recreational vehicle manufacturer, distributor or representative shall execute a written franchise or sales agreement with each of its recreational vehicle dealers. Each agreement shall include the following provisions:

- (1) warranty service obligations, including rates charged by a dealer for performing warranty service;
- (2) specific territory or market area designation;
- (3) grounds for termination;
- (4) repurchase obligations;
- (5) sales volume and performance; and
- (6) dispute resolution procedures.

B. Notwithstanding the provisions of Subsection A of this section, a dealer and manufacturer, distributor or representative may mutually agree not to include the provisions listed in Paragraphs (2) through (6) of Subsection A of this section; provided, however, a written declaration stating which of the provisions were intentionally omitted and not applicable shall be incorporated into the written agreement.

## **57-16-7. Warranty claims; payment.**

A. Each manufacturer shall specify in its franchise agreement, or in a separate written agreement, with each of its dealers licensed in this state, the dealer's obligation to perform warranty work or service on the manufacturer's products. Each manufacturer shall provide each of its dealers with a schedule of compensation to be paid to the dealer for any warranty work or service, including parts, labor and diagnostic work, required of the dealer by the manufacturer in connection with the manufacturer's products. The schedule of compensation for a warranty claim shall not be less than the rates charged by the dealer for similar service to retail customers for nonwarranty service and repairs and shall not be less than the schedule of compensation for an existing dealer as of July 1, 2011.

B. The rates charged by the dealer for nonwarranty service or work for parts means the price paid by the dealer for those parts, including all shipping and other charges, increased by the franchisee's average percentage markup. A dealer shall establish and declare the dealer's average percentage markup by submitting to the manufacturer one hundred sequential customer-paid service repair orders or ninety days of customer-paid service repair orders, whichever is less, covering repairs made no more than one hundred eighty days before the submission. A change in a dealer's established average percentage markup takes effect thirty days following the submission. A manufacturer shall not require a dealer to establish average percentage markup by another methodology. A manufacturer shall not require information that the dealer believes is unduly burdensome or time-consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations.

C. A manufacturer shall compensate a dealer for labor and diagnostic work at the rates charged by the dealer to its retail customers for such work. If a manufacturer can demonstrate that the rates unreasonably exceed those of all other franchised motor vehicle dealers in the same relevant market area offering the same or a competitive motor vehicle line, the manufacturer is not required to honor the rate increase proposed by the dealer. If the manufacturer is not required to honor the rate increase proposed by the dealer, the dealer is entitled to resubmit a new proposed rate for labor and diagnostic work.

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

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

F. All claims submitted by dealers on the forms and in the manner specified by the manufacturer shall be either approved or disapproved within thirty days following their receipt. The manufacturer shall notify the dealer in writing of any disapproved claim and shall set forth the reasons why the claim was not approved. Any claim not specifically disapproved in writing within thirty days following receipt is approved, and the manufacturer is required to pay that claim within thirty days of receipt of the claim.

G. A manufacturer may not otherwise recover all or any portion of its costs for compensating its dealers licensed in this state for warranty parts and service either by reduction in the amount due to the dealer or by separate charge, surcharge or other imposition.

H. The provisions of this section shall not apply to recreational travel trailers or to parts of systems, fixtures, appliances, furnishings, accessories and features of motor homes.

**57-16-7.1. Sales and service incentives; audit.**

A manufacturer or distributor may audit a claim for sales and service incentives only during the six-month period immediately following payment or credit issued for the claim; however, this limitation shall not apply if there is a reasonable suspicion of fraud.

## **57-16-8. Unreasonable restrictions; site control agreements; exclusive use agreements.**

A. It is unlawful to, directly or indirectly, impose unreasonable restrictions on the motor vehicle dealer or franchise relative to transfer, sale, right to renew, termination discipline, noncompetitive covenants, site-control whether by sublease, collateral pledge of lease or otherwise, right of first refusal to purchase, option to purchase, compliance with subjective standards and assertion of legal or equitable rights.

B. Unless a separate agreement lasting no more than fifteen years has been voluntarily entered into for separate consideration, it is unlawful to, directly or indirectly, require a site control agreement or exclusive use agreement as a condition of:

- (1) awarding a franchise to a prospective motor vehicle dealer;
- (2) adding a line make or franchise to an existing dealer;
- (3) renewing the franchise of an existing dealer;
- (4) approving the relocation of an existing dealer's facility; or
- (5) approving the sale or transfer of ownership of a franchise.

C. As used in this section, "site control agreement" or "exclusive use agreement" means any agreement that has the effect of:

- (1) requiring a dealer to establish or maintain exclusive dealership facilities;
- (2) restricting the ability of a dealer or a dealer's lessor to transfer, sell, lease or change the use of the dealership premises; or
- (3) preventing or attempting to prevent a dealer from acquiring, adding or maintaining a sales or service operation for another line make of motor vehicles at the same or expanded facility at which the dealer currently operates a dealership, provided that the dealer complies with any reasonable facilities requirements of the manufacturer, successor manufacturer or distributor.

## **57-16-9. Franchise renewal; termination; anticipatory termination.**

A. Anything to the contrary notwithstanding, it is unlawful for the manufacturer, distributor or representative without due cause to fail to renew a franchise on terms then equally available to all its motor vehicle dealers or their prospective purchasers, to terminate a franchise or to restrict the transfer of a franchise unless the dealer receives fair and reasonable compensation for the value of the business. A prospective purchaser may enforce the provisions of this section whether or not the person is a dealer.

B. A public announcement by a manufacturer or distributor of an intention to cease manufacturing or distribution of a motor vehicle brand within three years of the announcement or upon expiration of a dealers' current franchise or selling agreement may at the option of an affected dealer be deemed an anticipatory involuntary termination of the dealer's franchise.

## **57-16-9.1. Succession to motorcycle dealership.**

A. A manufacturer, distributor or representative shall not prevent or refuse to give effect to the succession to ownership or management control of a motorcycle dealership upon the death or incapacity of the dealer by the surviving spouse, heir, legatee or devisee nor shall the manufacturer, distributor or representative interfere, prevent or hinder, either directly or indirectly, the continuance of the business by reason of such succession, except as otherwise provided in this act.

B. Any designated family member of a deceased or incapacitated dealer may succeed the motorcycle dealer in ownership or management control under the existing agreement; provided that the designated family member provides notice to the manufacturer, distributor or representative, in writing by registered mail, of the intention to succeed to the dealership within one hundred and twenty days after the dealer's death or incapacity and the successor agrees to be bound by all the terms of the original agreement. The successor must meet the reasonable criteria applied by the manufacturer, distributor or representative to new dealers.

C. The rejection of succession, without good cause, shall constitute an unfair termination or cancellation, regardless of the terms or provisions of the franchise or selling agreement. If the manufacturer, distributor or representative believes that good cause exists for rejection, such manufacturer, distributor or representative shall provide notice to the successor, in writing by registered mail within sixty days of the receipt of the notice of intention to succeed. In no event shall the contractual term of any franchise or selling agreement expire, without the written consent of the successor, prior to the expiration of at least ninety days following such written notice. During the ninety-day period the designated family member or successor may petition a court to modify such ninety-day stay or to extend it pending a final determination of such proceedings on the merits. The court shall have authority to grant preliminary and final injunctive relief.

D. A motorcycle dealer may designate any person as the successor by written instrument filed with the manufacturer, distributor or representative and such written instrument shall be controlling.

## **57-16-9.2. Motor vehicle dealers; termination of franchise; return of inventory.**

A. If on termination of a franchise the dealer delivers to the manufacturer or distributor the inventory, vehicle brand-specific tools, signage and other specialized systems, equipment and real estate required by the manufacturer that was purchased from the manufacturer or distributor and that is held by the dealer on the date of termination, the manufacturer or distributor shall pay to the dealer:

(1) the dealer cost of the new, unsold and undamaged motorcycles and motor vehicles from the current and immediately preceding two model years and purchased from the manufacturer or distributor within fourteen months prior to receipt of a notice of termination;

(2) an amount equal to ninety-five percent of the current price of new, unused and undamaged motorcycle attachments and motor vehicle repair parts;

(3) an amount equal to an additional five percent of the current price of new, unused and undamaged motorcycle attachments and motor vehicle repair parts, unless the manufacturer or distributor performs the handling, packing and loading of the parts, in which case no additional amount is required under this paragraph;

(4) the fair market value, determined by appraisal as if installed for continuous use in an operating dealership, of all vehicle brand-specific special tools, signage and other specialized systems and equipment required by the manufacturer or distributor for dealership operations. The fair market value will be determined by a qualified independent appraiser agreed upon by the manufacturer or distributor and the dealer unless the fair market value is mutually agreed upon by the parties; and

(5) the economic loss to the dealer resulting from idled or underused dealer facility real estate due to a manufacturer's involuntary termination, determined by any reasonable means, including appraisal, unless the dealer is in violation of the franchise agreement. Economic loss is presumed to be at least equal to the value of two years of dealer facility fair market rental value, as if the facility were an operating dealership; real estate property tax; and property insurance.

B. The manufacturer or distributor may subtract from the sum due under Subsection A of this section the amount of debts owed by the dealer to the manufacturer or distributor. The manufacturer or distributor and the dealer are each responsible for one-half of the cost of delivering the inventory to the manufacturer or distributor.

C. The manufacturer or distributor shall pay the amount due under this section before the sixty-first day after the day that the manufacturer or distributor receives inventory from the dealer.

D. On payment of the amount due under this section, title to the inventory is transferred to the manufacturer or distributor.

E. The provisions of this section shall not apply to recreational travel trailer or motor home manufacturers or dealers.

**57-16-9.3. Motor vehicle dealers; termination of franchise; return of inventory; exceptions.**

A manufacturer or distributor is not required to repurchase:

A. inventory that the dealer orders either after the dealer receives notice of the termination of the franchise from the manufacturer or distributor or after any relief, granted by a court to the dealer in the form of temporary restraining orders, temporary injunctions or permanent injunctions, has expired;

B. inventory for which the dealer is unable to furnish evidence of clear title; or

C. motorcycle attachments or motor vehicle repair parts that have a limited storage life, are in a broken or damaged package, are usually sold as part of a set, if the parts are separated from the set, or cannot be sold without reconditioning.

**57-16-10. Refunds; discounts.**

In connection with a sale of a motor vehicle or vehicles to the state or to any political subdivision thereof, no manufacturer, distributor or representative shall offer any discounts, refunds or any other similar type of inducement to any dealer without making the same offer or offers to all other of its dealers within the relevant market area, and if such inducements are made, the manufacturer, distributor or representative shall give simultaneous notice thereof to all of its dealers within the relevant market area who have requested such notice.

**57-16-11. Injunction.**

Whenever it appears that a person has violated, or is violating, or is threatening to violate, any provision of this act, the aggrieved person may cause a civil suit to be instituted in district court for injunctive relief to restrain the person from continuing the violation or threat of violation.

**57-16-12. Venue of suits; relief.**

A suit for injunctive relief may be brought either in the county where the defendant resides or in the county where the violation or threat of violation occurs. In any suit to enjoin a violation or threat of violation of this act, the court may grant temporary restraining orders, temporary injunctions and permanent injunctions.

**57-16-13. Right of action; damages.**

In addition to any other judicial relief, any person who shall be injured in his business or property by reason of anything forbidden in this act may sue therefor in the district court and shall recover actual damages by him sustained, and the cost of suit, including a reasonable attorney's fee. In an action for money damages, the court or jury may award punitive damages not to exceed three times the actual damages, if the defendant acted maliciously.

**57-16-14. Limitations on suits.**

Actions arising out of any provision of this act shall be commenced within four years next after the cause of action accrues; provided, however, that if a person liable hereunder conceals the cause of action from the knowledge of the person entitled to bring it, the period prior to the discovery of his cause of action by the person so entitled shall be excluded in determining the time limited for the commencement of the action. If a cause of action accrues during the pendency of any civil, criminal or administrative proceeding against a person brought by the United States, or any of its agencies, under the antitrust laws, the Federal Trade Commission Act or any other federal act, or the laws of the state related to antitrust laws or to franchising, such actions may be commenced within one year after the final disposition of such civil, criminal or administrative proceeding.

**57-16-15. Price schedule change.**

A manufacturer or distributor motor vehicle price increase shall not apply to vehicles which the dealer had ordered for private retail consumers prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each such order. In the event of price reductions, the amount of any such reduction received by a dealer shall be passed on to the private retail consumer by the dealer if the retail price was negotiated on the basis of the previous higher price to the dealer. Price reduction shall apply to all motor vehicles in the dealer's inventory that are subject to the reduction. Price differences applicable to new model motor vehicles at the time of the introduction of new models shall not be considered a price increase or price decrease.

**57-16-16. Penalty.**

Any dealer who shall willfully violate any of the provisions of Section 4 [57-16-4 NMSA 1978] of this act shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100) or more than five hundred dollars (\$500), or by imprisonment in the county jail for a period not to exceed six months, or by both such fine and imprisonment.