

57-16-5. Unlawful acts; manufacturers; distributors; representatives.

It is unlawful for a manufacturer, distributor or representative to:

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

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

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

D. refuse to deliver, in reasonable quantities and within a reasonable time after receipt of dealer's order, to a motor vehicle dealer having a franchise or contractual arrangement for the retail sale of motor vehicles sold or distributed by the manufacturer, distributor or representative, those motor vehicles, parts or accessories covered by the franchise or contract specifically publicly advertised by the manufacturer, distributor or representative to be available for immediate delivery; provided, however, the failure to deliver a motor vehicle, parts or accessories shall not be considered a violation of Chapter 57, Article 16 NMSA 1978 if the failure is due to an act of God, work stoppage or delay due to a strike or labor difficulty, shortage of materials, freight embargo or other cause over which the manufacturer, distributor or representative or an agent thereof has no control;

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

F. terminate or cancel the franchise or selling agreement of a dealer without due cause. "Due cause" means a material breach by a dealer, due to matters within the dealer's control, of a lawful provision of a franchise or selling agreement. As used in this subsection, "material breach" means a contract violation that is substantial and significant. In determining whether due cause exists under this subsection, the court shall take into consideration only the dealer's sales in relation to the business available to the dealer; the dealer's investment and obligations; injury to the public welfare; the adequacy of the dealer's sales and service facilities, equipment and parts; the qualifications of the management, sales and service personnel to provide the consumer with reasonably good service and care of new motor vehicles; the dealer's failure to comply with the requirements of the franchise; and the harm to the manufacturer or distributor. The nonrenewal of a franchise or selling agreement, without due cause, shall constitute an unfair termination or cancellation regardless of the terms or provisions of the franchise or selling agreement. The manufacturer, distributor or representative shall notify a motor vehicle dealer in writing by registered mail of the termination or cancellation of the franchise or selling agreement of the dealer at least sixty days before the effective date thereof, stating the specific grounds for termination or cancellation; and the manufacturer, distributor or representative shall notify a motor vehicle dealer in writing by registered mail at least sixty days before the contractual term of the dealer's franchise or selling agreement expires that it will not be renewed, stating the specific grounds for nonrenewal in those cases where there is no intention to renew, and in no event shall the contractual term of a franchise or selling agreement expire without the written consent of the motor vehicle dealer involved prior to the expiration of at least sixty days following the written notice. During the sixty-day period, either party may in appropriate circumstances petition a district court to modify the sixty-day stay or to extend it pending a final determination of proceedings on the merits. The court may grant preliminary and final injunctive relief;

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

H. offer to sell or to sell a motor vehicle to a motor vehicle dealer in this or any other state of the United States at a lower actual price than the actual price offered to any other motor vehicle dealer in this state for the same model vehicle similarly equipped or to utilize devices, including sales promotion plans or programs that result in a lesser actual price; provided, however, the provisions of this subsection do not apply to sales to a motor vehicle dealer for resale to a unit of the United States government, the state or its political subdivisions; and provided, further, the provisions of this subsection do not apply to sales to a motor vehicle dealer of a motor vehicle ultimately sold, donated or used by the dealer in a driver education program; and provided, further, that the provisions of this subsection do not apply if a manufacturer, distributor or representative offers to sell or sells new motor vehicles to all motor vehicle dealers at an equal price. As used in this section, "actual price" means the price to be paid by the dealer less any incentive paid by the manufacturer, distributor or representative, whether paid to the dealer or the ultimate purchaser of the vehicle. This provision does not apply to sales by the manufacturer, distributor or representatives to the United States government or its agencies. The provisions of this subsection dealing with vehicle prices in another state and defining actual price do not apply to a manufacturer or distributor if all of the manufacturer's or distributor's dealers within fifty miles of a neighboring state are given all cash or credit incentives available in the neighboring state, whether the incentives are offered by the manufacturer or distributor or a finance subsidiary of either, affecting the price or financing terms of a vehicle;

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

J. offer to sell or to sell parts or accessories to a motor vehicle dealer for use in the dealer's own business for the purpose of repairing or replacing the same or a comparable part or accessory at a lower actual price than the actual price charged to any other motor vehicle dealer for similar parts or accessories for use in the dealer's own business; provided, however, in those cases where motor vehicle dealers have a franchise to operate and serve as wholesalers of parts and accessories to retail outlets or other dealers, whether or not the dealer is regularly designated as a wholesaler, nothing in this section prevents a manufacturer, distributor or representative from selling to the motor vehicle dealer who operates and serves as a wholesaler of parts and accessories such parts and accessories as may be ordered by the motor vehicle dealer for resale to retail outlets at a lower actual price than the actual price charged a motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories;

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

L. prevent or attempt to prevent by contract or otherwise a motor vehicle dealer or an officer, partner or stockholder of a motor vehicle dealer from selling or transferring a part of the interest of any of them to any other person or party; provided, however, that no dealer, officer, partner or stockholder shall have the right to sell, transfer or assign the franchise or power of management or control thereunder without the consent of the manufacturer, distributor or representative except that the manufacturer, distributor or representative shall not withhold consent to the sale, transfer or assignment of the franchise to a qualified buyer capable of being licensed in New Mexico and who meets the manufacturer's or distributor's uniformly applied requirement for appointment as a dealer. Uniform application shall not prevent the application of a separate standard of consent for sale, transfer or assignment to minority or women dealer candidates, and shall not require the application of an identical standard to all persons in all situations. The requirement of uniform application shall be met if the manufacturer applies the same set of standards, which takes into account business performance and

experience, financial qualifications, facility requirements and other relevant characteristics; provided that, if two dealers, persons or situations are identical, given the characteristics considered in the standards, the two dealers, persons or situations shall be treated identically, except as provided in this subsection. Upon request, a manufacturer or distributor shall provide its dealer with a copy of the standards that are normally relied upon by the manufacturer or distributor to evaluate a proposed sale, transfer or assignment. A manufacturer, distributor or representative shall send a letter by certified mail approving or withholding consent within sixty calendar days of receiving the completed application forms and related information requested by a manufacturer or distributor as provided below. A manufacturer, distributor or representative shall send its existing motor vehicle dealer the necessary application forms and identify the related information required within twenty calendar days of receiving written notice from the existing motor vehicle dealer of the proposed sale or transfer. No manufacturer, distributor or representative shall require any information not requested in the twenty-day period, and submission of the information requested within that period together with a completed form of the application provided shall constitute a completed application form. A request for consent shall be deemed granted, and the manufacturer, distributor or representative shall be estopped from denying the consent, if the consent has not been expressly withheld during the applicable sixty-day period;

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

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

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

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

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

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

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

T. force a dealer to sell or relocate a franchise with another manufacturer located at the same physical location or consider the existence of another line-make at a dealership for product allocation, successorship,

location approval and capitalization; provided that a manufacturer or distributor may require that the dealer:

- (1) meet the manufacturer's capitalization requirements;
- (2) meet the manufacturer's facilities requirements; and
- (3) not have committed fraudulent acts;

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

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

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

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

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

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

- (1) construct a new dealership, require the relocation of an existing dealership or substantially change, alter or remodel a dealer's facility except as necessary to comply with health or safety laws or to comply with technology requirements necessary to sell or service vehicles; or
- (2) construct a new dealership, require relocation of an existing dealership or substantially change, alter or remodel an existing dealership before the tenth anniversary of the date that the construction or change, alteration or remodel of the dealership at that location was completed if the construction was in substantial compliance with standards or plans provided by a manufacturer, distributor or representative; or

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

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

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

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

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

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