

ARTICLE 16

Motor Vehicle Dealers Franchising

Section

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57-16-1. Declaration of policy.

The distribution and sale of motor vehicles in this state vitally affects the general economy of the state and the public interest and welfare of its citizens. It is the policy of this state and the purpose of this act to exercise the state's police power to ensure a sound system of distributing and selling motor vehicles and regulating the manufacturers, distributors, representatives and dealers of those vehicles to provide for compliance with manufacturer's warranties, and to prevent frauds, unfair practices, discriminations, impositions and other abuses of our citizens.

57-16-2. Application of act.

The provisions of this act shall apply to all persons, manufacturers, representatives, distributors and dealers and to all written or oral agreements between a manufacturer, distributor or representative with a motor vehicle dealer including, but not limited to, the franchise offering, the franchise agreement, sales of goods, services or advertising, leases or mortgages of real or personal property, promises to pay, security interest, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts and all other such agreements in which the manufacturer, distributor or representative has any direct or indirect interest.

57-16-3. Definitions.

As used in Chapter 57, Article 16 NMSA 1978:

- A. "motor vehicle" means every self-propelled vehicle, having two or more wheels, by which a person or property may be transported on a public highway and includes recreational vehicles;
- B. "motor vehicle dealer" or "dealer" means any person who sells or solicits or advertises the sale of new or used motor vehicles. "Motor vehicle dealer" or "dealer" shall not include:
 - (1) receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court;
 - (2) public officers while performing their duties as such officers;
 - (3) persons making casual sales of their own vehicles duly registered and licensed to them by the state;or
 - (4) finance companies, banks and other lending institutions covering sales of repossessed vehicles;
- C. "person" means every natural person, partnership, corporation, association, trust, estate or any other legal entity;
- D. "prospective purchaser" means a person who has a bona fide written agreement to purchase a franchise;
- E. "manufacturer" means any person who manufactures or assembles new motor vehicles either within or outside of this state and may include a predecessor manufacturer or a successor manufacturer;
- F. "distributor" means any person who distributes or sells new or used motor vehicles to dealers and who is not a manufacturer;
- G. "representative" means any person who is or acts as an agent, employee or representative of a manufacturer or distributor and who performs any duties in this state relating to promoting the distribution or sale of new or used motor vehicles or contacts dealers in this state on behalf of a manufacturer or distributor;
- H. "franchise" means an oral or written arrangement for a definite or indefinite period in which a manufacturer, distributor or representative grants to a motor vehicle dealer a license to use a trade name, service mark or related characteristic and in which there is a community of interest in the marketing of motor

vehicles or services related to marketing, service or repair of motor vehicles at wholesale, retail, leasing or otherwise;

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

- (1) a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact;
- (2) a promise or representation not made honestly and in good faith; and
- (3) an intentional failure to disclose a material fact;

J. "sale" includes:

- (1) the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation or mortgage in any form, whether by transfer in trust or otherwise, of any motor vehicle or interest therein or of any franchise related thereto; and
- (2) any option, subscription or other contract or solicitation looking to a sale or offer or attempt to sell in any form, whether spoken or written. A gift or delivery of any motor vehicle or franchise with respect thereto with, or as, a bonus on account of the sale of anything shall be deemed a sale of such motor vehicle or franchise;

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

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

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

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

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

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

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

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

(3) twenty miles in all other cases.

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

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

- (1) a change in ownership, operation or control of the predecessor manufacturer;
- (2) the termination, suspension or cessation of all or a part of the business operation of the predecessor manufacturer;
- (3) the discontinuance of the sale of a product line; or
- (4) a change in the distribution system by the predecessor manufacturer, whether through a change in distributor or the predecessor manufacturer's decision to cease conducting business through a distributor;

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

T. "former franchisee":

- (1) means a dealer that has entered into a franchise agreement with a manufacturer and that has:
 - (a) entered into a termination agreement or deferred termination agreement with the manufacturer related to the franchise; or
 - (b) has had the franchise canceled, terminated or otherwise ended; and
- (2) includes the designated successor of the former franchisee in the event the former franchisee is deceased or disabled.

57-16-4. Unlawful acts; dealers.

It is unlawful for any dealer to:

A. require a retail purchaser of a new motor vehicle, as a condition of sale and delivery thereof, to purchase special features, equipment, parts or accessories not ordered or desired by the purchaser, provided such features, equipment, parts or accessories are not already installed on the new motor vehicle when received by the dealer;

B. use false, deceptive or misleading advertising in connection with his business;

C. willfully defraud any retail buyer to the buyer's damage;

D. fail to perform the obligations placed on the dealer in connection with the delivery and preparation of a new motor vehicle for retail sale as provided in the manufacturer's preparation and delivery agreements;

E. fail to perform the obligations placed on the dealer in connection with the manufacturer's warranty agreements;

F. represent or sell as a new motor vehicle any motor vehicle which has been used and operated for demonstration purposes or which is otherwise a used motor vehicle; or

G. intentionally fail to perform any written agreement with any retail buyer.

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.

57-16-6. Obligations; statement of compensation.

Every manufacturer shall specify to the dealer the delivery and preparation obligations of its motor vehicle dealers prior to delivery of new motor vehicles to retail buyers. A copy of the delivery and preparation obligations of its motor vehicle dealers and a schedule or statement of the compensation to be paid or credited to its motor vehicle dealers for the work and services they shall be required to perform in connection with such delivery and preparation obligations shall be furnished to the dealer. The compensation as set forth on such schedule or statement shall be reasonable and paid or credited as set out in Section 7 [57-16-7 NMSA 1978] of this act.

57-16-6.1. Motorcycle dealers; new product; franchise or sales agreement.

A. Before a manufacturer, distributor or representative offers a new or additional motorcycle product for resale to any person to act as dealer whose market area, as defined in Subsection P of Section 57-16-5 NMSA 1978, includes the place of business of an existing dealer of a manufacturer, distributor or representative, the manufacturer, distributor or representative shall first offer the new or additional motorcycle product to the existing dealer in writing by registered mail with all of the conditions for marketing the new or additional motorcycle product in the market area which the manufacturer, distributor or representative will impose on any person marketing the new or additional motorcycle product in the market area. The manufacturer, distributor or representative shall not offer the new or additional motorcycle product to any other person, to act as a dealer of the new or additional motorcycle product, whose market area, as defined in Subsection P of Section 57-16-5 NMSA 1978, includes the place of business of the existing dealer, until either sixty days has elapsed after the offer of the new or additional motorcycle product to the existing dealer or the existing dealer has rejected, in writing, that offer, whichever is sooner.

B. Any renewal of an existing franchise or sales agreement by a manufacturer, distributor or representative which occurs on or after July 1, 1985, or any new franchise or sales agreement which is executed by a manufacturer, distributor or representative on or after July 1, 1985, shall contain provisions for the addition of those motorcycle models, types or products which are under separate franchises or sales agreements to the dealer and for the addition of franchise agreements for new or additional motorcycle products introduced by the manufacturer, distributor or representative on or after July 1, 1985, so that, upon the date of renewal of the last separate franchise or sales agreement which was entered into by the dealer with the manufacturer, distributor or representative before July 1, 1985, all of those models and types of motorcycles, and any new or additional motorcycle products, which are offered by the manufacturer, distributor or representative on or after July 1, 1985 and accepted by the dealer, are under one franchise.

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.