

CHAPTER 61

H.B. No. 941

AN ACT

relating to the authority and responsibility of the Texas Motor Vehicle Board of the Texas Department of Transportation.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 1.03, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.03. DEFINITIONS. In this Act:

(1) "Motor vehicle" means:

(A) every fully self-propelled vehicle which has as its primary purpose the transport of a person or persons, or property, on a public highway, and having two or more wheels;

(B) every two or more wheeled fully self-propelled, titled vehicle which has as its primary purpose the transport of a person or persons or property and is not manufactured for use on public streets, roads, or highways; or

(C) an engine, transmission, or rear axle manufactured for installation in a vehicle having as its primary purpose the transport of a person or persons or property on a public highway and having a gross vehicle weight rating of more than 16,000 pounds, whether or not attached to a vehicle chassis.

(2) "New motor vehicle" means a motor vehicle which has not been the subject of a "retail sale" without regard to the mileage of the vehicle.

(3) "Person" means a natural person, partnership, corporation, association, trust, estate, or any other legal entity.

(4) "Dealer" means any person engaged in the business of buying, selling or exchanging new motor vehicles at an established and permanent place of business pursuant to a franchise in effect with a manufacturer or distributor.

(5) "Manufacturer" means any person who manufactures or assembles new motor vehicles either within or without this State.

(6) "Distributor" means any person who distributes and/or sells new motor vehicles to dealers and who is not a manufacturer.

(7) "Representative" means any person who is or acts as an agent, employee or representative of a manufacturer, distributor, or converter who performs any duties in this State relating to promoting the distribution and/or sale of new motor vehicles or contacts dealers in this State on behalf of a manufacturer, distributor, or converter.

(8) "Franchise" means one or more contracts *between a dealer as franchisee, and either a manufacturer or a distributor as franchisor* under which (A) the franchisee is granted the right to sell new motor vehicles manufactured or distributed by the franchisor; (B) the franchisee as an independent business is a component of franchisor's distribution system; (C) the franchisee is substantially associated with franchisor's trademark, tradename and commercial symbol; (D) the franchisee's business is substantially reliant on franchisor for a continued supply of motor vehicles, parts, and accessories for the conduct of its business; or (E) any right, duty, or obligation granted or imposed by this Act is affected. The term includes a written communication from a franchisor to a franchisee by which a duty is imposed on the franchisee.

(10) "Broker" means a person who, for a fee, commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle, and who is not:

(A) a dealer or bona fide employee of a dealer when acting on behalf of a dealer;

(B) a representative or bona fide employee of a representative when acting on behalf of a representative;

(C) a distributor or bona fide employee of a distributor when acting on behalf of a distributor; or

(D) at any point in the transaction the bona fide owner of the vehicle involved in the transaction.

(11) "Motor home" means a motor vehicle which is designed to provide temporary living quarters and which:

(A) is built onto as an integral part of, or is permanently attached to, a motor vehicle chassis; and

(B) contains at least four of the following independent life support systems if each is permanently installed and designed to be removed only for purposes of repair or replacement and meets the standards of the American National Standards Institute, Standards for Recreational Vehicles:

(i) a cooking facility with an on-board fuel source;

(ii) a gas or electric refrigerator;

(iii) a toilet with exterior evacuation;

(iv) a heating or air conditioning system with an on-board power or fuel source separate from the vehicle engine;

(v) a potable water supply system that includes at least a sink, a faucet, and a water tank with an exterior service supply connection;

(vi) a 110–125 volt electric power supply.

(12) "Conversion" means a motor vehicle, other than a motor home, which has been *substantially* modified by a person other than the manufacturer or distributor of the chassis of the motor vehicle and which has not been the subject of a retail sale.

(13) "Motor home manufacturer" means a person other than the manufacturer of the chassis of a motor vehicle who, prior to the retail sale of the motor vehicle, performs modifications on the chassis that result in the finished product being classified as a motor home.

(14) "Chassis manufacturer" means a person who manufactures and produces the frame upon which is mounted the body of a motor vehicle.

(15) "Converter" means a person who prior to the retail sale of a motor vehicle, assembles, installs, or affixes a body, cab, or special equipment to a chassis, or who *substantially* adds, subtracts from, or modifies a previously assembled or manufactured motor vehicle.

(16) "Rule" means a statement by the Commission of general and future applicability that implements, interprets, or prescribes law or policy or describes the organization or procedural practice requirements of the Commission. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management of the Commission which do not affect the rights of a person not connected with the Commission.

(17) "Party" means each person or agency named or admitted as a party and whose legal rights, duties, or privileges are to be determined by the Commission after an opportunity for adjudicative hearing.

(18) "Relocation" means the transfer of an existing dealership operation to facilities at a different location, including a transfer which results in a consolidation or dualing of an existing dealer's operation.

(19) "Retail sale" means the sale of a motor vehicle except:

(A) a sale in which the purchaser acquires a vehicle for the purpose of resale; or

(B) a sale of a vehicle that is operated under and in accordance with Article 6686, Revised Statutes.

(20) "Warranty work" means parts, labor, and any other expenses incurred by a dealer in complying with the terms of a manufacturer's or distributor's warranty.

(21) "Department" means the Texas Department of Transportation.

(22) *“Transportation Commission” means the Texas Transportation Commission of the Texas Department of Transportation.*

SECTION 2. Section 1.04, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon’s Texas Civil Statutes), is amended to read as follows:

Sec. 1.04. CONSTRUCTION AND SEVERABILITY. This Act shall be liberally construed so as to effectuate its purposes. The provisions of this Act are severable and if any phrase, clause, sentence, or provision of this Act is declared to be contrary to the constitution of this state, or of the United States or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this Act and the applicability thereof to any person or circumstance is not affected thereby. *An agreement to waive the terms of this Act is void and unenforceable.*

SECTION 3. Subsection (c), Section 2.01, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon’s Texas Civil Statutes), is amended to read as follows:

(c) A reference in this Act to the “Executive Director” or the Executive Director of the Texas Motor Vehicle Commission means the Director of the Motor Vehicle Division of the Texas Department of Transportation. A reference in other law, rule or regulation to the Executive Director of the Texas Motor Vehicle *Commission* [Board] means the Director of the Motor Vehicle Division of the Texas Department of Transportation.

SECTION 4. Section 3.03, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon’s Texas Civil Statutes), is amended to read as follows:

Sec. 3.03. GENERAL COMMISSION POWERS. (a) The Commission shall have and may, in its discretion and notwithstanding any other provision of law that is inconsistent with this Act, exercise the powers set forth in this Act, and shall have all other powers necessary, incidental, or convenient to carry out its duties and effectuate its express powers and duties. These powers and duties include the power to initiate and conduct proceedings, investigations, and hearings, administer oaths, receive evidence and pleadings, issue subpoenas to compel the attendance of any person, order the production of any tangible property, including papers, records, and documents, make findings of fact on all factual issues arising out of any proceeding initiated under this Act, specify, govern, and control appearance, practice, and procedure before the Commission; issue rules, conclusions of law, decisions, including declaratory decisions or orders, enter into contracts or execute instruments, retain counsel, utilize the services of the Attorney General of the State of Texas and thereafter institute and direct the conduct of legal proceedings in any forum or obtain other professional services as may be necessary and convenient, sanction for contempt, assess and collect fees and costs including attorney’s fees, issue, suspend, and revoke licenses, prohibit and regulate acts and practices in connection with the distribution and sale of new motor vehicles and warranty performance obligations, issue cease and desist orders in the nature of temporary and permanent injunctions, and levy civil penalties.

(b) *The commission may conduct hearings in contested cases brought pursuant to, and as provided by, Article 6686, Revised Statutes. The procedures applicable to a hearing conducted under this Subsection, and the disposition of a final order after a hearing conducted under this Subsection, are those applicable to a hearing conducted as provided by Section 6.07(e)(2) of this Act. A decision or final order issued under this Subsection is final, and no appeal may, as a matter of right, be made to the Texas Transportation Commission. The department may adopt rules applicable to procedures, hearings, and enforcement proceedings in an action brought pursuant to this Subsection.*

SECTION 5. Subsection (e), Section 4.05, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon’s Texas Civil Statutes), is amended to read as follows:

(e) The filing fees for a contested case or protest that involves a hearing are:

- (1) for a complaint filed under Section 6.07 of this Act, \$35 [\$75]; and
- (2) for all other complaints or protests, \$200.

SECTION 6. Section 5.01, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon’s Texas Civil Statutes), is amended to read as follows:

Sec. 5.01. DEALERS. It shall be unlawful for any dealer to:

(1) 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 at the time of sale.

(2) Use false, deceptive, or misleading advertising.

(3) Fail to perform the obligations placed on the selling 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 on file with the Commission and applicable to such vehicle.

(4) Fail to perform the obligations placed on the dealer in connection with the manufacturer's warranty agreements on file with the Commission.

(5) Operate as a dealer without a currently valid license from the Commission or otherwise violate this Act or rules promulgated by the Commission hereunder.

(6) Operate without appropriate signs readily and easily visible to the public, identifying the dealer's place of business and the products the dealer offers for sale. In the event of a conflict with another law or ordinance, this Subdivision prevails, and in the event of a dispute, the Board has exclusive jurisdiction to determine whether a sign or signs are in compliance with the terms of this Subdivision. In the event of a dispute, the Board shall uphold local ordinances of a home-rule city and protect dealers from retribution by manufacturers for having complied with local ordinances.

SECTION 7. Section 5.02, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.02. MANUFACTURERS; DISTRIBUTORS; REPRESENTATIVES. It shall be unlawful for any manufacturer, distributor, or representative to:

(1) Require or attempt to require any dealer to order, accept delivery of or pay anything of value, directly or indirectly, for any motor vehicle, appliance, part, accessory or any other commodity unless voluntarily ordered or contracted for by such dealer.

(2) Refuse or fail to deliver, in reasonable quantities and within a reasonable time, to ~~[after receipt of an order from]~~ a dealer having a franchise agreement for the retail sale of any motor vehicles sold or distributed by such manufacturer, distributor, or representative, any new motor vehicle or parts or accessories to new motor vehicles as are covered by such franchise if such vehicle, parts or accessories are publicly advertised as being available for delivery or are actually being delivered; provided, however, this provision is not violated if such failure is caused by acts of God, work stoppage or delays due to strikes or labor disputes, freight embargoes or other causes beyond the control of the manufacturer, distributor, or representative.

(3) Notwithstanding the terms of any franchise agreement:

(A) Terminate or refuse to continue any franchise with a dealer unless all of the following conditions are met:

(i) the dealer and the Commission have received written notice by registered or certified mail from the manufacturer, distributor, or representative not less than 60 days before the effective date of termination or noncontinuance setting forth the specific grounds for termination or noncontinuance; and

(ii) the written notice contains on the first page thereof a conspicuous statement which reads as follows: "NOTICE TO DEALER: YOU MAY BE ENTITLED TO FILE A PROTEST WITH THE TEXAS MOTOR VEHICLE COMMISSION IN AUSTIN, TEXAS, AND HAVE A HEARING IN WHICH YOU MAY PROTEST THE PROPOSED TERMINATION OR NONCONTINUANCE OF YOUR FRANCHISE UNDER THE TERMS OF THE TEXAS MOTOR VEHICLE COMMISSION CODE IF YOU OPPOSE THIS ACTION."; and

(iii) the manufacturer, distributor, or representative has received the informed, written consent of the affected dealer or the appropriate period for the affected dealer to protest the proposed franchise termination or noncontinuance has lapsed; or

(iv) if the affected dealer files a protest with the Commission within the greater of (1) 60 days after receiving its 60-day notice of proposed termination or noncontinuance or (2) the time specified in such notice, the Commission determines that the party seeking to terminate or not continue a dealer's franchise has established by a preponderance of the evidence, at a hearing called by the Commission, that there is good cause for the proposed termination or noncontinuance.

(v) Notwithstanding Subdivisions (3)(A)(i) and (3)(A)(iv) of this section, notice may be made not less than 15 days prior to the effective date of termination or noncontinuance if a licensed dealer fails to conduct its customary sales and service operations during its customary business hours for seven consecutive business days unless such failure is caused by an act of God, work stoppage or delays due to strikes or labor disputes, an order of the Commission, or other causes beyond the control of the dealer.

(B) Whenever a dealer files a timely protest to a proposed franchise termination or noncontinuance, the Commission shall notify the party seeking to terminate or to not continue the protesting dealer's franchise that a timely protest has been filed, that a hearing is required in accordance with this Act, and that the party who gave the dealer notice of termination or noncontinuance of the franchise may not terminate or refuse to continue the franchise until the Commission issues its final decision or order.

(C) If a franchise is terminated or not continued, another franchise in the same line-make will be established within a reasonable time unless it is shown to the Commission by a preponderance of the evidence that the community or trade area cannot reasonably support such a dealership. If this showing is made, no dealer license shall be thereafter issued in the same area unless a change in circumstances is established.

(4) Notwithstanding the terms of any franchise agreement, modify or replace a franchise with a succeeding franchise if the modification or replacement would adversely affect, to a substantial degree, the dealer's sales, investment, or obligations to provide service to the public, unless the manufacturer, distributor, or representative has first given the Commission and each affected dealer written notice by registered or certified mail of any such action 60 days in advance of the modification or replacement. The written notice shall contain on the first page thereof a conspicuous statement which reads as follows: "NOTICE TO DEALER: YOU MAY BE ENTITLED TO FILE A PROTEST WITH THE TEXAS MOTOR VEHICLE COMMISSION IN AUSTIN, TEXAS, AND HAVE A HEARING IN WHICH YOU MAY PROTEST THE PROPOSED MODIFICATION OR REPLACEMENT OF YOUR FRANCHISE WITH A SUCCEEDING FRANCHISE UNDER THE TERMS OF THE TEXAS MOTOR VEHICLE COMMISSION CODE IF YOU OPPOSE THIS ACTION." Within the greater of (1) 60 days after receipt of such notice or (2) the time specified in such notice, a dealer may file a protest with the Commission and the modification or replacement shall not become effective unless and until the Commission determines that the party seeking to modify or replace a franchise with a succeeding franchise has demonstrated by a preponderance of the evidence that there is good cause for the modification or replacement. The prior franchise shall continue in effect until the protest is resolved by the Commission.

(5) Notwithstanding the terms of any franchise agreement, in determining whether good cause has been established for modifying, replacing, terminating, or refusing to continue a franchise, the Commission shall consider all the existing circumstances including, without limitation by the enumeration herein, all the following:

- (A) the dealer's sales in relation to the sales in the market;
- (B) the dealer's investment and obligations;
- (C) injury to the public welfare;
- (D) the adequacy of the dealer's service facilities, equipment, parts, and personnel in relation to those of other dealers of new motor vehicles of the same line-make;
- (E) whether warranties are being honored by the dealer;
- (F) the parties' compliance with their franchise agreement; and

(G) the enforceability of the franchise agreement from a public policy standpoint, including, without limitation, issues of the reasonableness of the franchise agreement's terms, oppression, adhesion, and the relative bargaining power of the parties.

Good cause shall not be shown solely by the desire of a manufacturer, distributor, or representative for market penetration.

(6) Use any false, deceptive or misleading advertising.

(7) Notwithstanding the terms of any franchise agreement, prevent any dealer from reasonably changing the capital structure of his dealership or the means by or through which he finances the operation thereof, provided that the dealer meets reasonable capital requirements.

(8) Notwithstanding the terms of any franchise agreement, fail to give effect to or attempt to prevent any sale or transfer of a dealer, dealership or franchise or interest therein or management thereof unless, after complaint or protest, it is demonstrated to the Commission after hearing that the result of any such sale or transfer will be detrimental to the public or the representation of the manufacturer or distributor.

(9) Notwithstanding the terms of any franchise agreement, require or attempt to require that a dealer assign to or act as an agent for any manufacturer, distributor or representative in the securing of promissory notes and security agreements given in connection with the sale or purchase of new motor vehicles or the securing of policies of insurance on or having to do with the operation of vehicles sold.

(10) Notwithstanding the terms of any franchise agreement, fail or refuse, after complaint and hearing, to perform the obligations placed on the manufacturer in connection with the delivery, preparation and warranty of a new motor vehicle as provided in the manufacturer's warranty, preparation, and delivery agreements on file with the Commission.

(11) Notwithstanding the terms of any franchise agreement, fail to compensate its dealers for the work and services they are required to perform in connection with the dealer's delivery and preparation obligations according to the agreements on file with the Commission which must be found by the Commission to be reasonable, or fail to adequately and fairly compensate its dealers for labor, parts and other expenses incurred by such dealer to perform under and comply with a manufacturer's or a distributor's warranty agreement, *or require, as a prerequisite to the manufacturer's or distributor's payment of a claim for reimbursement as required by this section, that a dealer file with the manufacturer or distributor the actual time spent in the performance of labor unless actual time is the basis for reimbursement.* In no event shall any manufacturer or distributor pay its dealers an amount of money for warranty work that is less than that charged by the dealer to the retail customers of the dealer for nonwarranty work of like kind. All claims made by dealers for compensation for delivery, preparation, and warranty work shall be paid within 30 days after approval and shall be approved or disapproved within 30 days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or that the dealer failed to reasonably substantiate the claim in accordance with *reasonable [the] written requirements of the manufacturer or distributor, if the dealer has been notified of the requirements prior to the time the claim arose, and if the requirements were in effect at the time the claim arose. A manufacturer or distributor may not audit a claim after the expiration of two years following the submission of the claim unless the manufacturer or distributor has reasonable grounds to suspect that a claim was fraudulent.* Notwithstanding the terms of a franchise agreement or provision of law in conflict with this section, the dealer's delivery, preparation, and warranty obligations as filed with the Commission shall constitute the dealer's sole responsibility for product liability as between the dealer and manufacturer or distributor, and, except for a loss caused by the dealer's failure to adhere to these obligations, a loss caused by the dealer's negligence or intentional misconduct, or a loss caused by the dealer's modification of a product without manufacturer or distributor authorization, the manufacturer or distributor shall reimburse

the dealer for all loss incurred by the dealer, including legal fees, court costs, and damages, as a result of the dealer having been named a party in a product liability action.

(12) Operate as a manufacturer, distributor, or representative without a currently valid license from the Commission or otherwise violate this Act or rules promulgated by the Commission hereunder.

(13) Notwithstanding the terms of any franchise agreement, to prevent or refuse to honor the succession to a dealership by any legal heir or devisee under the will of a dealer or under the laws of descent and distribution of this State unless it is shown to the Commission, after notice and hearing, that the result of such succession will be detrimental to the public interest and to the representation of the manufacturer or distributor; provided, however, nothing herein shall prevent a dealer, during his lifetime, from designating any person as his successor dealer, by written instrument filed with the manufacturer or distributor.

(14) Notwithstanding the terms of any franchise agreement, require that a dealer pay or assume, directly or indirectly, any part of any refund, rebate, discount, or other financial adjustment made by the manufacturer, distributor, or representative to, or in favor of, any customer of a dealer, unless voluntarily agreed to by such dealer.

(15) Notwithstanding the terms of any franchise agreement, deny or withhold approval of a written application to relocate a franchise unless (A) the applicant has received written notice of the denial or withholding of approval within 90 days after receipt of the application containing information reasonably necessary to enable the manufacturer or distributor to adequately evaluate the application, and if (B) the applicant files a protest with the Commission and establishes by a preponderance of the evidence at a hearing called by the Commission that the grounds for, and distance of, the relocation are reasonable.

(16) Notwithstanding the terms of any franchise agreement, fail to pay to a dealer or any lienholder in accordance with their respective interest after the termination of a franchise:

(A) the dealer cost of each new motor vehicle in the dealer's inventory with mileage of 6,000 miles or less, reduced by the net discount value of each, where "net discount value" is determined according the following formula: net cost multiplied by total mileage divided by 100,000, and where "net cost" equals the dealer cost plus any charges by the manufacturer, distributor, or representative for distribution, delivery, and taxes, less all allowances paid to the dealer by the manufacturer, distributor, or representative for new, unsold, undamaged, and complete motor vehicles of current model year or one year prior model year in the dealer's inventory, except that if a vehicle cannot be reduced by the net discount value, the manufacturer or distributor shall pay the dealer the net cost of the vehicle;

(B) the dealer cost of each new, unused, undamaged, and unsold part or accessory if the part or accessory is in the current parts catalogue and is still in the original, resalable merchandising package and in unbroken lots, except that in the case of sheet metal, a comparable substitute for the original package may be used, and if the part or accessory was purchased by the dealer either directly from the manufacturer or distributor or from an outgoing authorized dealer as a part of the dealer's initial inventory;

(C) the fair market value of each undamaged sign owned by the dealer which bears a trademark or tradename used or claimed by the manufacturer, distributor, or representative if the sign was purchased from or purchased at the request of the manufacturer, distributor, or representative;

(D) the fair market value of all special tools, data processing equipment, and automotive service equipment owned by the dealer which were recommended in writing and designated as special tools and equipment and purchased from or purchased at the request of the manufacturer, distributor, or representative, if the tools and equipment are in usable and good condition except for reasonable wear and tear;

(E) the cost of transporting, handling, packing, storing, and loading of any property subject to repurchase under this section;

(F) except as provided by this subdivision, any sums due as provided by Paragraph (A) of this subdivision within 60 days after termination of a franchise and any sums due as provided by Paragraphs (B) through (E) of this subdivision within 90 days after

termination of a franchise. As a condition of payment, the dealer is to comply with reasonable requirements with respect to the return of inventory as are set out in the terms of the franchise agreement. A manufacturer or distributor shall reimburse a dealer for the dealer's cost for storing any property covered by this subdivision beginning 90 days following termination. A manufacturer or distributor shall reimburse a dealer for the dealer's cost of storing any property covered by this subdivision before the expiration of 90 days from the date of termination if the dealer notifies the manufacturer or distributor of the commencement of storage charges within that period. On receipt of notice of the commencement of storage charges, a manufacturer or distributor may immediately take possession of the property in question by repurchasing the property as provided by this subdivision. A manufacturer, distributor, or representative who fails to pay those sums within the prescribed time or at such time as the dealer and lienholder, if any, proffer good title prior to the prescribed time for payment, is liable to the dealer for:

- (1) the greatest of dealer cost, fair market value, or current price of the inventory;
- (2) interest on the amount due calculated at the rate applicable to a judgment of a court; and
- (3) reasonable attorney's fees and costs.

(17) Notwithstanding the terms of any franchise agreement, change its distributor, its method of distribution of its products in this state, or its business structure or ownership in a manner that results in the termination or noncontinuance of a franchise without good cause. The manufacturer, distributor, or representative shall issue the same notice to the dealer and to the Commission as is provided in Subdivisions (3)(A) and (B) of this section and said same procedures shall apply to the parties.

(18) Notwithstanding the terms of any franchise agreement, require a dealer to submit to arbitration on any issue unless the dealer and the manufacturer, distributor, or representative and their respective counsel agree to arbitrate after a controversy arises. The arbitrator shall apply the provisions of this Act in resolving the pertinent controversy. Either party may appeal to the Commission a decision of an arbitrator on the ground that the arbitrator failed to apply this Act.

(19) Notwithstanding the terms of any franchise agreement, require that a dealer join, contribute to, or affiliate with, directly or indirectly, any advertising association.

(20) Notwithstanding the terms of a franchise agreement:[,]

(A) require adherence to unreasonable sales or service standards;

(B) directly or indirectly, discriminate against a dealer or otherwise treat dealers differently as a result of a formula or other calculation or process intended to gauge the performance of a dealership, except a sales contest or other recognition program based on reasonable sales and service criteria;

(C) unreasonably require that a dealer purchase special tools or equipment; or

(D) fail to compensate a dealer for all costs incurred by the dealer as required by the manufacturer in complying with the terms of a product recall by the manufacturer or distributor, including the costs, if any, incurred by the dealer in notifying vehicle owners of the existence of the recall.

(21) Discriminate unreasonably between or among franchisees in the sale of a motor vehicle owned by the manufacturer or distributor.

(22) Directly or indirectly, or through a subsidiary or agent, require, as a condition for obtaining financing for a motor vehicle, the purchaser of a vehicle to purchase any product other than the motor vehicle from the manufacturer or distributor, or from an entity owned or controlled by the manufacturer or distributor.

(23) Directly or indirectly, or through a subsidiary or agent, require, as a condition of its or its subsidiary's agreement to provide financing for a motor vehicle, that any insurance policy or service contract purchased by the motor vehicle purchaser be purchased from a specific source.

(24) Compel a dealer through a financing subsidiary of the manufacturer or distributor to agree to unreasonable operating requirements or directly or indirectly to terminate a

dealer through the actions of a financing subsidiary of the manufacturer or distributor. This subdivision does not limit the right of a financing entity to engage in business practices in accordance with the usage of trade in retail and wholesale motor vehicle financing.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on March 18, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 941 on April 19, 1993: Yeas 137, Nays 0, 1 present, not voting; passed by the Senate, with amendments, on April 14, 1993: Yeas 29, Nays 0.

Approved April 29, 1993.

Effective April 29, 1993.