

**SENATE . . . . . No. 2346**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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An Act further regulating business practices between motor vehicle dealers, manufacturers, and distributors..

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Section 1 of Chapter 93B of the General Laws, as appearing in the 2008  
2 Official Edition, is hereby amended by inserting after the definition of “Dual” the following  
3 definition:--

4           “Former Franchisee”, a dealer that has either (a) entered into a termination agreement or  
5 deferred termination agreement with a predecessor or successor manufacturer related to such  
6 franchise; or (b) has had such franchise canceled, terminated, non-renewed, non-continued,  
7 rejected, non-assumed, or otherwise ended.

8           SECTION 2. Said section 1 of said chapter 93B, as so appearing, is hereby further  
9 amended by inserting after the definition of “Franchisor representative” the following  
10 definition:--

11           “Line Make”, a group or series of motor vehicles that are offered for sale, lease or  
12 distribution under a common name, trademark, service mark or brand name.

13           SECTION 3. Section 4 of chapter 93B of the General Laws, as appearing in the 2008  
14 Official Edition, is hereby amended in subsection (c) by striking paragraph (5) and inserting in  
15 place thereof the following paragraph:--

16           (5) to offer to sell or to sell any new motor vehicle to any person located in the  
17 commonwealth at a lower actual price therefor than the actual price offered contemporaneously  
18 to any motor vehicle dealer located in the commonwealth for the same model vehicle similarly  
19 equipped or to utilize any device including, but not limited to, sales promotion plans or programs  
20 which result in the lesser actual price unless available on equal terms to all dealers located in the  
21 commonwealth; provided, however, that this paragraph shall not apply to sales to a motor vehicle  
22 dealer for resale to any unit of the federal government or any agency thereof or to the  
23 commonwealth or any of its political subdivisions; provided, further, that this paragraph shall not  
24 apply to sales to a motor vehicle dealer of any motor vehicle ultimately sold, donated or used by  
25 the dealer in a driver education program. In connection with a sale of a motor vehicle or vehicles  
26 to a motor vehicle dealer for resale to any unit of the federal government or any agency thereof  
27 or to the commonwealth or to any political subdivision thereof, no manufacturer or distributor  
28 shall offer any discounts, refunds or any other similar type of inducement to any dealer without  
29 making the same offer available to all other of its dealers within the state, and if the inducements  
30 are made, the manufacturer or distributor shall give simultaneous notice thereof to all of its  
31 dealers within the state. In order to prove a violation of this paragraph, it shall be the dealer's  
32 burden to demonstrate a price, discount or incentive was not reasonably available; provided,  
33 however, that proof of a discrepancy alone shall be presumptive evidence of discrimination  
34 without further necessary proof of lost sales or lost opportunities; provided, further, that the use  
35 intended by any customer shall not serve as a means for any manufacturer or distributor to justify

36 a price discrepancy. Damages for a violation of this paragraph may be calculated by applying the  
37 percentage of any discrepancy to each new vehicle sold by the affected dealer during the  
38 applicable program period. This manner of calculating damages shall not prevent a dealer from  
39 demonstrating additional damages that were incurred due to lost sales resulting from any  
40 discrepancy.

41 SECTION 4. Said section 4 of said chapter 93B, as so appearing, is hereby further  
42 amended in said subsection (c) by striking paragraph (8) and inserting in place thereof the  
43 following paragraph:--

44 (8)(i) to impose upon any motor vehicle dealer or any director, officer, partner or  
45 stockholder thereof or any other person holding or otherwise owning an interest therein, by or  
46 through the terms and provisions of a franchise agreement or otherwise, unreasonable restrictions  
47 upon the financial arrangement or structure of a dealership, upon the method and manner by  
48 which the dealership finances or intends to finance its operation, equipment and facilities or upon  
49 the ability of any individual, proprietor or stockholder to use, sell or transfer any interest in the  
50 dealership or to enter into and implement any testamentary arrangement with respect thereto.

51 (ii) A manufacturer or distributor may require that any director, officer, partner or  
52 stockholder of a motor vehicle dealer, or any other person holding or otherwise owning an  
53 interest therein, be identified as such and may establish reasonable standards concerning the  
54 capital and facilities needed for dealership operations and concerning continuity of dealership  
55 management subject to the provisions of paragraph (13). There shall be no assignment,  
56 delegation or transfer of the franchise or management or control thereunder without the written  
57 consent of the manufacturer or distributor, which consent shall not unreasonably be withheld;

58 provided, however, that the manufacturer or distributor shall not deny to the surviving spouse or  
59 heirs of an individual franchised motor vehicle dealer or of a partner of an unincorporated  
60 franchised motor vehicle dealer or of a stockholder of a corporate franchised motor vehicle  
61 dealer the right to succeed to the interest of the decedent in such franchised motor vehicle  
62 dealership enterprise or directly or indirectly to interfere with, hinder or prevent the continuance  
63 of the business of the franchised motor vehicle dealer by reason of such succession to the interest  
64 of the decedent; provided, further, that the continuation of the business of the franchised motor  
65 vehicle dealer shall be conducted under competent management acceptable to the franchisor,  
66 whose acceptance shall not be unreasonably withheld; provided, further, that in the event the  
67 franchised motor vehicle dealer and franchisor have duly executed an agreement concerning  
68 succession rights prior to the individual dealer's, partner's or stockholder's death and if such  
69 agreement has not been revoked by the franchised motor vehicle dealer, such agreement shall be  
70 observed, even if it designates an individual other than the surviving spouse or heirs of the  
71 decedent.

72 (iii) The manufacturer or distributor shall promptly mail a dealership application to a  
73 proposed assignee, delegee or transferee following any request therefor submitted by the  
74 proposed assigning, delegating or transferring motor vehicle dealer. The proposed assignee,  
75 delegee, or transferee shall submit the application to the manufacturer or distributor with all  
76 supporting documentation as specified therein by the manufacturer or distributor. The  
77 manufacturer or distributor shall, within 30 days of receipt of the application and all supporting  
78 documentation as specified therein, review it and notify the assignee, delegee, or transferee what  
79 additional information, data, or documents, if any, is needed by the manufacturer or distributor to  
80 complete its review. Upon the submission of all specified additional information, data, or

81 documents by the assignee, delegee, or transferee, said manufacturer or distributor shall, within  
82 30 days of receipt of all of the specified additional information, make its decision to approve or  
83 reject the proposed sale, assignment, or transfer. If the manufacturer or distributor does not reject  
84 such application within 30 days after the submission of all of the requested additional  
85 information, data, or documents, the application shall be considered approved for all purposes,  
86 unless the 30 day deadline is extended by mutual agreement of the manufacturer or distributor  
87 and the proposed assigning, delegating, or transferring dealer. If the manufacturer or distributor  
88 did not request any additional information, data, or documents, the manufacturer or distributor  
89 shall, within 60 days of the receipt of the application and all supporting documentation as  
90 specified therein, review the application and approve or reject it. If the manufacturer or  
91 distributor does not reject the application within 60 days of receipt of the application and all  
92 supporting documentation as specified therein, the application shall be considered approved for  
93 all purposes, unless the 60 day deadline is extended by mutual agreement of the manufacturer or  
94 distributor and the proposed assigning, delegating, or transferring dealer.

95 (iv) If a franchise agreement specifies that the consent of the manufacturer or distributor  
96 must be obtained before a dealer engages in dualing, the consent shall not unreasonably be  
97 withheld; but this sentence shall not modify or supersede any term of a franchise agreement  
98 requiring a dealer to maintain an exclusive facility for its operations.

99 SECTION 5. Said section 4 of said chapter 93B, as so appearing, is hereby further  
100 amended in said subsection (c) by inserting at the end of paragraph (10) the following sentence:--  
101 Upon the written request to a manufacturer or distributor by a dealer of the same line make as a  
102 dealership established pursuant to clause (ii), the manufacturer or distributor shall demonstrate  
103 that the relationship with said independent person is in compliance with the provisions of this

104 paragraph by producing the required written contracts and other documentation necessary to  
105 substantiate the complete terms of the relationship.

106 SECTION 6. Said section 4 of said chapter 93B, as so appearing, is hereby further  
107 amended in subsection (c) by inserting after paragraph (12) the following paragraph:--

108 (13) to require a motor vehicle dealer, by agreement, program, policy, standard, or  
109 otherwise, to relocate, to make substantial changes, alterations, or remodeling to, or to replace a  
110 motor vehicle dealer's sales or service facilities unless the manufacturer's or distributor's  
111 requirements are reasonable and justifiable in light of the current and reasonably foreseeable  
112 projections of economic conditions, financial expectations, and the motor vehicle dealer's market  
113 for the manufacturer or distributor's motor vehicles; provided, however, that a manufacturer or  
114 distributor may provide to a motor vehicle dealer a commitment to allocate additional vehicles or  
115 a loan or grant of money as an inducement for the motor vehicle dealer to relocate, expand,  
116 improve, remodel, alter, or renovate its facilities if the manufacturer or distributor delivers an  
117 assurance to the dealer that it will offer to supply to the dealer a sufficient quantity of new motor  
118 vehicles, consistent with its allocation obligations at law and to its other same line-make motor  
119 vehicle dealers, which will economically justify such relocation, expansion, improvement,  
120 remodeling, renovation, or alteration, in light of reasonably current and reasonably projected  
121 market and economic conditions. The provisions of the increase in vehicle allocation, the loan or  
122 grant and the assurance, and the basis for them must be contained in a written agreement  
123 voluntarily entered into by the dealer and must be made available, on substantially similar terms,  
124 to any of the manufacturer's or distributor's other same line-make dealers in the commonwealth  
125 with whom the manufacturer or distributor offers to enter into such an agreement. A  
126 manufacturer or distributor shall not withhold from a motor vehicle dealer a bonus, incentive, or

127 other benefit that is available to its other same line-make franchised dealers in the  
128 commonwealth, or to take or threaten to take action that is unfair or adverse to a dealer who does  
129 not enter into an agreement with the manufacturer or distributor pursuant to this paragraph.

130 SECTION 7. Section 5 of said chapter 93B, as so appearing, is hereby amended in  
131 subsection (c) by inserting at the end thereof the following:-- If such action is timely  
132 commenced, such action shall serve to stay, without bond, the proposed termination or non-  
133 renewal until a final judgment has been rendered in an adjudicatory proceeding or action, or until  
134 the parties mutually agree otherwise. A dealer's inability to meet or substantially meet any  
135 performance standard unilaterally established by the manufacturer or distributor shall not be  
136 considered a default or breach of a franchise agreement, and does not provide independent good  
137 cause for a termination. If the termination is based upon performance of the dealer in sales and  
138 service, there shall be no good cause if the dealer substantially complies with the reasonable  
139 performance provisions established by the manufacturer or distributor during such cure period,  
140 and there shall be no good cause if the failure to demonstrate such substantial compliance was  
141 due to factors which were beyond the control of such dealer. In any situation where the  
142 manufacturer or distributor pursues a termination based in part on a failure to substantially  
143 comply with a performance standard, before any cure period commences, the manufacturer or  
144 distributor must provide the dealer with the underlying data that supports the performance  
145 standard cited.

146 SECTION 8. Said section 5 of said chapter 93B, as so appearing, is hereby further  
147 amended by striking subsection (k) and inserting in place thereof the following subsection:--

148 (k) In the event of a termination or cessation of a line make, regardless of cause, the  
149 manufacturer or distributor shall:

150 (1) within 60 days from the effective date of the termination, repurchase all new, unused,  
151 undamaged and unaltered motor vehicles of the current model year that it sold to the dealer and  
152 any other such vehicles that it sold to the dealer within 180 days before the notice of termination,  
153 at a price equal to the amount paid therefor by the motor vehicle dealer, including but not limited  
154 to transportation charges, less all incentives and allowances received by the dealer; provided,  
155 however, that the motor vehicles which are recreational vehicles of the current model year and  
156 any other recreational vehicles sold to the dealer within 180 days before the notice of termination  
157 shall be repurchased; provided, further, this paragraph shall not apply to a recreational vehicle  
158 manufacturer if the termination was initiated by the dealer for reasons other than the  
159 manufacturer's material breach of contract; provided, further, that the dealer has transferred to  
160 the manufacturer or distributor full right and legal title to the vehicles before their repurchase.

161 (2) if requested by the dealer within the same 60 day period, repurchase all genuine new  
162 and unused motor vehicle parts and accessories that it sold to the motor vehicle dealer so long as  
163 the same are undamaged, in their original packaging and listed in the current parts and  
164 accessories price list of the manufacturer or distributor, at a price equal to the wholesale price  
165 stated in the current parts and accessories price list of the manufacturer or distributor, including  
166 but not limited to transportation charges, less all incentives and allowances received by the  
167 dealer and without reduction for such repurchase or for processing or handling the repurchase;  
168 provided, however, that the dealer has transferred to the manufacturer or distributor full right and  
169 legal title to the equipment before their repurchase;



170 (3) if requested by the dealer within the same 60 day period, repurchase the new and used  
171 equipment that it sold to the motor vehicle dealer at its then fair market value, including, but not  
172 limited to, signs, special tools and manuals, which the manufacturer or distributor required the  
173 motor vehicle dealer to purchase, such repurchase amount to include transportation charges  
174 assessed on the dealer; provided, however, that the dealer has transferred to the manufacturer or  
175 distributor full right and legal title to the equipment before their repurchase; and

176 (4) if requested by the dealer within the same 60 day period, pay: (a) the fair market value  
177 of the goodwill of the franchise as of the date immediately preceding the manufacturer or  
178 distributor's announcement of a termination or announcement that a line make is being  
179 discontinued; (b) the cost of the lease for the facilities used for the franchise or line-make for the  
180 unexpired term of the lease not to exceed one year; provided, however, that if a facility is used  
181 for the operation of more than one franchise, the reasonable rent owed by the manufacturer shall  
182 be based on the portion of the facility utilized by the terminated franchise; and (c) the dealer's  
183 cost of any facility upgrades or alterations required by the manufacturer or distributor within the  
184 2 years preceding the notice of termination or announcement that a line make is being  
185 discontinued. The above provisions do not apply in the event of a sale of the assets or stock of a  
186 motor vehicle dealership.

187 SECTION 9. Section 6 of said chapter 93B, as so appearing, is hereby amended in  
188 subsection (b) by inserting at the end thereof the following paragraph:--

189 A motor vehicle dealer shall be limited to a relocation of an existing point pursuant to  
190 clause (1) or to the appointment of a successor at a site pursuant to clause (2) once within a two-  
191 year period of time.

192 SECTION 10. Said section 6 of said chapter 93B, as so appearing, is hereby further  
193 amended by inserting after subsection (h) the following subsection:--

194 (i) For a period of 4 years from the date that the former franchisee ceased operations, it  
195 shall be unlawful for any manufacturer or distributor to enter into a same line make franchise as  
196 that operated by the former franchisee with any person, or to permit the relocation of any  
197 existing same line make franchise, for the same line make represented by the former franchisee  
198 that would be located or relocated within the relevant market area of the former franchisee  
199 without first receiving written permission to do so from the majority owner of the former  
200 franchisee or his designated successor should the dealer principal of the former franchisee be  
201 deceased or disabled. Written permission from the former franchisee shall not be required if (a)  
202 the manufacturer or distributor has offered to re-instate or appoint the former franchisee at no  
203 cost and without any requirements or restrictions other than those imposed generally on the  
204 manufacturer's other franchisees at that time; or (b) the manufacturer or distributor has paid the  
205 former franchisee or designated successor, all termination assistance as required by section 5,  
206 including an amount to cover the fair market value of the former franchisee's franchise as of the  
207 time of the termination or as of the time the proposed replacement, whichever leads to a greater  
208 value.

209 SECTION 11. Section 9 of chapter 93B, as so appearing, is hereby amended by striking  
210 subsection (b) and inserting in place thereof the following subsection:--

211 (b)(1) A manufacturer or distributor shall specify in writing to each of its dealers the  
212 dealer's obligations for pre-delivery preparation and warranty service on its products, and shall  
213 compensate the dealer for such preparation and service. Every manufacturer or distributor shall

214 within a reasonable time fulfill its obligations under all express warranty agreements made by  
215 them with respect to any product manufactured, distributed or sold by them and shall adequately  
216 and fairly compensate any motor vehicle dealer who, in accordance with its franchise  
217 obligations, furnishes labor, parts and materials pursuant to the warranty or maintenance plan,  
218 extended warranty, certified pre-owned warranty, or a service contract, issued by the  
219 manufacturer or distributor or its common entity, unless issued by a common entity that is not a  
220 manufacturer; to fulfill a manufacturer or distributor's delivery or preparation procedures; or to  
221 repair a motor vehicle as a result of a manufacturer or distributor's or common entity's recall,  
222 campaign service, authorized goodwill, directive, or bulletin. For the purposes of motor vehicle  
223 dealers, fair and reasonable compensation shall be at the rate and price customarily charged for  
224 retail customer repairs as defined herein and computed pursuant to paragraph (2); provided,  
225 however, that fair and reasonable compensation shall, for purposes of this section for powersport  
226 vehicles, be computed at the rate normally charged by the motor vehicle dealer to the public for  
227 the labor and materials and shall include a fair charge for diagnostic and test services; provided,  
228 further, that notwithstanding the foregoing fair and adequate compensation shall, for purposes of  
229 this section for recreational vehicles, be computed at the rate normally charged by the motor  
230 vehicle dealer to the public for the labor and shall include a fair charge for diagnostic and test  
231 services, and shall, for the purposes of this section for recreational vehicles, be computed for the  
232 materials at the rate of not less than actual wholesale cost, plus a handling charge of 30 per cent  
233 of the cost and the cost, if any, of freight to return the warranty materials to the manufacturer.  
234 The term "labor" shall include time spent by employees for diagnosis and repair of a vehicle.  
235 The term "parts" shall include replacement parts and accessories. The term "retail customer  
236 repair" shall mean work, including parts and labor, performed by a dealer which does not come

237 within the provisions of a manufacturer's or distributor's or its common entity's warranty,  
238 extended warranty, certified pre-owned warranty, service contract, or maintenance plan, and  
239 excludes parts and labor described in clause (iii) of paragraph (2).

240 (2)(i) For purposes of determining the rate and price customarily charged by the motor  
241 vehicle dealer to the public for parts, the compensation may be an agreed percentage markup  
242 over the dealer's cost pursuant to a writing separate and distinct from the franchise agreement  
243 signed after the dealer's request, but if an agreement is not reached within 30 days after a dealer's  
244 written request to be compensated pursuant to this section, compensation for parts will be  
245 calculated, at the dealer's discretion, by utilizing one of the methods described herein:

246 (A) The retail rate customarily charged by the dealer for parts shall be established by the  
247 dealer submitting to the manufacturer or distributor fifty sequential non-warranty or customer-  
248 paid service repair orders which contain warranty-like parts, or sixty consecutive days of non-  
249 warranty customer-paid service repair orders which contain warranty-like parts, whichever is  
250 less, covering repairs made no more than one hundred eighty days before the submission and  
251 declaring the average percentage markup. The average of the markup rates shall be presumed to  
252 be fair and reasonable. The retail rate shall go into effect thirty days following the declaration,  
253 subject to audit of the submitted repair orders by the franchisor; provided, however, that nothing  
254 in this subsection precludes a dealer from seeking compensation or damages for a discrepancy  
255 between the rate paid and their average markup during periods of time preceding the request. If  
256 the declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the  
257 average percentage markup based on that rebuttal not later than thirty days after submission. If  
258 the dealer does not agree with the proposed average percentage markup, the dealer may file an  
259 action with a court of competent jurisdiction not later than thirty days after receipt of that

260 proposal by the manufacturer or distributor. In any action commenced pursuant to this  
261 subsection, the manufacturer or distributor shall have the burden of proving that the rate declared  
262 by the dealer was inaccurate or unfair and unreasonable as described in this subsection.

263 (B) The manufacturer or distributor's highest suggested retail or list price for the parts; or

264 (C) An amount equal to the dealer's markup over dealer cost that results in the same gross  
265 profit percentage for parts used in work done pursuant to method (A) herein as the dealer  
266 receives for parts used in the customer retail repairs, as evidenced by the average of said dealer's  
267 gross profit percentage in the dealer's financial statements for the 2 months preceding the dealer's  
268 request.

269 (ii) The retail rate customarily charged by the dealer for labor may be established by  
270 submitting to the manufacturer or distributor all non-warranty customer-paid service repair  
271 orders covering repairs made during the month prior to the submission and dividing the amount  
272 of the dealer's total labor sales by the number of total labor hours that generated those sales. The  
273 average labor rate shall be presumed to be fair and reasonable; provided, however, that a  
274 manufacturer or distributor may, not later than thirty days after submission, rebut such  
275 presumption by reasonably substantiating that such rate is unfair and unreasonable in light of the  
276 practices of all other franchised motor vehicle dealers in the vicinity offering the same line-make  
277 vehicles. The average labor rate shall go into effect thirty days following the declaration, subject  
278 to audit of the submitted repair orders by the franchisor and a rebuttal of such declared rate;  
279 provided, however, that nothing in this subsection precludes a dealer from seeking compensation  
280 or damages for a discrepancy between the rate paid and their average markup during periods of  
281 time preceding the request. If the declared rate is rebutted, the manufacturer or distributor shall

282 propose an adjustment of the average labor rate based on such rebuttal not later than thirty days  
283 after submission. If the dealer does not agree with the proposed average labor rate, the dealer  
284 may file an action with a court of competent jurisdiction not later than thirty days after receipt of  
285 that proposal by the manufacturer or distributor. In any action commenced pursuant to this  
286 subsection, the manufacturer or distributor shall have the burden of proving that the rate declared  
287 by the dealer was inaccurate or unfair and unreasonable as described in this subsection.

288 (iii) In calculating the retail rate customarily charged by the dealer for parts and labor, the  
289 following work shall not be included in the calculation: (1) Repairs for manufacturer or  
290 distributor special events, specials or promotional discounts for retail customer repairs; (2) parts  
291 sold at wholesale; (3) engine assemblies and transmission assemblies; (4) routine maintenance  
292 not covered under any retail customer warranty, such as fluids, filters and belts not provided in  
293 the course of repairs; (5) nuts, bolts, fasteners, and similar items that do not have an individual  
294 part number; (6) tires; and (7) vehicle reconditioning.

295 (iv) If a manufacturer or distributor furnishes a part or component to a dealer, at no cost,  
296 to use in performing repairs under a recall, campaign service action or warranty repair, the  
297 manufacturer or distributor shall compensate the dealer for the part or component in the same  
298 manner as warranty parts compensation under this section by compensating the dealer the  
299 average markup on the cost for the part or component as listed in the manufacturer's or  
300 distributor's price schedule less the cost for the part or component.

301 (v) A manufacturer or distributor shall not require a dealer to establish the retail rate  
302 customarily charged by the dealer for parts and labor by an unduly burdensome or time  
303 consuming method or by requiring information that is unduly burdensome or time consuming to

304 provide, including, but not limited to, part-by-part or transaction-by-transaction calculations. A  
305 dealer shall not declare an average percentage markup or average labor rate more than twice in  
306 one calendar year.

307 (vi) A manufacturer or distributor shall not establish or implement a special part or  
308 component number for parts used in pre-delivery, dealer preparation, warranty, extended  
309 warranty, certified pre-owned warranty, recall, campaign service, authorized goodwill, or  
310 maintenance-only applications if that results in lower compensation to the dealer than as  
311 calculated in this subsection.

312 (vii) A manufacturer or distributor shall not require, influence, or attempt to influence a  
313 motor vehicle dealer to implement or change the prices for which it sells parts or labor in retail  
314 customer repairs. A manufacturer or distributor shall not implement or continue a policy,  
315 procedure, or program to any of its dealers in this state for compensation under this section  
316 which is inconsistent with this section.

317 (viii) A manufacturer or distributor shall not otherwise recover its costs from dealers,  
318 including an increase in the wholesale price of a vehicle or surcharge imposed on a dealer solely  
319 intended to recover the cost of reimbursing a dealer for parts and labor pursuant to this section;  
320 provided, however, that a manufacturer or distributor shall not be prohibited from increasing  
321 prices for vehicles or parts in the normal course of business.

322 (3) Time allowances for the diagnosis and performance of warranty work and service  
323 shall be reasonable and adequate for the work to be performed.

324 (4) Each manufacturer or distributor shall perform all warranty obligations, include in  
325 written notices of factory recalls to owners and dealers the expected date by which necessary

326 parts and equipment shall be available to dealers for the correction of such defects, and  
327 compensate dealers for repairs necessitated by such recall.

328 (5) All claims by dealers under this section for such labor and parts and all claims for  
329 compensation relative to any sales incentive programs shall be paid not later than thirty days  
330 after approval by the manufacturer or distributor; provided, however, that manufacturers or  
331 distributors shall retain the right to audit such claims and to charge-back the dealer for false or  
332 unsubstantiated claims pursuant to this section. Dealers shall be required to maintain defective  
333 parts for a period of not longer than ninety days following submission of claims. All such claims  
334 shall be either approved or disapproved not later than thirty days after their receipt on forms, and  
335 in the manner specified by, the manufacturer or distributor. Any claim not disapproved in writing  
336 or by means of electronic transmission not later than thirty days after receipt shall be deemed  
337 approved and payment shall be made within thirty days.

338 (6) A manufacturer or distributor shall not take or threaten to take adverse action against  
339 a motor vehicle dealer who seeks to obtain compensation pursuant to this section. As used in this  
340 subsection, the term "adverse action" shall include, without limitation, acting or failing to act,  
341 other than in good faith; creating or implementing an obstacle or process that is inconsistent with  
342 the manufacturer or distributor's obligations to the dealer under this section; hindering, delaying,  
343 or rejecting the proper and timely payment of compensation due under this section to a dealer;  
344 establishing, implementing, enforcing, or applying any policy, standard, rule, program, or  
345 incentive regarding compensation due under this section other than in a uniform and non-  
346 disparate manner among the manufacturer or distributor's dealers in this state; conducting or  
347 threatening to conduct any warranty, retail customer repair, or other service-related audit more  
348 frequently than once each calendar year; or denying, reducing, or charging back a warranty claim



349 because of a dealer's failure to comply with all of the manufacturer or distributor's requirements  
350 for describing or processing a claim.

351 SECTION 12. Said section 9 of said chapter 93B, as so appearing, is hereby further  
352 amended in subsection (e) by inserting at the end thereof the following:-- A manufacturer or  
353 distributor may not charge a motor vehicle dealer back subsequent to the payment of a claim  
354 unless a representative of the manufacturer or distributor first meets in person or by video  
355 teleconference with an officer or employee of the dealer designated by the motor vehicle dealer.  
356 At such meeting the manufacturer or distributor shall provide a detailed explanation, with  
357 supporting documentation, as to the basis for each of the claims for which the manufacturer or  
358 distributor proposed a charge-back to the dealer and a written statement containing the basis  
359 upon which the motor vehicle dealer was selected for audit or review. Thereafter, the  
360 manufacturer or distributor shall provide the motor vehicle dealer's representative a reasonable  
361 period after the meeting within which to respond to the proposed charge-backs, with such period  
362 to be commensurate with the volume of claims under consideration, but in no case less than 45  
363 days after the meeting. The manufacturer or distributor shall be prohibited from changing or  
364 altering the basis for each of the proposed charge-backs as presented to the motor vehicle dealer's  
365 representative following the conclusion of the audit unless the manufacturer or distributor  
366 receives new information affecting the basis for one or more charge-backs. If the manufacturer  
367 or distributor claims the existence of new information, the dealer shall have the same right to a  
368 meeting and right to respond as when the charge-back was originally presented.

369 SECTION 13. Section 16 of said chapter 93B, as so appearing, is hereby amended by  
370 inserting at the end thereof the following subsection:--

371 (c) As that there exists an inequality in the bargaining position between motor vehicle  
372 dealers, manufacturers and distributors, in any judicial proceeding this chapter shall be liberally  
373 construed in order to achieve its purpose of preventing arbitrary and unfair treatment of dealers  
374 by manufacturers and distributors.

375 SECTION 14. Said chapter 93B, as so appearing, is hereby amended by inserting after  
376 section 18 the following section:--

377 Section 19. A manufacturer or distributor that manufactures or distributes, respectively, a  
378 line make shall provide indemnification as required in this chapter to any dealer that distributed  
379 vehicles of the same line make regardless of how long and when the manufacturer or distributor  
380 acquired the rights to, or when it began manufacturing or distributing vehicles of, the line make.