

*Effective
June 16, 2014*



NEW YORK STATE

FRANCHISE LAW

FOR NEW CAR DEALERS

Designed and provided by the Greater New York Automobile Dealers Association



Greater New York
Automobile Dealers
Association



Greater New York
Automobile Dealers
Association

Dear GNYADA Member:

At the end of the 2014 Legislative Session, Governor Andrew Cuomo signed into law the Greater New York Automobile Dealers Association's key legislative agenda item—a revised Dealer Franchise Protection Law.

The new Franchise Law adds nearly 20 new sections to the existing Law. These additions strengthen the rights of dealers with manufacturers. The amendments were necessary to address the ever-changing requirements that manufacturers often put on dealers—requirements that can make your businesses less profitable and threaten its operation.

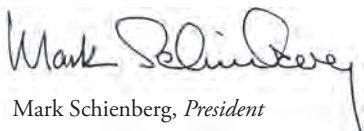
We are pleased to provide you with this updated and revised guide to the New York State Motor Vehicle Dealer Franchise Act. This edition, created and produced by the Greater New York Automobile Dealers Association for its members, includes and reflects the entire Franchise Law. What's more, we've highlighted the most recent changes that became effective on June 16, 2014.

GNYADA's Franchise Law Guide includes the actual language of the law and is designed to help you understand the various provisions of the law. The Highlights section identifies relevant and noteworthy passages. Key Terms have been updated in the front of this guide, and the Detailed Index provides another way to access the statute's provisions and can be found in the back of this brochure.

We would like to thank several individuals who have assisted in preparing and updating this important resource for our members—franchise law expert Richard Sox of Bass Sox & Myers; members of our Albany lobbying firm of Wilson Elser, including Cindy Shenker, Douglas Clark, and Ryan Horstmyer; Stuart Rosenthal, GNYADA General Counsel and VP of Government Affairs; and Susan Bieber, GNYADA's Director of Dealer Services. These and many other people were instrumental in helping us attain passage of these amendments.

We hope that this publication provides all the important information you need regarding your rights under New York State Law to keep your business thriving for many years.

If you have questions or comments, we would be pleased to hear from you. Call us at 718.746.5900.



Mark Schienberg, *President*

KEY TERMS

TO THE NEW YORK STATE FRANCHISE LAW

Definitions 8, 9, 10, 11, 12

A

Administrative Hearing 52, 53, 54, 55

Advertising 22, 24, 46, 47

Allocate/Allocation 40, 43, 44, 45, 46

Alter/Alteration 27, 28, 35, 36

Appeal 42, 55

Arbitration 51

Audit 48, 49

B

Breach 31

C

Captive Finance 38

Chargeback 48, 49, 50

Construction 26, 27, 28, 35, 36, 56

Customer Satisfaction Index (CSI) 38

D

Delivery and Preparation 46

E

Exclusive Dealership Facilities 27

Export 40

Extended Service Contract 25, 26

F

Factory Store 14, 17, 18, 40

Fleet Program 40

G

Good Faith 26, 31, 40, 45, 49

H

Heirs 33, 34

I

Image 28, 29

Incentive Program(s) 32, 35, 37

L

Labor Reimbursement Rate 46, 47

Line Make 22, 29, 30, 35, 36, 38, 39, 41, 42, 43, 45

Loaner 44

M

Maintenance Plan 25, 26

Marketing 21, 39, 48, 49

Mediation 52, 53

N

Nonrenewal of Franchise 30, 35, 50

Notice/Notification

Good Faith Notice to Dealer	26
Notice of Termination.....	30, 31
Notice of Franchisor's Demand	30
Notice of Breach.....	31
Withholding Consent of Sale	33
In-transit Damage/Repair	34, 36
RMA / Additional Franchise.....	40
RMA/Relocation Existing Franchise.....	40
Modification of Franchise.....	42
Termination of Promotion/Program Consent.....	43
Incentive Claims Approval/Disapproval.....	46
Final Amount of Chargeback	47
Notice of Hearing.....	51
Failure to Comply with Commissioner's Decision.....	53
Change of Address of Dealership.....	15, 16

O

Original Equipment Manufacturer's Parts (OEM).....	39
--	----

P

Parts Reimbursement Rate.....	45
Performance.....	23, 29, 36, 43
Population.....	21, 22, 41
Protest.....	29, 40

R

Reimburse/Reimbursement.....	23, 26, 34, 42, 45, 46
Relevant Market Area (RMA).....	21, 27, 40, 41, 42
Additional New Motor Vehicle Dealer	40, 41
Existing New Motor Vehicle Dealer.....	40, 41, 42
Relocate.....	21, 22, 42
Remodel.....	25, 26, 33, 34
Renovation.....	24, 25, 28
Rent/Rental	24, 25, 28, 42, 49, 54

S

Sales Incentive	35, 44, 46, 47
Service Contracts.....	23, 24, 45
Signage	26, 32
Succession.....	31

T

Terminate/Termination

.....	22, 24, 26, 27, 28, 29, 32, 33, 34, 43, 48
Tools.....	22, 32, 36
Training.....	22, 23, 36
Transfer	18, 20, 31, 34, 48

U

Unreasonable.....	23, 25, 31, 42, 43, 45, 46, 48
-------------------	--------------------------------

V

Viability	44
-----------------	----

W

Warranty.....	32, 35, 44, 45, 46, 47, 50, 54
---------------	--------------------------------

NEW YORK STATE
FRANCHISE LAW

HIGHLIGHTS

Registration of Dealers - Factory Store Provisions

Article 16-Vehicle and Traffic Law

NEW

Application for Dealership Certificate of Registration – Section 415(5) (b-2)

page 14

- Requires an application for a dealership registration to disclose the ownership interest a manufacturer or distributor, or any affiliate or subsidiary of such a company, has in the dealership.

NEW

Issuance of Dealership Certificate of Registration – Section 415(7) (f)

page 16

- Prohibits, with limited exceptions, any manufacturer, distributor, distributor branch and factory branch, and any subsidiary, affiliate or controlled entity, from having an interest in dealership.
- Directs DMV to deny a license to factory stores that do not qualify for licenses (only those licensed before July 1, 2006 qualify).
- Permits a franchisor to have an interest in a dealership but only if the interest is either (a) for a one (1) year period during which ownership of the dealership is in the process of being transferred to another dealer, or (b) shared with an independent dealer for a maximum of eight (8) years with the purpose of assisting the independent dealer develop its business. These provisions, which are also found in Vehicle and Traffic Law §463(2)(bb) were placed in section 415 to ensure enforcement by the Commissioner of Motor Vehicles.
- Also permits the Commissioner to renew a registration of a manufacturer, or its subsidiary, affiliate or controlled entity, provided the certificate of registration was first issued prior to March 26, 2014, and the manufacturer or other entity produces only zero emission vehicles and has not transferred ownership to an unrelated entity. This type of franchisor may not take advantage of the 8-year dealer development option described above.

Franchised Motor Vehicle Dealer Act

Article 17-a Vehicle and Traffic Law

Good Faith – 462(8a)

page 20

- Defines “good faith” dealings as honesty in fact and requires the use of reasonable commercial standards of fair dealing, which is applied in later sections.
- Incorporates and expands on the common law definition of good faith.

Line-make – Section 462(13)

page 20

- Clarifies that the term “line-make” includes a specific “brand.

Relevant Market Area – 462(15)

page 21

- Establishes a “relevant market area” (RMA) for the purposes of defining a territory around the dealership. A dealer may protest a unilateral addition or relocation of a same line-make dealer by a franchisor within the dealer’s RMA.
- Defines a relevant market area as a 6-mile radius in counties of 100,000 or more population or 10 mile radius in counties with less than 100,000 in population.

Captive Finance Source – 462(16)

page 22

- Defines “captive finance source” in order to match up with later provisions restricting the ways in which manufacturers can use their captive finance companies.

Termination – 462(17)

page 22

- Defines “termination” of a franchise in a manner to match up with provisions in later sections that provide rights to dealers in connection with terminations by franchisors.

Limitations on Participation in Factory Training Programs – 463(1)(d)

page 22

- Prohibits franchisors from requiring dealership employees to participate in training programs unless the programs are limited to information needed to sell or service vehicles.
- Prohibits franchisors from unreasonably requiring attendance of a dealer-principal in training sessions.
- Requires franchisors to employ reasonable efforts to limit or reimburse dealer costs for factory training programs.

NEW Non-factory Service Contracts – 463(1)(e)

page 23

- Prohibits franchisors from requiring dealers to sell only extended service contracts offered by the franchisor.

NEW Limits on Changes to, or Control of a Facility – 463(2)(c)

page 26

- Prohibits franchisors from unreasonably requiring facility upgrades.
- Requires franchisors to submit to a dealer more detailed projections to support any request for renovations.
- Prohibits a franchisor from conditioning the renewal or extension of a franchise agreement on the dealer constructing a new facility or renovating an existing facility, unless the franchisor provides at least 180 days notice and can demonstrate that the updated facility is needed and reasonable in light of economic conditions in the automotive industry.
- Requires franchisors requesting new facilities to agree, in writing, to supply a dealer with additional vehicles needed to support the increased overhead as a result of any required construction or renovation.
- Prohibits franchisors from forcing a dealer to perform repeated facility upgrades or rejecting construction materials or services that are chosen by dealers that are substantially similar to those required by franchisors.

- Prohibits franchisors from requiring a dealer to operate dealership facilities that are exclusive to a particular line make, unless such a restriction is justified by current and reasonably expected future economic conditions in the area of the dealership.
- Prohibits franchisors from requiring site control provisions that would survive or continue after the termination of a dealership if the termination is due to the discontinuation of the line-make.

Enhancement of Termination Protections – 463(2)(d)

page 27

- Requires manufacturers acquiring a brand to honor an existing franchise agreement or to offer an agreement that is similar to the agreement that is offered to other existing franchisees.
- Imposes a duty on franchisors to continue a franchise.
- Provides that a franchise may not be terminated or canceled, or a renewal refused, except for “due cause”, regardless of the terms of the franchise agreement.
- Defines “due cause” as a material breach by the dealer of a reasonable and necessary term of the franchise that has not been cured after notice by the franchisor.

Protest of Franchise Termination – 463(2)(e)

page 28

- Provides an automatic stay of any termination that a dealer protests within four (4) months.
- Requires franchisors to provide at least 90 days notice of a proposed termination and, if the termination is based on sales/service performance, to provide at least 180 days for the dealer to “cure” any alleged problems.
- Lists specific issues that must be considered in a dealer’s challenge to a franchise termination, including “due cause” and “good faith”.
- Places the burden on a franchisor to prove that a dealer breached a material duty of the franchise. If a breach of a dealer’s duty is caused by factors beyond a dealer’s control then that breach will not be considered due cause for a termination.

Vehicle, Parts, and Accessories, Sales, Incentives – 463(2)(g)-(i)

page 29-30

- Prohibits franchisors from selling a vehicle, part, and/or accessory at a lower actual price than that offered to any other dealer.
- Requires franchisors to make incentives, plans, or programs reasonably available to all dealers on a proportionally equal basis.

Prohibition on Interference with Inventory Financing – 463(2)(j)

page 30

- Prohibits franchisors from interfering with a dealer's choice of financing its vehicle inventory, including if a dealer chooses not to use the franchisor's captive finance company.

Ownership Succession – 463(2)(m)

page 31

- Prohibits franchisors from denying a dealer's surviving spouse or heirs the right to continue in the business, or otherwise interfere with the continuation of the business provided that the business is operated by competent management.

NEW

Reimbursement for Inventory, Signage, Tools, Recent Facility Upgrades – 463(2)(o)

page 32

- Requires franchisors to repurchase inventory, supplies, special tools, signage and other items, purchased by a dealer from a franchisor or its approved sources, upon termination of a franchise.
- Requires franchisors to reimburse dealers for facilities upgrades occurring within three (3) years of a termination without cause.
- Requires franchisors to reimburse dealers for liability on Dealer Management System contracts in the event of a termination.

Restrictions on Applications of Foreign Laws – 463(2)(t)

page 36

- Applies the Franchised Motor Vehicle Dealer Act to disputes between New York dealers and their franchisors.

NEW Export Chargebacks – 463(2)(z)

page 38

- Prohibits a franchisor from charging-back sales, incentives, or related payments due to a vehicle that is exported if the dealer can demonstrate it exercised due diligence and the sale was made in good faith and without knowledge of the purchaser's intent to export the vehicle, or the dealer reasonably relied upon the franchisor's approval to complete the sale. Registration of the vehicle (in any state in the U.S.) and collection of applicable sales tax will satisfy the due diligence requirement.
- Requires franchisors to provide notice to dealers prior to assessing an export chargeback.

Right to Protest Add Point/Relocation – 463(2)(cc)

page 40

- Requires franchisors to provide notice (by certified mail) to existing dealers of a proposed new point or relocation in a dealer's RMA.
- Provides an existing dealer who receives such a notice with the right to challenge the addition or relocation of the proposed new dealership. Excludes relocation or replacement of a dealer within its own existing RMA.
- Places the burden on the franchisor to show good cause for a new point or relocation of an existing point within an existing dealer's RMA.
- Establishes criteria to be considered in determining whether there is "good cause" for the addition or relocation of a dealership into an existing dealer's RMA. The criteria include consideration of the interests of the existing dealer, the franchisor and the public.

Restriction Against Unreasonable Denial of Relocation – 463(2)(dd)

page 42

- Requires franchisors to approve or deny a dealer relocation request within 60 days, or it is approved.
- Prohibits a franchisor from unreasonably denying a dealer's request to relocate his or her dealership location within his or her RMA.

Reimbursement for Loaner Vehicles – 463(2)(ee)

page 42

- Requires franchisors to reimburse a dealer the average cost in a dealer's region for rental vehicles similar to the vehicle that is being serviced if the franchisor requires its dealers to provide a loaner.

Unilateral Modification of Franchise – 463(2)(ff)

page 42

- Limits a franchisor from substantially adversely altering the rights and obligations of a dealer under the franchise.
- Requires franchisors to provide 90 days written notice of proposed modifications as well as the specific grounds for the modification.
- Provides dealers with the right to protest a modification, and that upon such a protest any modification will be stayed.

Arbitrary Sales or Performance Standards Prohibited – 463(2)(gg)

page 43

- Prohibits franchisors from using any unreasonable, arbitrary or unfair sales or performance standards.
- Requires franchisors to provide a clear and concise written description of their sales or performance standards.

**Consent to Program Participation
– 463(2)(hh)**

page 43

- Prohibits franchisors from requiring dealers to contribute money to a program or promotion without first receiving the dealer's written consent.

NEW

**Inventory Allocation With Geographic
Area – 463(2)(ii)**

page 43

- Requires franchisors to give credit to dealers, for inventory allocation purposes, for sales of new motor vehicles to persons from areas outside a franchisees assigned sales territory.

NEW

**Inventory Allocation Fairness and
Transparency – 463(2)(jj)-(kk)**

page 43-44

- Requires franchisors to make fair vehicle allocations of vehicle inventory and to disclose, upon the request of a dealer, its vehicle allocation methodology and the actual allocations to individual dealers.

NEW

**Procedures Relating to Warranty
Reimbursement and Sales Incentive
Claims – 465(1)-(2)**

page 44-46

- Clarifies that a franchisor must reimburse dealers for the performance of warranty work at the dealer's retail rate charged for non-warranty work.
- Establishes a specific method by which a dealer is to support the calculation of its retail rate on non-warranty work (the 100 most recent customer-paid R.O.s).
- Requires that a dealer's average retail rate calculation should go into effect 30 days after it is submitted.
- Allows a dealer to request a change to the average retail rate each year.
- Prohibits a franchisor from instituting burdensome procedures for reimbursement.
- Excludes certain products from the retail rate calculation in order to avoid distortions in rate.

- Requires a franchisor to identify with specificity the reason for rejecting or rebutting a dealer's declaration of the retail rate.
- Provides a dealer with the opportunity to resubmit, within 60 days, a full and corrected declaration addressing any alleged error. Requires a franchisor to respond to a resubmission within 60 days. Stays the requirement of submitting repair orders within 180 days of completing a repair from the date of initial submission of a claim.
- Places on the franchisor the burden of proving the unreasonableness of declared retail rate and the reasonableness of any adjustment.
- Requires franchisors to approve or disapprove warranty or sales incentive claims within thirty (30) days of their submission.

NEW

Warranty and Sales Incentive Audits and Chargebacks – 465(3)-(7)

page 46-47

- Restricts the franchisor from auditing or charging back any warranty payment, or any sales, advertising or marketing incentive payment more than one year after the date of payment, unless there is fraud.
- Requires franchisors to provide dealers with notice of a chargeback, or some system that allows dealers to access information about errors or problems with their warranty, sales, advertising or marketing incentive claims.
- Protects dealers from chargebacks of all warranty claims in a single submission where a dealer fails to properly document only one repair job.
- Prohibits manufacturers from denying a claim solely due to a dealer's incidental failure to comply with a specific claim processing requirement, a clerical error, or other administrative technicality, provided the claim is legitimate and the dealer corrects the claim.
- Requires franchisors to meet with or call their dealers to explain any chargeback and to allow dealers to explain their position.

- Establishes a right of dealers to protest a chargeback attempt. A protest automatically stays (halts) the chargeback until a final determination.
- Requires franchisors' chargebacks to be reasonable.
- Prohibits a franchisor from denying or charging-back a warranty claim unless it proves (a) that the dealer did not make a good faith effort to comply with the reasonable written procedures or (b) that the dealer did not perform the work.
- Prohibits a franchisor from denying or charging-back a sales, marketing or advertising incentive payment made to a dealer unless (a) the claim was false or materially fraudulent or (b) the dealer failed to reasonable substantiate the claim in accordance with the franchisor's reasonable procedure.
- Prohibits a franchisor from imposing any chargeback, debiting a dealer's account or otherwise seeking to obtain any part of a chargeback during the thirty (30) day period in which the dealer has the opportunity to file a protest.

Private Actions – 469

page 49

- Confirms the Franchised Motor Vehicle Dealer Act to federal law.
- Prohibits franchisors from requiring dealers to use binding arbitration to resolve disputes.

To read and search this document online, go to:

WWW.GNYADA.COM

REGISTRATION OF DEALERS - FACTORY STORE PROVISIONS

VTL Article 16 (EFF. 6/16/14)

**Text highlighted in blue is new for 2014*

415. Registration of manufacturers, dealers, repairmen and others

5. Application for registration. The application for registration under this section shall be filed with the commissioner in such form and detail as the commissioner shall prescribe, setting forth:

a. Name and residence address of applicant; if an individual, the name under which he intends to conduct business; if a co-partnership, the name and residence address of each member thereof, and the name under which the business is to be conducted; if a corporation, the name of the corporation and the name and residence address of each of the officers.

b. The place or places, including the complete address or addresses where the business is to be conducted and, in the case of an application to do business as a new motor vehicle dealer, the names of each line or make of new motor vehicle which a manufacturer or distributor has authorized the applicant to sell from each location and the date of inception of the franchise, as defined in section four hundred sixty-two of this title, which authorizes the applicant to sell such line or make from each location. A copy of each such franchise, or other documentation in lieu thereof satisfactory to the commissioner, shall be submitted to the commissioner at the time of application and upon each renewal of each certificate to do business as a new motor vehicle dealer.

b-1. The name and address of the surety company which will issue the bond required by subdivision six-b of this section. If the bond is to be issued by an authorized agent of the surety company licensed by the state, then the name and address of that agent may be provided in lieu of the information concerning the surety company.

b-2. A statement indicating any interest in the applicant's franchise entity by a person or entity described in paragraph f of subdivision seven of this section.

c. Such further information as the commissioner may reasonably prescribe.

d. Before an application for an original certificate of registration is approved, the applicant must have on the premises to be licensed adequate space and proper facilities to retain and safeguard all records and documents he must maintain upon the licensed premises as required by the vehicle and traffic law and the regulations of the commissioner.

The commissioner may require the applicant for registration to appear at such time and place as may be designated by the commissioner for examination to enable him to determine the accuracy of the facts set forth in the written application, either for initial registration or renewal thereof.

7. Issuance of certificate.

a. If the commissioner is satisfied that the applicant for a new motor vehicle dealer registration certificate is party to a franchise or franchises authorizing such applicant to sell or lease lines or makes of new motor vehicles which the applicant proposes to sell or lease from the locations described in the application for the sale or lease of such lines or makes and if the commissioner otherwise approves the application, upon payment of the prescribed fee, he or she shall issue a new motor vehicle dealer registration certificate in such form as he or she may prescribe. Every new motor vehicle dealer registration certificate shall by its terms permit the sale or lease of the particular lines or makes of new motor vehicles only from a location or locations authorized for such sale or lease in the franchise or franchises between such new motor vehicle dealer and the manufacturers or distributors of such new motor vehicles. The commissioner may, in his or her discretion, issue such certificates of registration and number plates on a staggered expiration basis, in which event the fees set forth in subdivision six of this section for such certificate shall be prorated on a monthly basis. A new motor vehicle dealer registered under this section shall notify the commissioner of any change of address of the locations of his or her place or places of business and whether or not such locations are approved as locations for the sale or lease of new motor vehicles in a franchise and which lines or makes are so approved for sale or lease at each location pursuant to the franchise or franchises within thirty days after such change

is made, and the commissioner shall be authorized to cancel the registration upon failure to give such notice. A copy of each franchise affected by any such change or other proof satisfactory to the commissioner shall accompany the notice to the commissioner. If any location shall cease to be approved by the new motor vehicle manufacturer or distributor for the sale or lease of the line or make of new motor vehicle, then such new motor vehicle dealer shall immediately cease selling or leasing such line or make of new motor vehicle from such location and shall notify the commissioner within thirty days of such change, after which such new motor vehicle dealer registration certificate shall be modified to reflect such change.

b. Registration certificate for qualified dealer. If a dealer makes application, under penalty of perjury, for a registration certificate as a qualified dealer, the commissioner shall issue a registration as a qualified dealer to such dealer upon payment of the prescribed fee.

c. Registration certificate for other than new motor vehicle dealer or qualified dealer. If the commissioner approves the application of an applicant for a registration certificate other than a new motor vehicle dealer certificate or a qualified dealer certificate, upon payment of the prescribed fee, he or she shall issue a registration certificate in such form as he or she may prescribe.

d. The commissioner may, in his or her discretion, issue such certificates of registration and number plates on a staggered expiration basis, in which event the fees set forth in subdivision six of this section for such certificate shall be prorated on a monthly basis. A registrant shall notify the commissioner of any change of address of his or her principal place of business within thirty days after such change is made, and the commissioner shall be authorized to cancel the registration upon failure to give such notice.

e. A registration issued under this section may be renewed upon application therefor in such form as the commissioner may prescribe, upon payment of the fee as herein prescribed.

f. Except as provided in paragraph (bb) of subdivision two of section four hundred sixty-three of this title and subparagraph (iii) of this paragraph:

(i) The commissioner shall not issue any certificate of registration authorized by this section to any franchisor, manufacturer, distributor, distributor branch or factory branch, as such terms are defined in section four hundred sixty-two of this title, or to any subsidiary, affiliate or controlled entity thereof, except that the commissioner may renew such certificate previously issued or otherwise approved to operate to a franchisor prior to July first, two thousand six. Nothing in this section shall preclude the establishment of such facilities necessary to continue the ongoing operation of any holder of a certificate of registration authorized by this section or otherwise approved to operate to a franchisor provided such original certificate or approval was granted prior to July first, two thousand six.

(ii) On or after the effective date of this subparagraph, the commissioner shall not issue any certificate of registration, or renew any certificate, unless the original certificate was issued before July first, two thousand six, to any motor vehicle dealer in which a franchisor, manufacturer, distributor, distributor branch or factory branch, as such terms are defined in section four hundred sixty-two of this title, or any subsidiary, affiliate or controlled entity thereof, has acquired, or possesses, a controlling interest in the franchise entity except:

(1) when operating such franchise for a temporary period, not to exceed one year, during the transition from one owner of the motor vehicle dealership to another, provided, however, that such temporary period may be extended once for an additional period not to exceed one year for good cause. Provided that for franchisors of house coaches, the period of temporary ownership of a franchised house coach dealership may be extended in one year increments for good cause shown, except that the aggregate of such extensions shall not exceed five years; or

(2) when operating such franchise temporarily under a plan with an independent individual who is obligated to make a significant investment in the dealership that is subject to loss and has an ownership interest or expects to acquire full ownership in a reasonable period under reasonable terms and conditions, provided that a reasonable period shall be presumed to not exceed eight years.

(iii) Notwithstanding any other provision of this paragraph or any provision of paragraph (bb) of subdivision two of section four hundred sixty-three of this title, the commissioner may renew any certificate of registration that was issued to a franchisor, manufacturer, distributor, distributor branch or

factory branch, as such terms are defined in section four hundred sixty-two of this title, or to any subsidiary, affiliate or controlled entity thereof, prior to March twenty-sixth, two thousand fourteen; provided, however, that such franchisor, manufacturer, distributor, distributor branch or factory branch, or any subsidiary, affiliate or controlled entity thereof, is a manufacturer that manufactures or assembles exclusively zero emissions vehicles, or is a subsidiary, affiliate, or controlled entity of such a manufacturer; and provided further that a controlling interest in such original franchisor, manufacturer, distributor, distributor branch or factory branch or any subsidiary, affiliate or controlled entity was not transferred, sold or conveyed to another person or entity, other than to a subsidiary, affiliate or controlled entity of such franchisor, manufacturer, distributor, distributor branch or factory branch. For purposes of this paragraph, zero emission vehicles shall have the same meaning as under part two hundred eighteen of title six of the New York code of rules and regulations.

FRANCHISED MOTOR VEHICLE DEALER ACT

VTL ARTICLE 17-A (EFF.1/1/12)

460. Legislative findings

The legislature finds and declares that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state and the public interest and the public welfare, and that in order to promote the public interest and the public welfare and in the exercise of its police power, it is necessary to regulate motor vehicle manufacturers, distributors and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state.

461. Short title

This article shall be known and may be cited as the “franchised motor vehicle dealer act”.

462. Definitions

Whenever used in this article:

1. “Distributor” means any person who primarily offers, sells or distributes new motor vehicles to franchised motor vehicle dealers or maintains distributor representatives within the state.
2. “Distributor branch” means a branch office maintained by a distributor which offers, sells or distributes new motor vehicles to franchised motor vehicle dealers in this state.
3. “Distributor representative” means a representative employed by a distributor branch or distributor.
4. “Factory branch” means a branch office maintained for directing and supervising the representatives of the manufacturer or which office is maintained for the sale of motor vehicles.
5. “Factory representative” means a representative employed by a factory branch for the purpose of making or promoting the sale of motor vehicles or for supervising, servicing, instructing or contacting franchised motor vehicle dealers or prospective motor vehicle dealers.
6. “Franchise” means a written arrangement for a definite or indefinite period in which a manufacturer or distributor grants to a franchised 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 thereto at wholesale, retail, by lease or otherwise and/or pursuant to which a franchised motor vehicle dealer purchases and resells or offers (as agent, principal, or otherwise) products associated with the name or mark or related components of the franchise.
7. “Franchised motor vehicle dealer” means: (a) any person required to be registered pursuant to section four hundred fifteen of this title which has been granted a franchise as defined in subdivision six of this section, or (b) any person engaged in the business of selling snowmobiles, all terrain vehicles and/or personal watercraft at wholesale or retail who has been granted a franchise; provided, however, that any person primarily engaged in the sale of vessels and other marine items who meets the definition of “dealer” as

provided in subdivision one of section eight hundred ten of the general business law shall not be a “franchised motor vehicle dealer” pursuant to this article.

8. “Franchisor” means any manufacturer, distributor, distributor branch or factory branch, importer or other person, partnership, corporation, association, or entity, whether resident or non-resident, which enters into or is presently a party to a franchise with a franchised motor vehicle dealer.

8-a. “Good faith” means, in addition to any common law definitions of that term, honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade.

9. “Manufacturer” means any person, partnership, corporation, association, factory branch or other entity engaged in the business of manufacturing or assembling [*sic*] new and unused motor vehicles for sale in this state.

10. “Motor vehicle” means: (a) any motor vehicle as defined in section one hundred twenty-five of this chapter, (b) any snowmobile as defined in article forty-seven of this chapter, (c) any all terrain vehicle as defined in article forty-eight-B of this chapter and (d) any personal watercraft as defined in section two of the navigation law, provided the commissioner shall have authority to except by regulation vehicles other than passenger automobiles, trucks and motorcycles from such definition.

11. “New motor vehicle” means a vehicle sold or transferred by a manufacturer, distributor or dealer, which has not been placed in consumer use or used as a demonstrator.

12. “New motor vehicle product” means any motor vehicle which is of the same line make of motor vehicle as those which the franchisor has authorized its existing franchised motor vehicle dealers to sell under the existing franchises between franchised motor vehicle dealers and the franchisor.

13. “Line make” means all models of a specific brand of motor vehicle manufactured by a manufacturer that may manufacture several brands, each of which are a separate line of make; except that, as such term applies to the sale of any new house coach, means that group or those groups of house coaches, as defined by the terms of the written franchise.

14. Notwithstanding the provisions of section one hundred nineteen of this chapter, for purposes of this article the term “house coach” shall mean any vehicle motivated by a power connected therewith or propelled by a power within itself, which is designed to provide temporary living quarters, and which is built onto, as an integral part of, or is permanently attached to a motor vehicle chassis, and 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 for recreation vehicles:

- (a) a cooking facility with an on-board fuel source;
- (b) a gas or electric refrigerator;
- (c) a toilet with exterior evacuation;
- (d) a heating or air conditioning system with an on-board power or fuel source separate from the vehicle engine;
- (e) a potable water supply system that includes at least a sink, a faucet and a water tank with an exterior service supply connection; and
- (f) a 110-125 volt electric power supply.

15. “Relevant market area” means:

- (a) if the proposed additional or relocated motor vehicle dealer is to be located in a county having a population in excess of one hundred thousand, the area within the radius of six miles of the intended site of the proposed or relocated dealer. Such six mile distance shall be determined by measuring the distance between the nearest surveyed boundary of the existing new motor vehicle dealer’s principal place of business and the nearest surveyed boundary line of the proposed or relocated new motor vehicle dealer’s place of business; or
- (b) if the proposed additional or relocated motor vehicle dealer is to be within a county having a population of less than one hundred thousand, the area within the radius of ten miles of the intended site of the proposed or relocated dealer. Such ten mile distance shall be determined by measuring the distance between the nearest surveyed boundary line of the existing new

motor vehicle dealer's principal place of business and the nearest surveyed boundary line of the proposed or relocated new motor vehicle dealer's principal place of business.

In determining the population of a county, the most recent census by the U.S. Bureau of Census or the most recent population update, either from the National Planning Data Corporation or other similar recognized source, shall be used.

16. "Captive finance source" means any finance source that provides automotive-related loans, or purchases retail installment contracts or lease contracts for motor vehicles and is, directly or indirectly, owned, operated or controlled, in whole or in part, by a manufacturer, factory branch, distributor or distributor branch.

17. "Termination" and "terminate" as such terms are used in connection with the removal of a franchise by a franchisor, means a franchisor's proposed termination, cancellation, non-renewal, or rescission.

463. Unfair business practices by franchisors

1. It shall be unlawful for any franchisor to directly or indirectly coerce or attempt to coerce any franchised motor vehicle dealer:

- (a) To order or accept delivery of any motor vehicle or vehicles, appliances, tools, machinery, equipment, parts or accessories therefor or any other commodity or commodities which shall not have been voluntarily ordered by said franchised motor vehicle dealer except any such items required by a recall campaign.
- (b) To order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of said motor vehicle as publicly advertised by the franchisor.
- (c) To contribute or pay money or anything of value into any cooperative or other advertising program or fund unless such program or fund shall be controlled by a dealer or group of dealers.
- (d) To participate in any training program unless such program is expressly limited to specific information necessary to sell or service the models of vehicles the

dealer is authorized to sell or service under the dealer's franchise with that franchisor. A franchisor shall not unreasonably require an owner or dealer principal of a dealership to attend any meeting or training program. A franchisor who requires participation in a training program as authorized by this paragraph shall to the largest extent practicable make all reasonable efforts to limit or reimburse the expenses of a dealer incurred in attending such program. Nothing in this paragraph shall be deemed to prohibit any training program located within a dealer's own principal place of business.

- (e) To sell, or sell exclusively an extended service contract, extended maintenance plan or similar product, including, but not limited to, gap products offered, endorsed or sponsored by the franchisor by the following means:
- (1) by a statement made by the franchisor that failure to do so will substantially and adversely impact the dealer; or
 - (2) by a provision in a franchise agreement that the dealer sell, or sell exclusively an extended service contract, extended maintenance plan or similar product offered, endorsed or sponsored by the franchisor; or
 - (3) by measuring the dealer's performance under the franchise based on the sale of extended service contracts, extended maintenance plans or similar products offered, endorsed or sponsored by the manufacturer or distributor; or
 - (4) by requiring the dealer to exclusively promote the sale of extended service contracts, extended maintenance plans or similar products offered, endorsed or sponsored by the franchisor.

Nothing in this section shall prohibit a franchisor from:

- (A) providing incentives to a dealer that makes the voluntary decision to sell or sell exclusively an extended service contract, extended maintenance plan or similar product, including, but not limited to, gap products offered, endorsed or sponsored by the franchisor, or
- (B) requiring that a dealer that sells an extended service contract, extended maintenance plan, or similar product that is not offered, endorsed or sponsored by the franchisor, disclose to the consumer the

disclosures required under section seven thousand nine hundred five of the insurance law, and a separate statement, acknowledged by the consumer, that the extended service contract, extended maintenance plan or similar product is not offered, endorsed or sponsored by the franchisor, if that is the case.

2. It shall be unlawful for any franchisor, notwithstanding the terms of any franchise contract:

- (a) To refuse to deliver in reasonable quantity and within a reasonable time after receipt of a dealer's order to any franchised motor vehicle dealer any vehicle covered by such franchise which is publicly advertised by such franchisor to be available for immediate delivery. Provided, however, the failure to deliver any motor vehicle shall not be considered a violation of this article if such failure be due to acts of God, work stoppages or delays due to strikes or labor difficulties, freight embargoes, shortage of materials, a lack of manufacturing capacity or other causes over which the franchisor shall have no control.
- (b) To directly or indirectly coerce or attempt to coerce any franchised motor vehicle dealer to enter into any agreement with such franchisor or officer, agent or other representative thereof, or to do any other act prejudicial to the monetary interests or property rights of said dealer by threatening to **terminate** said dealer. Provided, however, that good faith notice to any franchised motor vehicle dealer of said dealer's violation of any terms or provisions of such franchise shall not constitute a violation of this article.
- (c)(1) To condition the renewal or extension of a franchise on a franchised motor vehicle dealer's substantial renovation of the dealer's place of business or on the construction, purchase, acquisition or rental of a new place of business by the franchised motor vehicle dealer unless the franchisor has advised the franchised motor vehicle dealer in writing of its intent to impose such a condition within a reasonable time prior to the effective date of the proposed date of renewal or extension (but in no case less than one hundred eighty days) and provided the franchisor demonstrates the need for such change in the place of business and the

reasonableness of such demand in view of the need to service the public and the economic conditions existing in the automobile industry at the time such action would be required of the franchised motor vehicle dealer. As part of any such condition the franchisor shall agree, in writing, to supply the dealer with a reasonable quantity and mix of additional new motor vehicles which, as determined by a reasonable analysis of market conditions, are projected to meet the sales levels necessary to support the increased overhead incurred by the franchised motor vehicle dealer by reason of such renovation, construction, purchase, acquisition or rental of a new place of business.

(2) To require a franchised motor vehicle dealer to purchase goods, building materials, or services for the dealer's place of business, including, but not limited to, office furniture, design features, flooring, and wall coverings, from a vendor chosen by the franchisor if goods, building materials, or services of substantially similar quality and design are available from other sources, provided, however, that the goods or building materials are not subject to the franchisor's intellectual property or trademark rights and the franchised motor vehicle dealer has received the franchisor's approval, which approval may not be unreasonably withheld. Nothing in this subdivision shall be construed to allow a franchised motor vehicle dealer to impair or eliminate a franchisor's intellectual property or trademark rights and trade dress usage guidelines, or to impair other intellectual property interests owned or controlled by the franchisor.

(3) Except as necessary to comply with a health or safety law, or to comply with a technology requirement, which is necessary to sell or service a motor vehicle that the franchised motor vehicle dealer is authorized or licensed by the franchisor to sell or service, to require a franchised motor vehicle dealer to construct a new dealer facility or substantially alter or remodel an existing dealer facility before the date that is ten years after the date the construction of the new dealer facility or such alteration or remodeling at that location was completed and shall continue with any successor owner provided such owner has been designated and approved

by the franchisor in the franchise agreement, and such construction, alteration or remodeling substantially complied with the franchisor's brand image standards or plans that the franchisor provided at the time the construction, alteration, or remodeling was completed.

- (i) As used in this subparagraph, "substantially alter":
 - (A) Refers to an alteration that has a major impact on the architectural features, characteristics, or integrity of a structure or lot; and
 - (B) Does not include routine maintenance, such as interior painting, reasonably necessary to keep a dealership facility in attractive condition.
- (ii) Nothing in this paragraph shall prohibit a franchisor from:
 - (A) Continuing a facility improvement program that is in effect as of the effective date of this paragraph with more than one franchised motor vehicle dealer in the state or to renewing or modifying such program; or
 - (B) Providing lump sum or regularly-scheduled payments to assist a franchised motor vehicle dealer in making a facility improvement, including construction, alteration or remodeling, or installing signage or a franchisor image element;
 - (C) Providing reimbursement to a franchised motor vehicle dealer on reasonable, written terms for a portion of the franchised motor vehicle dealer's cost of making a facility improvement, including construction, alteration or remodeling, the purchase of goods, building materials or services, or installing signage or a franchisor image element.
- (4) To deny a franchised motor vehicle dealer a franchisor image element payment, incentive or allowance if the franchised motor vehicle dealer, with the franchisor's approval, began construction, alterations or remodeling intended to comply with the franchisor's image element program before the franchisor substantially changed or terminated the program prior to the program's scheduled

ending date provided the dealer is otherwise eligible for program payments and provided that after such substantial change or termination, the compensation payable to the dealer shall be limited to image element payments, incentives or allowances that the dealer would have earned through program's scheduled ending date, provided that the dealer complies with all program requirements, and provided, further, that such program or payments are not otherwise prohibited by law or regulation.

(5) To require or attempt to require a franchised motor vehicle dealer to establish or maintain exclusive dealership facilities unless justified by current and reasonably expected future economic conditions existing in the dealer's relevant market area at the time the request for exclusive facilities is made; provided that the foregoing shall not restrict the terms and conditions of any agreement for which the dealer has voluntarily accepted valuable consideration separate from the franchised motor vehicle dealer's right to sell and service motor vehicles for the franchisor. The fact that local market share, facing competitive brand dealerships have exclusive dealership facilities shall constitute evidence that current economic conditions may justify the requirement to establish and maintain exclusive dealership facilities.

(6) To require a site control provision regarding the dealer's place of business to survive or continue after the termination of such dealer's franchise if the termination is due to the discontinuation of the line-make that was the subject of the agreement.

(d)(1) To terminate, cancel or refuse to renew the franchise of any franchised motor vehicle dealer except for due cause, regardless of the terms of the franchise. A franchisor shall notify a franchised motor vehicle dealer, in writing, of its intention to terminate, cancel or refuse to renew the franchise of such dealer at least ninety days before the effective date thereof, stating the specific grounds for such termination, cancellation or refusal to renew. In no event shall the term of any such franchise expire without the written consent of the franchised motor vehicle dealer involved prior to the expiration of at least ninety days following such written notice except as hereinafter provided.

(2) A change in ownership of a manufacturer or distributor that contemplates a continuation of that line make in the state shall not directly or indirectly, through actions of any parent of the manufacturer or distributor, subsidiary of the manufacturer or distributor, or common entity cause a termination, cancellation, or nonrenewal of a dealer agreement by a present or previous manufacturer or distributor of an existing agreement unless the manufacturer or distributor offers the new vehicle dealer an agreement substantially similar to that offered to other dealers of the same line make.

(3) The provisions of subparagraphs one and two of this paragraph notwithstanding, a franchisor may terminate its franchise with a franchised motor vehicle dealer upon at least fifteen days written notice upon the occurrence of any of the following: (i) conviction of a franchised motor vehicle dealer, or one of its principal owners, of a felony or a crime punishable by imprisonment which substantially adversely affects the business of the franchisor, or (ii) the failure of the franchised motor vehicle dealer to conduct its customary sales and service operations for a continuous period of seven business days, except for acts of God or circumstances beyond the direct control of the franchised motor vehicle dealer or when any license required by the franchised motor vehicle dealer is suspended for a period of thirty days or less, or (iii) insolvency of the franchised motor vehicle dealer, or filing of any petition by or against the franchised motor vehicle dealer under any bankruptcy or receivership law.

(e)(1) Any franchised motor vehicle dealer who receives a written notice of termination or a written notice of a franchisor's demand that the dealer substantially renovate an existing place of business, or buy, construct or rent a new place of business as a condition of franchise renewal or extension may have a review of the demand to change the place of business or the threatened termination by instituting an action, as provided in section four hundred sixty-nine of this article. If such action is commenced within four months of receipt of notice, such action shall serve to stay, without bond, the proposed termination or renovation or demand to change the place of business until the final judgment has

been rendered in an adjudicatory proceeding or action, as provided in section four hundred sixty-nine of this article.

(2) The issues to be determined in an action commenced pursuant to subparagraph one of this paragraph are whether the franchisor's notice of termination was issued with due cause and in good faith. The burden of proof shall be upon the franchisor to prove that due cause and good faith exist. The franchisor shall also have the burden of proving that all portions of its current or proposed sales and service requirements for the protesting franchised new motor vehicle dealer are reasonable. The determination of due cause shall be that there exists a material breach by a new motor vehicle dealer of a reasonable and necessary provision of a franchise if the breach is not cured within a reasonable time after written notice of the breach has been received from the manufacturer or distributor.

(3) The franchisor shall provide notification in writing to the dealer that the dealer has one hundred eighty days to correct dealer sales and service performance deficiencies or breaches and that the franchise is subject to termination under this section if the dealer does not correct those deficiencies or breaches. If the termination is based upon performance of the dealer in sales and service then there shall be no due cause if the dealer substantially complies with the reasonable performance provisions of the franchise during such cure period and, no due cause if the failure to demonstrate such substantial compliance was due to factors which were beyond the control of such dealer.

- (f) To intentionally resort to or use any false or misleading advertisements.
- (g) To sell or offer to sell any new motor vehicle to any franchised motor vehicle dealer at a lower actual price therefor than the actual price offered to any other franchised motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device including, but not limited to, sales promotion plans or programs which result in such lesser actual price. Provided, however, the provisions of this paragraph shall not apply to sales to a franchised motor vehicle dealer

for: (i) resale to any unit of government; or (ii) donation or use by said dealer in a driver education program. This paragraph shall not be construed to prevent the offering of incentive programs or other discounts provided such incentives or discounts are reasonably available to all franchised motor vehicle dealers in this state on a proportionately equal basis.

- (h) To sell or offer to sell any new motor vehicle to any person, except a distributor, at a lower actual price therefor than the actual price offered and charged to a franchised motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device which results in such lesser actual price.
- (i) To sell or offer to sell parts and/or accessories to any franchised motor vehicle dealer at a lower actual price therefor than the actual price offered to any other franchised motor vehicle dealer for similar parts and/or accessories for use in his own business. Provided, however, that nothing herein contained shall be construed to prevent a manufacturer or distributor, or any agent thereof, from selling to a franchised motor vehicle dealer, who operates and serves as a wholesaler of parts and accessories, such parts and accessories as may be ordered by such franchised motor vehicle dealer for resale to retail outlets at a lower actual price than the actual price offered a franchised motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories. This paragraph shall not be construed to prevent the offering of incentive programs or other discounts provided the franchisor demonstrates that such incentives or discounts are reasonably available to all franchised motor vehicle dealers in the state on a proportionately equal basis.
- (j) To prevent or attempt to prevent, by contract or otherwise, any franchised motor vehicle dealer from changing the capital structure of its dealership, or the means by or through which it finances the operation of its dealership, or finances the acquisition or retention of inventory, provided the dealer at all times meets any capital standards agreed to between the dealer and the franchisor and as applied by the franchisor to all other comparable franchised motor vehicle dealers of the franchisor located within the state.

- (k) To unreasonably withhold consent to the sale or transfer of an interest, in whole or in part, to any other person or party by any franchised motor vehicle dealer or any partner or stockholder of any franchised motor vehicle dealer. If such consent to sale or transfer shall be withheld by the franchisor, the franchisor shall provide specific reasons for its withholding of consent within sixty days of receipt of the request for such consent provided such request is accompanied by proper documentation as may reasonably be required by the franchisor. Upon receipt of notice and reasons for the franchisor's withholding of consent, the franchised motor vehicle dealer may within one hundred twenty days have a review of the manufacturer's decision as provided in section four hundred sixty-nine of this article.
- (l) To require a franchised motor vehicle dealer to assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed under this article, provided that this paragraph shall not be construed to prevent a franchised motor vehicle dealer from entering into a valid release or settlement agreement with a franchisor.
- (m) (1) To deny to the surviving spouse or heirs of an individual franchised motor vehicle dealer or of a partner of an unincorporated franchised motor vehicle dealer or of a stockholder of a corporate franchised motor vehicle dealer the right to succeed to the interest of the decedent in such franchised motor vehicle dealership enterprise or directly or indirectly to interfere with, hinder or prevent the continuance of the business of the franchised motor vehicle dealer by reason of such succession to the interest of the decedent. Provided, however, that the continuation of the business of the franchised motor vehicle dealer shall be conducted under competent management acceptable to the franchisor, whose acceptance shall not be unreasonably withheld.
- (2) Notwithstanding the foregoing, in the event the franchised motor vehicle dealer and franchisor have duly executed an agreement concerning succession rights prior to the individual dealer's, partner's or stockholder's death and if such agreement has not been revoked by the franchised motor vehicle dealer, such

agreement shall be observed, even if it designates an individual other than the surviving spouse or heirs of the decedent.

- (n) To fail to indemnify and hold harmless its franchised motor vehicle dealers against any losses or damages including, but not limited to, court costs and attorneys' fees arising out of actions, claims or proceedings including, but not limited to, those based upon strict liability, negligence, misrepresentation, warranty (expressed or implied) or revocation as described in section 2-608 of the uniform commercial code, where the action, claim or proceeding directly relates to the manufacture, assembly or design of new motor vehicles, parts or accessories or other functions of the franchisor including, without limitation, the selection by the franchisor of parts or components for the vehicle or any damages to merchandise or vehicles occurring in transit where the carrier is designated by the franchisor, notwithstanding the terms of any franchise. If the action, claim or proceeding includes independent allegations against the franchised motor vehicle dealer, the franchisor shall bear only that portion of the costs, fees and judgment which is directly related to the manufacture, assembly or design of the vehicle, parts or accessories, or other function of the franchisor beyond the control of the franchised motor vehicle dealer.
- (o) (1) Upon a termination of a franchise by a franchisor or franchised motor vehicle dealer under this article, to refuse to accept a return of new and unused current model motor vehicle inventory which has been acquired from the franchisor, new and unused noncurrent model motor vehicle inventory which has been acquired from the franchisor within one hundred **eighty** days of the effective date of the termination; supplies, parts, equipment, **signage**, **special tools**, and furnishings purchased from the franchisor or its approved sources. The obligation of the franchisor, **except with respect to signage** shall be limited to the repurchase of the above property which is unaltered and undamaged, in good and usable condition, and, in the case of supplies, parts and equipment to those items which are currently listed in the franchisor's supplies and parts list. **In the case of signage, the franchisor shall be obligated to repurchase any franchisor required signage, purchased within the**

five years preceding termination and which is in good and useable condition less depreciation as set forth in the Internal Revenue Code of one-fifteenth of the initial cost per year starting the year following the dealer's acquisition of the item. Furthermore, the obligation of the franchisor to repurchase supplies upon a termination, cancellation or nonrenewal by a franchised motor vehicle dealer shall be limited to supplies mandated by the franchisor. Parts eligible for repurchase shall include parts which have been renumbered in the current parts list but which are identical in design and material to the currently numbered part. The return rights afforded the franchised motor vehicle dealer under the provisions of the paragraph shall be in addition to those, if any, provided in the franchise agreement.

(2) The franchisor shall pay fair and reasonable compensation for the above described property upon repurchase. In the case of new motor vehicle inventory, accessories and parts, fair and reasonable compensation shall in no instance be less than the net acquisition price paid by the franchised motor vehicle dealer to the franchisor or its approved sources. Upon a termination of a franchise by a franchisor, within thirty days of such termination, the franchisor shall send to the franchised motor vehicle dealer instructions on the methodology by which the franchised motor vehicle dealer must ship the above described property to the franchisor; the franchisor shall then remit payment for such property to the franchised motor vehicle dealer within sixty days after receipt of such property.

(3) Upon a termination of a franchise by a franchised motor vehicle dealer where the franchise consists primarily of the distribution and sale of house coaches, the franchisor's repurchase obligations set forth in this paragraph shall not apply.

(4) In addition to any other requirements of this subdivision, in the event a franchisor terminates a franchise due to termination of a line make, the franchisor shall compensate the dealer for any franchisor required facility construction, alterations or remodeling, or construction, alterations or remodeling required for participation in any incentive programs which were completed by the dealer within three years of the date

the franchisor announced the termination of the line make. For the purposes of this section, completion shall be deemed to occur at the later of the franchisor's final approval of the construction, alterations, or remodeling or the issuance of a certificate of occupancy. The compensation required under this section shall be in an amount equal to the dealer's cost for the facility upgrades less any assistance provided to the dealer within three years of the date the franchisor announced the termination of the line make by the manufacturer or distributor, and less the amount for depreciation as set forth in Internal Revenue Code of one thirty-ninth of the total initial cost of such construction, alterations, or remodeling per year starting the year following the dealer's completion of the facility construction, alterations, or remodeling.

(5) In addition to the requirements of subparagraph four of this paragraph, in the event a franchisor terminates a franchise due to a termination of a line make, the franchisor shall compensate the dealer in an amount equal to the amount remaining on the terminated dealer's management computer system lease or contract, or one year of lease payments, whichever is less if the dealer management computer system will no longer be utilized as a result of the termination and the franchisor required the dealer to utilize the particular dealer management computer system.

- (p) To refuse to repurchase for cost, including transportation charges, a new vehicle which has been substantially damaged by the franchisor or its agent; or to sell or transfer to a franchised motor vehicle dealer a new motor vehicle which has been subjected to repairs with a retail value in excess of five percent of the lesser of the manufacturer's or distributor's suggested retail price where such repairs are performed after shipment from the franchisor including damage to the vehicle while in transit without so notifying the franchised motor vehicle dealer to whom such new motor vehicle so repaired is sold or transferred. Such notice shall be in writing, advise of such repairs, and be provided prior to the receipt of any payment for such motor vehicle. If the franchisor shall fail to provide such notice, any franchised motor vehicle dealer suffering a loss by reason of such failure shall be entitled to reimbursement from the franchisor who failed to provide such notice.

(q) To provide directly or to grant to any person the right to perform warranty or recall service on any new motor vehicle line other than a house coach line but deny to said person the right to purchase the motor vehicles of that line for resale to consumers in this state as new motor vehicles provided, however, that this paragraph shall not prohibit a franchisor from:

(1) authorizing warranty service by employees of a fleet operator or governmental entity on owned vehicles; or

(2) authorizing such other persons to perform warranty service as the franchisor deems necessary to protect its interests as they may be affected by section one hundred ninety-eight-a of the general business law.

A “fleet operator” shall be required to own for its own use or for the use of others the minimum number of vehicles of the current or preceding model year manufactured or sold by the same franchisor as determined by the standards of such franchisor applied on a general and consistent basis to substantially all fleet operators. Notwithstanding the preceding, a franchisor which withdraws from the United States market shall continue to allow its former franchised motor vehicle dealers to continue servicing and supplying parts, including service and parts supplied under the franchisor’s warranty to vehicle owners, for a period of at least five years after such withdrawal from the United States market.

(r) To establish or attempt to establish the actual resale price for any new motor vehicle, part or accessory charged by a franchised motor vehicle dealer in the state, provided, however, nothing contained herein shall prohibit publication of recommended resale prices or historical information by a franchisor.

(s) To grant a commission to any person other than a franchised motor vehicle dealer within the state involved in the sale of a new motor vehicle by such franchised motor vehicle dealer without said franchised motor vehicle dealer’s written consent. This prohibition shall not apply to sales incentive programs for employees of franchised motor vehicle dealers as long as the payments are made by the franchisor to such employees and not charged to the dealer.

- (t) To require or attempt to require by the terms of the franchise that any dispute arising out of or in connection with the interpretation, performance or nonperformance of the parties to the franchise or in any way related to the franchise be determined through the application of any other state's laws
- (u) To use any subsidiary corporation, affiliated corporation, captive finance source or any other controlled corporation, partnership, association or person to accomplish what would otherwise be unlawful conduct under this article on the part of the franchisor.
- (v) To use a CSI (customer satisfaction index) or other system measuring a customer's degree of satisfaction with a franchised motor vehicle dealer as a sale or service provider unless any such system is designed and implemented in such a way that it is fair and equitable to both the franchisor and the franchised motor vehicle dealer. In any dispute between a franchisor and a franchised motor vehicle dealer the party claiming the benefit of the system as justification for acts in relation to the franchise shall have the burden of demonstrating the fairness and equity of the system both in design and implementation in relation to the pending dispute. Upon request of any franchised motor vehicle dealer, a franchisor shall disclose in writing to such dealer a description of how that system is designed and all relevant information pertaining to such dealer used in the application of that system to such dealer.
- (w) To withhold from a franchised motor vehicle dealer a new motor vehicle product of the same line make which the franchised motor vehicle dealer is authorized to sell under its franchise. Provided that the failure to deliver any motor vehicle shall not be considered to be a violation of this article if such failure is due to an act of God, work stoppages or delays due to strikes or labor difficulties, freight embargoes, shortages of materials, a lack of manufacturing capacity, or other causes over which the franchisor shall have no control. A franchised motor vehicle dealer shall be entitled to sell and service all the manufacturer's new motor vehicles which the franchised motor vehicle dealer is authorized to sell pursuant to the franchise, provided, however, a franchisor may impose reasonable facility, capital, training, tools and parts inventory requirements as a condition to

the franchised motor vehicle dealer being permitted to sell such new motor vehicle products. Conditions imposed by the franchisor shall be reasonably applied to all of its franchised motor vehicle dealers. Franchised motor vehicle dealers who are presently parties to a franchise with the franchisor shall be offered the right to sell and service any new motor vehicle product of the same line make owned or generally distributed by such franchisor's franchised motor vehicle dealer within such franchised motor vehicle dealer's designated area of responsibility designated in the franchise agreement before any person not a party to such a franchise for the sale of motor vehicles within such area of responsibility is offered or granted a franchise to sell such new motor vehicle product from a location within such area of responsibility.

- (x) To require a franchised motor vehicle dealer to agree to a term or condition in a franchise, or as a condition to the offer, grant or renewal of the franchise, lease or agreement, which:
 - (1) unless preempted by federal law, requires the franchised motor vehicle dealer to waive trial by jury in actions involving the franchisor; or
 - (2) unless preempted by federal law, specifies the jurisdiction, venues or tribunals in which disputes arising with respect to the franchise, lease or agreement shall or shall not be submitted for resolution or otherwise prohibits a franchised motor vehicle dealer from bringing an action in a particular forum otherwise available.
- (y) Subject to the provisions of paragraph (w) of this subdivision, to sell or offer to sell or lease or offer to lease a motor vehicle other than to a franchised motor vehicle dealer in this state; provided, however, that this paragraph shall not apply to sales or leases of new motor vehicles made by a franchisor to its employees, immediate family members of employees, retirees or immediate family members of retirees which are hereby authorized notwithstanding the provisions of section four hundred fifteen of this title. Nothing in this paragraph shall prohibit a franchisor from utilizing direct marketing designed to generate leads via mail, phone, or any other

medium, provided that leads developed thereby are referred to the franchised motor vehicle dealers in this state and in proximity to the consumer pursuant to a fair and equitable system of allocating such leads or to the franchised motor vehicle dealer as specified by the consumer. The provisions of this paragraph shall not apply to franchisors of house coaches when the franchisor does not have any franchised house coach dealers in this state.

- (z) To refuse to allocate, sell, or deliver motor vehicles, to charge back or withhold payments or other things of value for which the franchisee is otherwise eligible, or to take or threaten to take any adverse action against a franchised motor vehicle dealer, in connection with or as a result of any new motor vehicle sold by the franchised motor vehicle dealer and subsequently exported, providing such dealer can demonstrate that he exercised due diligence and that the sale was made in good faith including that the dealer did not know nor reasonably should have known of the purchaser's intention to export the motor vehicle. A franchised motor vehicle dealer which causes a new motor vehicle to be registered in this state or in a foreign state and causes to be collected the appropriate sales and use tax, or that reasonably relied on a franchisor to complete a sale shall be presumed to have exercised good faith and due diligence. Prior to taking an adverse action, including a charge back, as a result of an export, a franchisor shall provide written notice to the franchised motor vehicle dealer of the adverse action, and, if a charge back, the specific amount of the charge back, and the vehicle or vehicles at issue. A dealer shall not be liable for the delivery of any vehicle sold through a franchisor's fleet program for any such delivery in which the sale or lease was not initiated or negotiated by the dealer and its function was to provide delivery on behalf of the franchisor.
- (aa) To: (1) sell directly to a franchised motor vehicle dealer or, to or through a franchised motor vehicle dealer in which the franchisor owns any interest or controls the management, directly or indirectly, motor vehicles, parts, warranties, or services at a price that is lower than the price which the franchisor charges to all other franchised motor vehicle dealers; or

(2) sell directly to a consumer at retail new original equipment manufacturer's parts (OEM) at a price that is lower than the price which the franchisor makes available to franchised motor vehicle dealers; or

(3) otherwise provide a franchised motor vehicle dealer in which the franchisor owns any interest or controls the management, directly or indirectly, goods or services at a price that is lower than the price charged to all other franchised motor vehicle dealers.

(bb) On and after the effective date of this paragraph, to acquire any interest in any additional motor vehicle dealer in this state, with the exception of stock in a publicly held dealer when ownership is passive and for investment purposes only; provided, however, that nothing in this paragraph shall prohibit a franchisor and its affiliates that own an interest in a franchised motor vehicle dealership that operates or is approved to operate, within one hundred twenty days after the effective date of this paragraph, from selling or servicing a new line make of the franchisor or its affiliates that was not distributed in this state as of the effective date of this paragraph. Provided, further, that nothing in this paragraph shall prohibit a franchisor from acquiring any interest in any franchised motor vehicle dealership:

(1) when operating such franchise for a temporary period, not to exceed one year, during the transition from one owner of the motor vehicle dealership to another, provided, however, that such temporary period may be extended once for an additional period not to exceed one year for good cause. Provided that for franchisors of house coaches, the period of temporary ownership of a franchised house coach dealership may be extended in one year increments for good cause shown, except that the aggregate of such extensions shall not exceed five years; or

(2) when operating such franchise temporarily under a plan with an independent individual who is obligated to make a significant investment in the dealership that is subject to loss and has an ownership interest or expects to acquire full ownership in a reasonable period under reasonable terms and conditions, provided that a reasonable period shall be presumed to not exceed eight

years; provided, however, that the exception provided in this subparagraph shall not apply to any franchisor, manufacturer, distributor, distributor branch or factory branch that holds a certificate or registration pursuant to subparagraph (iii) of paragraph f of subdivision seven of section four hundred fifteen of this title.

(cc) (1) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into the relevant market area of an existing franchise motor vehicle dealer of the same line make unless the franchisor provides notice pursuant to the terms of this subdivision. All dealers that have a relevant market area that encompasses the proposed site shall be entitled to written notice, via certified mail return receipt requested, informing them of the proposed addition or relocation. Any new motor vehicle dealer may institute an action as provided in section four hundred sixty-nine of this article to protest the establishment or relocation of the new motor vehicle dealer following receipt of such notice, or following the end of any appeal procedure provided by the franchisor. In any action brought by the dealer, the franchisor shall have the burden of proving that there exists good cause for any such addition or relocation. Institution of an action pursuant to this subdivision shall serve to stay, without bond, the proposed addition or relocation until a final judgment has been rendered in a proceeding or action as provided in section four hundred sixty-nine of this article.

(2) This subdivision shall not apply to:

(i) the relocation or replacement, other than a replacement of a dealer who has moved within such area, of an existing new motor vehicle dealer within that dealer's own existing relevant market area, provided that the relocation not be to a site within the relevant market area of a licensed new motor vehicle dealer for the same line make of motor vehicle, unless such existing franchise was previously located within such new motor vehicle dealer's relevant market area; or

(ii) the addition of a new motor vehicle dealer or the establishment of a replacement new motor vehicle dealer, other than a replacement of a dealer who has moved within such area, at or within two miles of a

location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years; or

(iii) the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership if the franchise has been operating on a regular basis from the existing site for a minimum of three years immediately preceding the relocation; or

(iv) the relocation of a new motor vehicle dealer of the same line make if that dealer or replacement dealer is moving further away from a motor vehicle dealer of the same line make.

(3) In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, there shall be individual findings with respect to the following:

(i) the permanency of the investment of both the existing and proposed additional new motor vehicle dealers;

(ii) growth or decline in population, density of population, and new car registrations in the area;

(iii) effect on the consuming public in the area;

(iv) whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;

(v) whether the new motor vehicle dealers of the same line make in that area are providing adequate competition and convenient customer care for the motor vehicles of the same line make including the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;

(vi) whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer in the relevant market area would increase competition in a manner beneficial to the long-term public interest;

(vii) the effect on the dealer that proposed to relocate; and

(viii) any other factor which may be deemed material by the finder of fact to the unique facts and circumstances presented.

- (dd) To unreasonably prevent or refuse to approve the relocation of a dealership to another site within that dealership's relevant market area. The dealership must provide prior written notice providing the address of the proposed new location and a site plan of the proposed facility. The franchisor must, within sixty days of receipt of such information, grant or deny the dealer's relocation request. Failure to timely deny the request shall be deemed consent to the relocation.
- (ee) To fail to reimburse a dealer in full for the actual cost of providing a loaner vehicle to any customer who is having a vehicle serviced at the dealership if the provision of such a loaner vehicle is required by the franchisor. For the purposes of this paragraph, actual cost shall not exceed the average cost in the dealer's region for the rental of a substantially similar make and model as the vehicle being serviced.
- (ff) (1) To modify the franchise of any franchised motor vehicle dealer unless the franchisor notifies the franchised motor vehicle dealer, in writing, of its intention to modify the franchise of such dealer at least ninety days before the effective date thereof, stating the specific grounds for such modification.
- (2) For purposes of this paragraph, the term "modify" or "modification" means any change or replacement of any franchise if such change or replacement may substantially and adversely affect the new motor vehicle dealer's rights, obligations, investment or return on investment.
- (3) If any franchised motor vehicle dealer who receives a written notice of modification institutes an action within one hundred twenty days of receipt of such notice as provided in section four hundred sixty-nine of this article to have a review of the threatened modification, such action shall serve to stay, without bond, the proposed modification until a final judgment has been rendered in an adjudicatory proceeding or

action as provided in section four hundred sixty-nine of this article. A modification is deemed unfair if it is not undertaken in good faith; is not undertaken for good cause; or would adversely and substantially alter the rights, obligations, investment or return on investment of the franchised motor vehicle dealer under an existing franchise agreement. In any action brought by the dealer, the franchisor shall have the burden of proving that such modification is fair and not prohibited.

- (gg) To use an unreasonable, arbitrary or unfair sales or other performance standard in determining a franchised motor vehicle dealer's compliance with a franchise agreement. Before applying any sales, service or other performance standard to a franchised motor vehicle dealer, a franchisor shall communicate the performance standard in writing in a clear and concise manner.
- (hh) To require that a franchised motor vehicle dealer contribute monetarily to any program or promotion without first receiving the written consent of the franchised motor vehicle dealer to participate in such program or promotion. For purposes of this paragraph, the written consent specific to the particular program or promotion must be executed, by means of handwritten, typed or electronic signature, within sixty days prior to the start of the particular program or promotion, provided, however, that consent shall not be required to continue participation in a program or promotion to which the dealer has given written consent to renewal, and provided further, that the dealer shall be able to terminate such renewal upon reasonable written notice within thirty days following the start or renewal of the program or promotion.
- (ii) To allocate new motor vehicles to a franchised motor vehicle dealer based on a program that differentiates between vehicle sales by a franchised motor vehicle dealer within a territory or geographic area assigned to such dealer and vehicle sales outside of such territory or geographic area.
- (jj) To utilize a discriminatory, unreasonable, arbitrary or unfair system of allocation of new motor vehicle inventory. A franchisor shall communicate its system of allocation in writing in a clear and concise manner to all same line-make dealers located in this state.

(kk) To refuse to disclose to any franchised motor vehicle dealer the manner and mode of distribution of vehicles in the franchised motor vehicle dealer's line make within the state, and an explanation of the allocation system, including the methodology used, in a clear and comprehensible form.

2-a. On and after the effective date of this subdivision, if a franchisor notifies a franchised motor vehicle dealer, in writing, of its decision to monitor the continued viability of the dealership, the franchisor shall include in such notice the specific reasons upon which the franchisor's decision is based.

2-b. It shall be unlawful for any franchisor to provide financial information particular to a franchised motor vehicle dealer, including but not limited to, selling prices and sales margins, that has been collected from such franchised motor vehicle dealer to any other franchised motor vehicle dealer including a franchised motor vehicle dealer in which the franchisor owns any interest or controls, directly or indirectly, the management thereof. Nothing contained in this subdivision shall be deemed to prevent any franchisor from collecting and distributing any such financial information in an aggregate manner provided that the information from any motor vehicle dealer has been combined with the information from one or more franchised motor vehicle dealers such that the financial information from a particular dealer is no longer identifiable to such dealer.

3. In any action or proceeding instituted pursuant to the provisions of this section, there shall be available to the franchisor all of the defenses provided for under section thirteen-b of title fifteen, United States code, known as the Robinson-Patman Act.

464. Obligations of dealers prior to delivery to retail buyers

Every franchisor shall specify in writing the delivery and preparation obligations of its franchised motor vehicle dealers prior to delivery of new motor vehicles to retail buyers.

465. Procedures relating to warranties and sales incentives

1. Every franchisor shall properly fulfill any warranty agreement and/or franchisor's service contract and shall compensate each of its franchised motor vehicle dealers for warranty parts and labor in amounts which reflect fair and

reasonable compensation for such work. All warranty claims and/or claims under a franchisor's service contract made by franchised motor vehicle dealers shall be paid within thirty days following their approval. For parts reimbursement, other than components, systems, fixtures, appliances, furnishings, accessories and features of a house coach that are designed, used and maintained primarily for nonvehicular residential purposes, and for labor reimbursement, fair and reasonable compensation shall not be less than the price and rate charged by the franchised motor vehicle dealer for like services to non-warranty and/or non-service contract customers. For purposes of this section, the price and rate charged by the franchised motor vehicle dealer for parts may be established by submitting to the franchisor one hundred sequential nonwarranty customer-paid service repair orders or the number of sequential nonwarranty customer-paid service repair orders written within a ninety day period, whichever is less, covering repairs made no more than one hundred eighty days before the submission, and declaring the price and rate, including average markup for the franchised motor vehicle dealer as its reimbursement rate. The reimbursement rate so declared shall go into effect thirty days following the declaration and shall be presumed to be fair and reasonable, however a franchisor may rebut such presumption by showing that such rate so established is unfair and unreasonable in light of the practices of all other franchised motor vehicle dealers in the vicinity offering the same line make. The franchised motor vehicle dealer shall not request a change in the reimbursement rate more often than **once** in each calendar year. In establishing the labor reimbursement rate, the franchisor shall not require a franchised motor vehicle dealer to establish said rate by a methodology, or by requiring information, that is unduly burdensome or time consuming to provide, including, but not limited to, a transaction by transaction calculation. **For the purposes of this section, the following parts or types of repairs shall be excluded from the parts and/or labor calculations and the franchisor's reimbursement requirements under this section:** (a) parts sold at wholesale; (b) tires; (c) routine maintenance not covered under any retail customer warranty such as fluids, filters and belts not provided in the course of repairs; (d) vehicle reconditioning; and (e) batteries replaced as part of a routine maintenance operation. If the franchisor rejects the declaration or attempts to rebut the declaration because of an error in the dealer's submission, the franchisor shall

identify with specificity the reason for rejection and identify the error or errors within the submission. In the event the franchisor rejects or rebuts the dealer's initial declaration, the dealer shall have the opportunity, within sixty days to resubmit the full and corrected declaration addressing the alleged error or errors identified by the franchisor. The franchisor shall respond within sixty days. The one hundred eighty day requirement for the repair orders shall be stayed from the date of initial submission. In any action or proceeding held pursuant to this subdivision, the franchisor shall have the burden of proving that the rate declared by the dealer was unreasonable as described in this subdivision and that the proposed adjustment of the average percentage markup or rejection of the submission is reasonable pursuant to the provisions of this subdivision.

2. All warranty or sales incentive claims shall be either approved or disapproved within thirty days after their receipt. When any such claim is disapproved the franchised motor vehicle dealer shall be notified in writing of its disapproval within said period. Each such notice shall state the specific grounds upon which the disapproval is based. Failure to disapprove a claim within thirty days shall be deemed approval.

3. No franchisor shall conduct an audit or charge back any warranty payment, or any sales, advertising or marketing incentive payment ("incentive payments") or otherwise hold a franchised motor vehicle dealer liable for charges more than one year, or five years in the case of fraud, after the date the franchisor made such payment to the dealer, without providing a notice to a franchised motor vehicle dealer of, or a mechanism that makes available to a franchised motor vehicle dealer, information regarding errors or issues regarding such dealer's warranty, sales, advertising or marketing incentive claims that are the subject of the audit or chargeback. Nothing in this section shall be deemed to grant a dealer the right to access any file held by the manufacturer evaluating such dealer. In connection with a claim for warranty reimbursements, the dealer's failure to document properly one part of a warranty repair that contains more than one part shall not be the sole basis to charge back the entire repair. A manufacturer shall not deny a claim submitted under this section based solely on a dealer's incidental failure to comply with a specific claim processing requirement, a clerical error, or other administrative technicality, provided

that the failure does not call into question the legitimacy of the claim and that the dealer corrects the claim according to franchisor guidelines.

4. A franchisor shall not charge a dealer back subsequent to the payment of a warranty, sales, [advertising or marketing incentive](#) claim unless a representative of the franchisor has met in person at the dealership, or by telephone, with an officer or employee of the dealer designated by the dealer and explained in detail the basis for each of the proposed charge backs and thereafter given the dealer's representative a reasonable opportunity at the meeting, or during the telephone call, to explain the dealer's position relating to each of the proposed charge backs. In the event the dealer was selected for audit or review on the basis that some or all of the dealer's claims were viewed as excessive in comparison to average, mean or aggregate data accumulated by the franchisor, or in relation to claims submitted by a group of other franchisees, the franchisor shall, at or prior to the meeting or telephone call with the dealer's representative, provide the dealer with a written statement containing the basis or methodology upon which the dealer was selected for audit or review.

5. A franchisor shall not deny or charge back a payment for warranty work claimed by the dealer unless the franchisor satisfies its burden of proof that the dealer did not make a good faith effort to comply with the reasonable written procedures of the franchisor or that the dealer did not actually perform the work.

6. A franchisor shall not deny or charge back a sales, [advertising or marketing incentive](#) payment made to a dealer unless the claim was materially false or fraudulent or that the dealer failed to reasonably substantiate the claim either in accordance with the manufacturer's reasonable procedures.

7. After all internal dispute resolution processes provided through the franchisor have been resolved, the franchisor shall give notice to the dealer of the final amount of a proposed warranty, sales, [advertising or marketing incentive](#) charge back. If the dealer institutes an action pursuant to this article within thirty days of receipt of such notice, the proposed charge back shall be stayed, without bond, during the pendency of such action and until the final judgment has been rendered in an adjudicatory proceeding or action as provided in section four hundred sixty-nine of this article.

The franchisor shall not impose the chargeback, debit the dealer's account, or otherwise seek to obtain all or any part of the chargeback funds from the dealer during the thirty-day period in which the dealer has the opportunity to file an action as set forth above.

466. Unreasonable restrictions

1. It shall be unlawful for a franchisor directly or indirectly to impose unreasonable restrictions on the franchised motor vehicle dealer relative to transfer, sale, right to renew or termination of a franchise, discipline, noncompetition 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 with respect to its franchise or dealership.

2. It shall be deemed an unreasonable restriction upon the sale or transfer of a dealership for a franchisor (i) directly or indirectly to prevent or attempt to prevent a franchised motor vehicle dealer from obtaining the fair value of the franchise or the fair value of the dealership business as a going concern; or (ii) to refuse to approve the sale or transfer of a dealership due to the fact that the franchised motor vehicle dealer owns, has an investment in, participates in the management of or holds a franchise for the sale or service of another line make of new motor vehicles, or that the franchised motor vehicle dealer has established another franchise in the same dealership facilities for the sale or service of another line make of new motor vehicles prior to the effective date of this paragraph, or the other franchise has been approved in writing by the franchisor.

467. Dealership facilities assistance upon termination, cancellation or nonrenewal

Upon a permitted termination, cancellation or nonrenewal by the franchisor, unless such termination, cancellation or nonrenewal is for a reason or reasons set forth in subparagraph three of paragraph (d) of subdivision two of section four hundred sixty-three of this article, the franchisor shall assume the obligations for any lease of the dealership facilities or arrange for a new lease of the dealership facilities or pay the dealer the lease payments for one year, whatever is less, or negotiate a lease termination for the dealership facilities at the franchisor's expense. If the facilities are owned by the franchised motor vehicle dealer, the franchisor shall pay such

dealer a sum equivalent to the reasonable rental value of the dealership facility for one year, provided the franchised motor vehicle dealer shall mitigate damages in the case of an owned facility.

468. Preservation of consumer protection statutes

Nothing contained herein shall in any way be construed or interpreted to modify, limit or affect the full powers and duties heretofore or hereafter granted to consumer protection agencies created by statute or regulation enacted by state, city, county or local municipalities and the rights of consumers to make complaints thereto, it being the intent of this article to provide for the settlement and/or determination of disputes under the franchised motor vehicle dealer act as between franchisors and franchised motor vehicle dealers as defined herein.

469. Private actions

1. A franchised motor vehicle dealer who is or may be aggrieved by a violation of this article shall be entitled to request an adjudicatory proceeding, as prescribed in section four hundred seventy-one-a of this article, or in lieu thereof, sue for, and have, injunctive relief and damages in any court of the state having jurisdiction over the parties. In any such judicial action or proceeding, the court may award necessary costs and disbursements plus a reasonable attorney's fee to any party.

2. Whenever a franchise provides for the use of arbitration to resolve a controversy arising out of or relating to such contract, arbitration may be used to settle such controversy only if after such controversy arises all parties to such controversy consent in writing to use arbitration to settle such controversy.

469-a. Powers of the commissioner

1. In addition to any other powers and duties of the commissioner set forth in this chapter, the commissioner shall have the power to enforce the provisions of this article, in accordance with section four hundred seventy-one-a of this article.

2. The commissioner shall prescribe such rules and regulations as the commissioner shall deem necessary for the implementation of this section and section four hundred seventy-one-a of this article.

470. Construction of article

The provisions of this article shall be in addition to and not in lieu of those contained in the uniform commercial code.

471. Notice requirement

1. A dealer shall not display for sale, exchange or sell any new motor vehicle, or any used motor vehicle, that was originally sold by a manufacturer for distribution outside the United States without prominently displaying a label on the vehicle stating that “This vehicle was not sold by the manufacturer for distribution within the United States. It may not have the same standard features, emissions equipment, safety equipment, optional equipment, specifications and warranty, or otherwise be identical to the other motor vehicles which are sold by the manufacturer for distribution in the United States”.

2. Any person who violates this section and any person who knowingly aids and abets any such violation of this section shall be liable to any person aggrieved to the extent of any additional margin obtained or obtainable on such purchase and resale.

471-a. Adjudicatory proceedings

1. Request for an adjudicatory proceeding.

(a) Any franchised motor vehicle dealer who is or may be aggrieved by a violation of this article may request mediation with the franchisor. The request for mediation shall be served by certified mail, or in such manner as the franchisor and franchised motor vehicle dealer have agreed. If the franchisor agrees to mediation, such mediation shall proceed in accordance with the terms as agreed upon by the franchisor and franchised motor vehicle dealer; provided, however, that if the franchisor and franchised motor vehicle dealer have not agreed upon the terms of mediation (i) the franchisor and franchised motor vehicle dealer shall select a mediator within seven days of service by the franchised motor vehicle dealer of the request for mediation; (ii) the mediation shall be completed within twenty-one days of selection of the mediator, or within such period as the franchisor and the franchised motor vehicle dealer shall agree; and (iii) the cost of mediation shall be shared equally by the parties. If the matter is resolved by mediation, a written memorandum of the agreement shall be executed by the mediator, the franchisor, and the franchised motor vehicle dealer.

(b) If the matter has not been resolved by mediation, the franchisor and franchised motor vehicle dealer have not agreed to mediation, or the mediation has not been completed within the period set forth in subparagraph (ii) of paragraph (a) of this subdivision, the franchised motor vehicle dealer may file with the commissioner a request for an adjudicatory proceeding pursuant to this section. The request shall be in writing and contain a short and plain statement of the facts relied upon by the dealer to support a claim that the franchisor has violated one or more specific provisions of this article together with a request for a specific remedy other than damages. The request shall be accompanied by copies of all correspondence between the dealer and the franchisor and other documents relevant to the claims made in the request. The request shall be accompanied by a non-refundable filing fee of two thousand dollars.

(c) A true copy of the request with copies of all documents filed with the request shall be served upon the franchisor at the same time as the request is filed with the commissioner by transmitting such documents in any manner specifically permitted under the terms of the franchise agreement or, if no such manner is specified in such agreement, then by certified mail, return receipt requested, addressed to the officer or employee of the franchisor from whom the dealer has received correspondence relevant to the claims made in the request. A certificate of service shall accompany the request.

(d) The hearing shall be at such time and place as the commissioner shall prescribe. The commissioner shall mail to the dealer and the franchisor a notice stating the name of the presiding officer assigned to the matter, and the place and time of the hearing. The hearing shall be commenced as soon as practicable, but in no event sooner than sixty days from the date of the notice.

(e) The notice shall be sent by ordinary mail to the address of the dealer or attorney shown in the request and to the address to which the copy of the request was sent as shown in the certificate of service or such other address as the franchisor has designated for receiving such notices. The notice shall advise the franchisor of the right to submit within twenty days of receipt of such notice a short and plain statement of answers to the allegations of the request and of facts on which the franchisor relies in defense of

such allegations. Such answering statement shall be mailed to the commissioner or his or her designee and the dealer at addresses shown on the notice.

(f) The dealer may submit within twenty days of receipt of the franchisor's answering statement and additional statement of facts and documentary material only to the extent of answering new matter raised by the franchisor. Except as set forth in paragraph (g) of this subdivision, after receipt by a party of the notice from the commissioner, all correspondence and other communications relating to the dispute shall be with the presiding officer with copies to the opposing party.

(g) In accordance with the rules and regulations prescribed by the commissioner, each party shall disclose to the other all documents or other materials, including those that may have been maintained in electronic form, that the party intends to introduce at the hearing.

2. Hearings and other proceedings and presiding officers. Except as otherwise set forth in this section, hearings and other proceedings authorized under this article shall comply with article three of the state administrative procedure act and shall be presided over by the presiding officer appointed by the commissioner. The presiding officer shall be admitted to practice as an attorney in the state of New York and shall rule on all motions, procedures and other legal objections.

3. Resolution without a hearing. Either party may request resolution of the dispute without a hearing. A request for a resolution without a hearing shall be accompanied by sufficient information to permit a determination of whether any unresolved material issue of fact exists, and may be accompanied by a legal memorandum. The other party shall have an opportunity to respond. Such a request shall be granted if the presiding officer determines that no unresolved material issue of fact is presented in the matter. No hearing shall be conducted until the request for a resolution without a hearing has been determined.

4. Presiding officer decision. The presiding officer shall render a decision upon the conclusion of the hearing or without a hearing pursuant to subdivision three of this section not later than ninety days after the close of the

hearing or the granting of the request for resolution without a hearing. The decision of the presiding officer shall be based on the preponderance of the evidence. The presiding officer shall prepare a decision which shall include: (a) findings of fact; (b) a determination on each charge; and (c) in the event of a determination of a violation of this article, the remedy to be ordered. The decision of the presiding officer shall be deemed the determination of the commissioner.

5. Right of appeal. Any party may file an appeal of a determination made pursuant to this section in accordance with section two hundred sixty-one of this chapter.

6. Litigation costs. In any administrative proceeding pursuant to this section, each party shall bear its own litigation costs and attorneys' fees.

7. Penalties. Any party to a proceeding held pursuant to this section shall comply with the commissioner's decision in such proceeding, unless a stay or extension of the date for compliance is granted by the commissioner or a court of competent jurisdiction. If, after notice to such party and an opportunity to respond, the commissioner finds that a party has not complied with the commissioner's decision by the designated date of compliance, unless a stay or extension of such date has been granted, the commissioner, in addition to any other enforcement powers the commissioner holds, may assess such party a civil penalty not to exceed one thousand dollars per day of noncompliance. Civil penalties assessed under this section shall be paid to the commissioner for deposit in the state treasury, and unpaid civil penalties may be recovered by the commissioner in a civil action in the name of the commissioner. In addition, as an alternative to such civil action and provided that no proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county in which the dealer or franchisor is located a final order of the commissioner containing the amount of the penalty assessed. The filing of such final order shall have the full force and effect of a judgment duly docketed in the office of such clerk and may be enforced in the same manner and with the same effect as that provided by law in respect to executions issued against property upon judgments by a court of record.

471-b. Judicial review

A decision of the presiding officer under section four hundred seventy-one-a of this article shall be subject to review by the supreme court in the manner provided by article seventy-eight of the civil practice law and rules.

472. Separability

If any part or provision of this article or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this article or the application thereof to other persons or circumstances.

473. Savings clause

Nothing in this article shall prohibit, limit, restrict or impose conditions on:

1. The business activities (including, without limitation, the dealings with motor vehicle manufacturers and their representatives and affiliates) of any person that is primarily engaged in the business of rental of motor vehicles and industrial and construction equipment and activities incidental to that business provided that (a) any motor vehicles sold by such person are limited to used motor vehicles that have been previously used exclusively and regularly by such person in the conduct of business and used motor vehicles traded in on motor vehicles sold by such person, (b) warranty repairs performed by such person on motor vehicles are limited to those motor vehicles that it owns, previously owned or takes in trade, and (c) motor vehicle financing provided by such person to retail consumers for motor vehicles is limited to vehicles sold by such person in the conduct of business; or
2. The direct or indirect ownership, affiliation or control of a person described in subdivision one of this section.

DETAILED INDEX

Registration of Dealers - Factory Store Provisions

415	Registration of dealers – factory stores	14
	application for dealer license	15
	issuance of dealer license.....	15
	no license shall be issued to franchisor, manufacturer, distributor, distributor branch or factory branch	17

Franchise Law

460	Legislative Findings	18
461	Short Title; Franchised Motor Vehicle Dealer Act.....	18
462	Definitions.....	19
463	Unfair business practices by franchisors	22
	unreasonable training programs	22
	sale of extended warranties	23
	refuse to deliver vehicles advertised to the public.....	24
	condition the renewal of franchise on renovation of facility.....	24
	purchase of building materials, office furniture, design features	25
	request new facility upgrade less than 10 years before last remodel	25
	establish exclusive dealership facility.....	27
	sales and service standard must be reasonable.....	29
	resort to false or misleading advertising.....	29
	discriminate as to sales incentives	30
	discount parts for certain dealers.....	30
	discriminate as to financing	30

withhold consent to transfer.....	31
require dealer to waive rights.....	31
prevent succession of ownership.....	31
fail to indemnify dealers against loss or damages.....	32
fail to repurchase vehicles, parts, signage, tools, etc. upon termination.....	32
fail to compensate amount remaining on dealer management computer system at termination.....	34
refuse to repurchase damaged vehicle.....	34
allow nondealers to perform warranty/ recall service but deny the right to sell vehicles in the same linemake.....	35
establish resale price for vehicle parts.....	35
require disputes to be resolved under another state's laws.....	36
use an unreasonable CSI measurement.....	36
restrict availability of all models within the franchise.....	36
sell vehicle to non-dealer.....	37
chargeback or refuse to allocate vehicles resulting from the dealer's export of vehicle if dealer exercised good faith.....	38
sell vehicles direct; take ownership in dealership.....	38
establish or relocate a new dealership within a dealer's relevant market area.....	40
prevent relocation of a dealership.....	42
reimburse dealer for loaner cars.....	42
to adversely modify franchise.....	42
to apply unreasonable sales standard.....	43

	allocate vehicles based on discriminatory, unreasonable or arbitrary system	43
	refuse to disclose vehicle distribution methodology.....	44
464	Obligations of dealers prior to delivery to retail buyers.....	44
465	Procedures relating to warranties and sales incentives.....	44
	retail reimbursement for parts & labor.....	44
	exclusion from parts reimbursement calculation	45
	failure of franchisor to identify error in submission.....	46
	failure to provide dealer 60 days to correct submission.....	46
	approval or denial of claims within 30 days.....	46
	no chargeback beyond 1 year unless fraud.....	46
466	Unreasonable restrictions	48
467	Facilities assistance upon termination.....	48
468	Preservation of consumer protection statutes.....	49
469	Private actions.....	49
469a	Powers of the commissioner	49
470	Construction of article.....	50
471	Notice requirement	50
471-a	Adjudicatory proceedings.....	50
471-b	Judicial review.....	54
472	Separability	54
473	Savings clause.....	54



Governmental Affairs Office

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP
677 Broadway, Albany NY 12207
518-449-8893
Cynthia Shenker, Esq.

Headquarters

Greater New York Automobile Dealers Association, Inc.
18-10 Whitestone Expressway, Whitestone NY 11357
718-746-5900 • www.gnyada.com

Mark Schienberg, *President*
Stuart Rosenthal, *Vice President,*
Legal Affairs and General Counsel



Greater New York
Automobile Dealers
Association



PRINTED ON RECYCLED PAPER

