

AUTOMOBILE FRANCHISE AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Steve Eliason

LONG TITLE

General Description:

This bill makes changes to the New Automobile Franchise Act.

Highlighted Provisions:

This bill:

▶ requires an automobile franchisor to:

• provide a franchisee with certain written disclosures that may be provided to a potential buyer of the new motor vehicle; and

• provide reasonable compensation to a franchisee assisting a customer whose vehicle was subjected to an over the air or remote change, repair, or update;

▶ amends requirements for changes to a franchisee's retail labor rate and retail parts markup; and

▶ defines terms.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-14-201, as last amended by Laws of Utah 2018, Chapter 245

13-14-204, as last amended by Laws of Utah 2022, Chapter 455

Be it enacted by the Legislature of the state of Utah:

30 Section 1. Section **13-14-201** is amended to read:

31 **13-14-201. Prohibited acts by franchisors -- Affiliates -- Disclosures.**

32 (1) A franchisor may not in this state:

33 (a) except as provided in Subsection (3), require a franchisee to order or accept
34 delivery of any new motor vehicle, part, accessory, equipment, or other item not otherwise
35 required by law that is not voluntarily ordered by the franchisee;

36 (b) require a franchisee to:

37 (i) participate monetarily in any advertising campaign; or

38 (ii) contest, or purchase any promotional materials, display devices, or display
39 decorations or materials;

40 (c) require a franchisee to change the capital structure of the franchisee's dealership or
41 the means by or through which the franchisee finances the operation of the franchisee's
42 dealership, if the dealership at all times meets reasonable capital standards determined by and
43 applied in a nondiscriminatory manner by the franchisor;

44 (d) require a franchisee to refrain from participating in the management of, investment
45 in, or acquisition of any other line of new motor vehicles or related products, if the franchisee:

46 (i) maintains a reasonable line of credit for each make or line of vehicles; and

47 (ii) complies with reasonable capital and facilities requirements of the franchisor;

48 (e) require a franchisee to prospectively agree to a release, assignment, novation,
49 waiver, or estoppel that would:

50 (i) relieve a franchisor from any liability, including notice and hearing rights imposed
51 on the franchisor by this chapter; or

52 (ii) require any controversy between the franchisee and a franchisor to be referred to a
53 third party if the decision by the third party would be binding;

54 (f) require a franchisee to change the location of the principal place of business of the
55 franchisee's dealership or make any substantial alterations to the dealership premises, if the
56 change or alterations would be unreasonable or cause the franchisee to lose control of the
57 premises or impose any other unreasonable requirement related to the facilities or premises;

58 (g) coerce or attempt to coerce a franchisee to join, contribute to, or affiliate with an
59 advertising association;

60 (h) require, coerce, or attempt to coerce a franchisee to enter into an agreement with the
61 franchisor or do any other act that is unfair or prejudicial to the franchisee, by threatening to
62 cancel a franchise agreement or other contractual agreement or understanding existing between
63 the franchisor and franchisee;

64 (i) adopt, change, establish, enforce, modify, or implement a plan or system for the
65 allocation, scheduling, or delivery of new motor vehicles, parts, or accessories to the
66 franchisor's franchisees so that the plan or system is not fair, reasonable, and equitable,
67 including a plan or system that imposes a vehicle sales objective, goal, or quota on a
68 franchisee, or that evaluates a franchisee's sales effectiveness or overall sales performance,
69 without providing a reasonable opportunity for the franchisee to acquire the necessary vehicles
70 in a timely manner from the franchisor on commercially reasonable terms;

71 (j) increase the price of any new motor vehicle that the franchisee has ordered from the
72 franchisor and for which there exists at the time of the order a bona fide sale to a retail
73 purchaser if the order was made prior to the franchisee's receipt of an official written price
74 increase notification;

75 (k) fail to indemnify and hold harmless the franchisor's franchisee against any
76 judgment for damages or settlement approved in writing by the franchisor:

77 (i) including court costs and attorney fees arising out of actions, claims, or proceedings
78 including those based on:

79 (A) strict liability;

80 (B) negligence;

81 (C) misrepresentation;

82 (D) express or implied warranty;

83 (E) revocation as described in Section [70A-2-608](#); or

84 (F) rejection as described in Section [70A-2-602](#); and

85 (ii) to the extent the judgment or settlement relates to alleged defective or negligent

86 actions by the franchisor;

87 (l) threaten or coerce a franchisee to waive or forbear the franchisee's right to protest
88 the establishment or relocation of a same line-make franchisee in the relevant market area of
89 the affected franchisee;

90 (m) fail to ship monthly to a franchisee, if ordered by the franchisee, the number of
91 new motor vehicles of each make, series, and model needed by the franchisee to achieve a
92 percentage of total new vehicle sales of each make, series, and model equitably related to the
93 total new vehicle production or importation being achieved nationally at the time of the order
94 by each make, series, and model covered under the franchise agreement;

95 (n) require or otherwise coerce a franchisee to under-utilize the franchisee's existing
96 dealer facility or facilities, including by:

97 (i) requiring or otherwise coercing a franchisee to exclude or remove from the
98 franchisee's facility operations the selling or servicing of a line-make of vehicles for which the
99 franchisee has a franchise agreement to utilize the facilities; or

100 (ii) prohibiting the franchisee from locating, relocating, or occupying a franchise or
101 line-make in an existing facility owned or occupied by the franchisee that includes the selling
102 or servicing of another franchise or line-make at the facility provided that the franchisee gives
103 the franchisor written notice of the franchise co-location;

104 (o) fail to include in any franchise agreement or other agreement governing a
105 franchisee's ownership of a dealership or a franchisee's conduct of business under a franchise
106 the following language or language to the effect that: "If any provision in this agreement
107 contravenes the laws or regulations of any state or other jurisdiction where this agreement is to
108 be performed, or provided for by such laws or regulations, the provision is considered to be
109 modified to conform to such laws or regulations, and all other terms and provisions shall
110 remain in full force.";

111 (p) engage in the distribution, sale, offer for sale, or lease of a new motor vehicle to
112 purchasers who acquire the vehicle in this state except through a franchisee with whom the
113 franchisor has established a written franchise agreement, if the franchisor's trade name,

114 trademark, service mark, or related characteristic is an integral element in the distribution, sale,
115 offer for sale, or lease;

116 (q) engage in the distribution or sale of a recreational vehicle that is manufactured,
117 rented, sold, or offered for sale in this state without being constructed in accordance with the
118 standards set by the American National Standards Institute for recreational vehicles and
119 evidenced by a seal or plate attached to the vehicle;

120 (r) except as provided in Subsection (2), authorize or permit a person to perform
121 warranty service repairs on motor vehicles, except warranty service repairs:

122 (i) by a franchisee with whom the franchisor has entered into a franchise agreement for
123 the sale and service of the franchisor's motor vehicles; or

124 (ii) on owned motor vehicles by a person or government entity who has purchased new
125 motor vehicles pursuant to a franchisor's fleet discount program;

126 (s) fail to provide a franchisee with a written franchise agreement;

127 (t) (i) except as provided in Subsection (1)(t)(ii) and notwithstanding any other
128 provisions of this chapter:

129 (A) unreasonably fail or refuse to offer to its same line-make franchised dealers all
130 models manufactured for that line-make;

131 (B) unreasonably require a dealer to:

132 (I) pay any extra fee, remodel, renovate, recondition the dealer's existing facilities; or

133 (II) purchase unreasonable advertising displays or other materials as a prerequisite to
134 receiving a model or series of vehicles;

135 (ii) notwithstanding Subsection (1)(t)(i), a recreational vehicle franchisor may split a
136 line-make between motor home and travel trailer products;

137 (u) except as provided in Subsection (6), directly or indirectly:

138 (i) own an interest in a new motor vehicle dealer or dealership;

139 (ii) operate or control a new motor vehicle dealer or dealership;

140 (iii) act in the capacity of a new motor vehicle dealer, as defined in Section [13-14-102](#);

141 or

- 142 (iv) operate a motor vehicle service facility;
- 143 (v) fail to timely pay for all reimbursements to a franchisee for incentives and other
144 payments made by the franchisor;
- 145 (w) directly or indirectly influence or direct potential customers to franchisees in an
146 inequitable manner, including:
- 147 (i) charging a franchisee a fee for a referral regarding a potential sale or lease of any of
148 the franchisee's products or services in an amount exceeding the actual cost of the referral;
- 149 (ii) giving a customer referral to a franchisee on the condition that the franchisee agree
150 to sell the vehicle at a price fixed by the franchisor; or
- 151 (iii) advising a potential customer as to the amount that the potential customer should
152 pay for a particular product;
- 153 (x) fail to provide comparable delivery terms to each franchisee for a product of the
154 franchisor, including the time of delivery after the placement of an order by the franchisee;
- 155 (y) if a franchisor provides personnel training to the franchisor's franchisees,
156 unreasonably fail to make that training available to each franchisee on proportionally equal
157 terms;
- 158 (z) condition a franchisee's eligibility to participate in a sales incentive program on the
159 requirement that a franchisee use the financing services of the franchisor or a subsidiary or
160 affiliate of the franchisor for inventory financing;
- 161 (aa) make available for public disclosure, except with the franchisee's permission or
162 under subpoena or in any administrative or judicial proceeding in which the franchisee or the
163 franchisor is a party, any confidential financial information regarding a franchisee, including:
- 164 (i) monthly financial statements provided by the franchisee;
- 165 (ii) the profitability of a franchisee; or
- 166 (iii) the status of a franchisee's inventory of products;
- 167 (bb) use any performance standard, incentive program, or similar method to measure
168 the performance of franchisees unless the standard or program:
- 169 (i) is designed and administered in a fair, reasonable, and equitable manner;

170 (ii) if based upon a survey, utilizes an actuarially generally acceptable, valid sample;
171 and
172 (iii) is, upon request by a franchisee, disclosed and explained in writing to the
173 franchisee, including:
174 (A) how the standard or program is designed;
175 (B) how the standard or program will be administered; and
176 (C) the types of data that will be collected and used in the application of the standard or
177 program;
178 (cc) other than sales to the federal government, directly or indirectly, sell, lease, offer
179 to sell, or offer to lease, a new motor vehicle or any motor vehicle owned by the franchisor,
180 except through a franchised new motor vehicle dealer;
181 (dd) compel a franchisee, through a finance subsidiary, to agree to unreasonable
182 operating requirements, except that this Subsection (1)(dd) may not be construed to limit the
183 right of a financing subsidiary to engage in business practices in accordance with the usage of
184 trade in retail and wholesale motor vehicle financing;
185 (ee) condition the franchisor's participation in co-op advertising for a product category
186 on the franchisee's participation in any program related to another product category or on the
187 franchisee's achievement of any level of sales in a product category other than that which is the
188 subject of the co-op advertising;
189 (ff) except as provided in Subsections (7) through (9), discriminate against a franchisee
190 in the state in favor of another franchisee of the same line-make in the state:
191 (i) by selling or offering to sell a new motor vehicle to one franchisee at a higher actual
192 price, including the price for vehicle transportation, than the actual price at which the same
193 model similarly equipped is offered to or is made available by the franchisor to another
194 franchisee in the state during a similar time period;
195 (ii) except as provided in Subsection (8), by using a promotional program or device or
196 an incentive, payment, or other benefit, whether paid at the time of the sale of the new motor
197 vehicle to the franchisee or later, that results in the sale of or offer to sell a new motor vehicle

198 to one franchisee in the state at a higher price, including the price for vehicle transportation,
199 than the price at which the same model similarly equipped is offered or is made available by
200 the franchisor to another franchisee in the state during a similar time period;

201 (iii) except as provided in Subsection (9), by failing to provide or direct a lead in a fair,
202 equitable, and timely manner; or

203 (iv) if the franchisee complies with any reasonable requirement concerning the sale of
204 new motor vehicles, by using or considering the performance of any of its franchisees located
205 in this state relating to the sale of the franchisor's new motor vehicles in determining the:

206 (A) dealer's eligibility to purchase program, certified, or other used motor vehicles
207 from the franchisor;

208 (B) volume, type, or model of program, certified, or other used motor vehicles the
209 dealer is eligible to purchase from the franchisor;

210 (C) price of any program, certified, or other used motor vehicles that the dealer is
211 eligible to purchase from the franchisor; or

212 (D) availability or amount of any discount, credit, rebate, or sales incentive the dealer
213 is eligible to receive from the manufacturer for the purchase of any program, certified, or other
214 motor vehicle offered for sale by the franchisor;

215 (gg) (i) take control over funds owned or under the control of a franchisee based on the
216 findings of a warranty audit, sales incentive audit, or recall repair audit, unless the following
217 conditions are satisfied:

218 (A) the franchisor fully identifies in writing the basis for the franchisor's claim or
219 charge back arising from the audit, including notifying the franchisee that the franchisee has 20
220 days from the day on which the franchisee receives the franchisor's claim or charge back to
221 assert a protest in writing to the franchisor identifying the basis for the protest;

222 (B) the franchisee's protest shall inform the franchisor that the protest shall be
223 submitted to a mediator in the state who is identified by name and address in the franchisee's
224 notice to the franchisor;

225 (C) if mediation is requested under Subsection (1)(gg)(i)(B), mediation shall occur no

226 later than 30 days after the day on which the franchisor receives the franchisee's protest of a
227 claim or charge back;

228 (D) if mediation does not lead to a resolution of the protest, the protest shall be set for
229 binding arbitration in the same venue in which the mediation occurred;

230 (E) binding arbitration under Subsection (1)(gg)(i)(D) shall be conducted:

231 (I) by an arbitrator mutually agreed upon by the franchisor and the franchisee; and

232 (II) on a date mutually agreed upon by the franchisor and the franchisee, but shall be
233 held no later than 90 days after the franchisor's receipt of the franchisee's notice of protest;

234 (F) this Subsection (1)(gg)(i) applies exclusively to warranty audits, recall repair
235 audits, and sales incentive audits;

236 (G) Subsections (1)(gg)(i)(A) through (E) do not apply if the franchisor reasonably
237 believes that the amount of the claim or charge back is related to a fraudulent act by the
238 franchisee; and

239 (H) the costs of the mediator or arbitrator instituted under this Subsection (1)(gg) shall
240 be shared equally by the franchisor and the franchisee; or

241 (ii) require a franchisee to execute a written waiver of the requirements of Subsection
242 (1)(gg)(i);

243 (hh) coerce, or attempt to coerce a franchisee to purchase or sell an aftermarket product
244 manufactured by the franchisor, or obtained by the franchisor for resale from a third-party
245 supplier and the franchisor or its affiliate derives a financial benefit from the franchisee's sale
246 or purchase of the aftermarket product as a condition to obtaining preferential status from the
247 franchisor;

248 (ii) through an affiliate, take any action that would otherwise be prohibited under this
249 chapter;

250 (jj) impose any fee, surcharge, or other charge on a franchisee designed to recover the
251 cost of a warranty repair for which the franchisor pays the franchisee;

252 (kk) except as provided by the audit provisions of this chapter, take an action designed
253 to recover a cost related to a recall, including:

- 254 (i) imposing a fee, surcharge, or other charge on a franchisee;
255 (ii) reducing the compensation the franchisor owes to a franchisee;
256 (iii) removing the franchisee from an incentive program; or
257 (iv) reducing the amount the franchisor owes to a franchisee under an incentive
258 program;
- 259 (ll) directly or indirectly condition any of the following actions on the willingness of a
260 franchisee, prospective new franchisee, or owner of an interest in a dealership facility to enter
261 into a site-control agreement:
- 262 (i) the awarding of a franchise to a prospective new franchisee;
263 (ii) the addition of a line-make or franchise to an existing franchisee;
264 (iii) the renewal of an existing franchisee's franchise;
265 (iv) the approval of the relocation of an existing franchisee's dealership facility, unless
266 the franchisor pays, and the franchisee voluntarily accepts, additional specified cash
267 consideration to facilitate the relocation; or
268 (v) the approval of the sale or transfer of a franchise's ownership, unless the franchisor
269 pays, and the buyer voluntarily accepts, additional specified cash consideration to facilitate the
270 sale or transfer;
- 271 (mm) subject to Subsection (11), deny a franchisee the right to return any or all parts or
272 accessories that:
- 273 (i) were specified for and sold to the franchisee under an automated ordering system
274 required by the franchisor; and
- 275 (ii) (A) are in good, resalable condition; and
276 (B) (I) the franchisee received within the previous 12 months; or
277 (II) are listed in the current parts catalog;
- 278 (nn) subject to Subsection (12), obtain from a franchisee a waiver of a franchisee's
279 right, by threatening:
- 280 (i) to impose a detriment upon the franchisee's business; or
281 (ii) to withhold any entitlement, benefit, or service:

282 (A) to which the franchisee is entitled under a franchise agreement, contract, statute,
283 rule, regulation, or law; or

284 (B) that has been granted to more than one other franchisee of the franchisor in the
285 state;

286 (oo) coerce a franchisee to establish, or provide by agreement, program, or incentive
287 provision that a franchisee must establish, a price at which the franchisee is required to sell a
288 product or service that is:

289 (i) sold in connection with the franchisee's sale of a motor vehicle; and

290 (ii) (A) in the case of a product, not manufactured, provided, or distributed by the
291 franchisor or an affiliate; or

292 (B) in the case of a service, not provided by the franchisor or an affiliate;

293 (pp) except as necessary to comply with a health or safety law, or to comply with a
294 technology requirement compliance with which is necessary to sell or service a motor vehicle
295 that the franchisee is authorized or licensed by the franchisor to sell or service, coerce or
296 require a franchisee, through a penalty or other detriment to the franchisee's business, to:

297 (i) construct a new dealer facility or materially alter or remodel an existing dealer
298 facility before the date that is 10 years after the date the construction of the new dealer facility
299 at that location was completed, if the construction substantially complied with the franchisor's
300 brand image standards or plans that the franchisor provided or approved; or

301 (ii) materially alter or remodel an existing dealer facility before the date that is 10 years
302 after the date the previous alteration or remodeling at that location was completed, if the
303 previous alteration or remodeling substantially complied with the franchisor's brand image
304 standards or plans that the franchisor provided or approved; [~~or~~]

305 (qq) notwithstanding the terms of a franchise agreement providing otherwise and
306 subject to Subsection (14):

307 (i) coerce or require a franchisee, including by agreement, program, or incentive
308 provision, to purchase a good or service, relating to a facility construction, alteration, or
309 remodel, from a vendor that a franchisor or its affiliate selects, identifies, or designates, without

310 allowing the franchisee, after consultation with the franchisor, to obtain a like good or service
311 of substantially similar quality from a vendor that the franchisee chooses; or

312 (ii) coerce or require a franchisee, including by agreement, program, or incentive
313 provision, to lease a sign or other franchisor image element from the franchisor or an affiliate
314 without providing the franchisee the right to purchase a sign or other franchisor image element
315 of like kind and quality from a vendor that the franchisee chooses[?];

316 (rr) when providing a new motor vehicle to a franchisee for offer or sale to the public,
317 fail to provide to the franchisee a written disclosure that may be provided to a potential buyer
318 of the new motor vehicle of each accessory or function of the vehicle that may be initiated,
319 updated, changed, or maintained by the franchisor or affiliate through over the air or remote
320 means, and the charge to the customer at the time of sale for such initiation, update, change, or
321 maintenance; or

322 (ss) fail to provide reasonable compensation to a franchisee for assistance requested by
323 a customer whose vehicle was subjected to an over the air or remote change, repair, or update
324 to any part, system, accessory, or function by the franchisor or affiliate and performed at the
325 franchisee's dealership in order to satisfy the customer.

326 (2) Notwithstanding Subsection (1)(r), a franchisor may authorize or permit a person to
327 perform warranty service repairs on motor vehicles if the warranty services is for a franchisor
328 of recreational vehicles.

329 (3) Subsection (1)(a) does not prevent the franchisor from requiring that a franchisee
330 carry a reasonable inventory of:

331 (a) new motor vehicle models offered for sale by the franchisor; and

332 (b) parts to service the repair of the new motor vehicles.

333 (4) Subsection (1)(d) does not prevent a franchisor from requiring that a franchisee
334 maintain separate sales personnel or display space.

335 (5) Upon the written request of any franchisee, a franchisor shall disclose in writing to
336 the franchisee the basis on which new motor vehicles, parts, and accessories are allocated,
337 scheduled, and delivered among the franchisor's dealers of the same line-make.

338 (6) (a) A franchisor may engage in any of the activities listed in Subsection (1)(u), for a
339 period not to exceed 12 months if:

340 (i) (A) the person from whom the franchisor acquired the interest in or control of the
341 new motor vehicle dealership was a franchised new motor vehicle dealer; and

342 (B) the franchisor's interest in the new motor vehicle dealership is for sale at a
343 reasonable price and on reasonable terms and conditions; or

344 (ii) the franchisor is engaging in the activity listed in Subsection (1)(u) for the purpose
345 of broadening the diversity of its dealer body and facilitating the ownership of a new motor
346 vehicle dealership by a person who:

347 (A) is part of a group that has been historically underrepresented in the franchisor's
348 dealer body;

349 (B) would not otherwise be able to purchase a new motor vehicle dealership;

350 (C) has made a significant investment in the new motor vehicle dealership which is
351 subject to loss;

352 (D) has an ownership interest in the new motor vehicle dealership; and

353 (E) operates the new motor vehicle dealership under a plan to acquire full ownership of
354 the dealership within a reasonable period of time and under reasonable terms and conditions.

355 (b) After receipt of the advisory board's recommendation, the executive director may,
356 for good cause shown, extend the time limit set forth in Subsection (6)(a) for an additional
357 period not to exceed 12 months.

358 (c) A franchisor who was engaged in any of the activities listed in Subsection (1)(u) in
359 this state prior to May 1, 2000, may continue to engage in that activity, but may not expand that
360 activity to acquire an interest in any other new motor vehicle dealerships or motor vehicle
361 service facilities after May 1, 2000.

362 (d) Notwithstanding Subsection (1)(u), a franchisor may own, operate, or control a new
363 motor vehicle dealership trading in a line-make of motor vehicle if:

364 (i) as to that line-make of motor vehicle, there are no more than four franchised new
365 motor vehicle dealerships licensed and in operation within the state as of January 1, 2000;

366 (ii) the franchisor does not own directly or indirectly, more than a 45% interest in the
367 dealership;

368 (iii) at the time the franchisor first acquires ownership or assumes operation or control
369 of the dealership, the distance between the dealership thus owned, operated, or controlled and
370 the nearest unaffiliated new motor vehicle dealership trading in the same line-make is not less
371 than 150 miles;

372 (iv) all the franchisor's franchise agreements confer rights on the franchisee to develop
373 and operate as many dealership facilities as the franchisee and franchisor shall agree are
374 appropriate within a defined geographic territory or area; and

375 (v) as of January 1, 2000, no fewer than half of the franchisees of the line-make within
376 the state own and operate two or more dealership facilities in the geographic area covered by
377 the franchise agreement.

378 (7) Subsection (1)(ff) does not apply to recreational vehicles.

379 (8) Subsection (1)(ff)(ii) does not prohibit a promotional or incentive program that is
380 functionally available to all competing franchisees of the same line-make in the state on
381 substantially comparable terms.

382 (9) Subsection (1)(ff)(iii) may not be construed to:

383 (a) permit provision of or access to customer information that is otherwise protected
384 from disclosure by law or by contract between a franchisor and a franchisee; or

385 (b) require a franchisor to disregard the preference volunteered by a potential customer
386 in providing or directing a lead.

387 (10) Subsection (1)(ii) does not limit the right of an affiliate to engage in business
388 practices in accordance with the usage of trade in which the affiliate is engaged.

389 (11) (a) Subsection (1)(mm) does not apply to parts or accessories that the franchisee
390 ordered and purchased outside of an automated parts ordering system required by the
391 franchisor.

392 (b) In determining whether parts or accessories in a franchisee's inventory were
393 specified and sold under an automated ordering system required by the franchisor, the parts and

394 accessories in the franchisee's inventory are presumed to be the most recent parts and
395 accessories that the franchisor sold to the franchisee.

396 (12) (a) Subsection (1)(nn) does not apply to a good faith settlement of a dispute,
397 including a dispute relating to contract negotiations, in which the franchisee gives a waiver in
398 exchange for fair consideration in the form of a benefit conferred on the franchisee.

399 (b) Subsection (12)(a) may not be construed to defeat a franchisee's claim that a waiver
400 has been obtained in violation of Subsection (1)(nn).

401 (13) (a) As used in Subsection (1)(pp):

402 (i) "Materially alter":

403 (A) means to make a material architectural, structural, or aesthetic alteration; and

404 (B) does not include routine maintenance, such as interior painting, reasonably
405 necessary to keep a dealership facility in attractive condition.

406 (ii) "Penalty or other detriment" does not include a payment under an agreement,
407 incentive, or program that is offered to but declined or not accepted by a franchisee, even if a
408 similar payment is made to another franchisee in the state that chooses to participate in the
409 agreement, incentive, or program.

410 (b) Subsection (1)(pp) does not apply to:

411 (i) a program that provides a lump sum payment to assist a franchisee to make a facility
412 improvement or to pay for a sign or a franchisor image element, if the payment is not
413 dependent on the franchisee selling or purchasing a specific number of new vehicles;

414 (ii) a program that is in effect on May 8, 2012, with more than one franchisee in the
415 state or to a renewal or modification of the program;

416 (iii) a program that provides reimbursement to a franchisee on reasonable, written
417 terms for a substantial portion of the franchisee's cost of making a facility improvement or
418 installing signage or a franchisor image element; or

419 (iv) a written agreement between a franchisor and franchisee, in effect before May 8,
420 2012, under which a franchisee agrees to construct a new dealer facility.

421 (14) (a) Subsection (1)(qq)(i) does not apply to:

422 (i) signage purchased by a franchisee in which the franchisor has an intellectual
423 property right; or

424 (ii) a good used in a facility construction, alteration, or remodel that is:

425 (A) a moveable interior display that contains material subject to a franchisor's
426 intellectual property right; or

427 (B) specifically eligible for reimbursement of over one-half its cost pursuant to a
428 franchisor or distributor program or incentive granted to the franchisee on reasonable, written
429 terms.

430 (b) Subsection (1)(qq)(ii) may not be construed to allow a franchisee to:

431 (i) impair or eliminate a franchisor's intellectual property right; or

432 (ii) erect or maintain a sign that does not conform to the franchisor's reasonable
433 fabrication specifications and intellectual property usage guidelines.

434 (15) A franchisor may comply with Subsection (1)(rr) by notifying the franchisee that
435 the information in a written disclosure described in Subsection (1)(rr) is available on a website
436 or by other digital means.

437 Section 2. Section **13-14-204** is amended to read:

438 **13-14-204. Franchisor's obligations related to service -- Franchisor audits -- Time**
439 **limits.**

440 (1) Each franchisor shall specify in writing to each of the franchisor's franchisees
441 licensed as a new motor vehicle dealer in this state:

442 (a) the franchisee's obligations for new motor vehicle preparation, delivery, [~~and~~]
443 warranty service, and recalls on the franchisor's products;

444 (b) the schedule of compensation to be paid to the franchisee for parts, work, and
445 service; and

446 (c) the time allowance for the performance of work and service.

447 (2) (a) The schedule of compensation described in Subsection (1) shall include
448 reasonable compensation for diagnostic work, as well as repair service, parts, and labor.

449 (b) Time allowances described in Subsection (1) for the diagnosis and performance of

450 warranty work and service shall be reasonable and adequate for the work to be performed.

451 (3) (a) ~~[In the determination of what constitutes reasonable compensation under this~~
452 ~~section, the principal factor to be considered is the prevailing wage rates being paid by~~
453 ~~franchisees in the relevant market area in which the franchisee is doing business.] As used in~~
454 this Subsection (3):

455 (i) "Qualified repair" means a repair to a motor vehicle that:

456 (A) would have come within the franchisor's new motor vehicle warranty but for such
457 motor vehicle having exceeded the time or mileage limits of such warranty; and

458 (B) does not otherwise constitute warranty work.

459 (ii) "Qualified repair" does not include:

460 (A) routine maintenance, including without limitation the replacement of fluids, filters,
461 non-electric vehicle batteries, bulbs, belts, brake pads, rotors, nuts, bolts, or fasteners;

462 (B) a replacement of or work on tires, wheels, or elements related to either, including
463 without limitation wheel alignments and tire or wheel rotations;

464 (C) a repair for a government agency, an insurer, or an extended warranty or service
465 contract provider;

466 (D) a repair that is the subject of a franchisor special event, promotion, or service
467 campaign, or otherwise is subject to a franchisor discount;

468 (E) a repair of a motor vehicle owned by the franchisee or an employee of the
469 franchisee;

470 (F) an installation of an accessory;

471 (G) a safety or vehicle emission inspection required by law;

472 (H) motor vehicle reconditioning;

473 (I) a part sold at wholesale;

474 (J) a repair or replacement with or to an aftermarket part;

475 (K) a franchisor-approved goodwill or policy repair or replacement; or

476 (L) a repair performed on a motor vehicle of a line-make other than that for which the
477 franchisee is franchised by the franchisor.

478 (b) (i) [~~Compensation~~] Reasonable compensation of the franchisee for parts and service
479 in warranty [~~service~~] or recall repair work may not be less than the [~~amount~~] rates charged by
480 the franchisee for like parts and service to retail [~~or fleet customers, if the amounts are~~
481 reasonable] customers.

482 (ii) In the case of a recreational vehicle franchisee, reimbursement for parts used in the
483 performance of warranty repairs, including those parts separately warranted directly to the
484 consumer by a recreational vehicle parts supplier, may not be less than the franchisee's cost
485 plus 20%.

486 (iii) For purposes of Subsection (3)(b)(ii), the term "cost" shall be that same price paid
487 by a franchisee to a franchisor or supplier for the part when the part is purchased for a
488 nonwarranty repair.

489 (c) A franchisee seeking to establish or modify the franchisee's retail labor rate, retail
490 parts markup, or both, shall submit in writing or electronically to the franchisee's franchisor at
491 the location and materially in the format theretofore specified by the franchisor in writing to the
492 franchisee whichever of the following produces the fewer number of repair orders, all of which
493 must be for repairs made no more than 180 days before such submission:

494 (i) all consecutive repair orders that include 100 sequential repair orders reflecting
495 qualified repairs; or

496 (ii) all repair orders reflecting qualified repairs closed during any period of 90
497 consecutive days.

498 (d) A franchisee shall calculate the franchisee's:

499 (i) retail labor rate by determining the total charges for labor in the qualified repairs
500 submitted and dividing that amount by the total number of hours in the qualified repairs that
501 generated such charges; and

502 (ii) retail parts markup by determining the total charges for parts in the qualified repairs
503 submitted, dividing such amount by the franchisee's total cost of the purchase of such parts,
504 subtracting one, and multiplying by 100 to produce a percentage.

505 (e) (i) A retail labor rate or retail parts markup described in Subsection (3)(c) is

506 effective 30 days after the franchisee submits the notice described in Subsection (3)(c), unless,
507 within 30 days after receiving the franchisee's submission, the franchisor delivers to the
508 franchisee:

509 (A) a written objection to the material accuracy of the retail labor rate or retail parts
510 markup; or

511 (B) a written request for supplemental repair orders pursuant to Subsection (3)(e)(ii).

512 (ii) (A) If a franchisor determines from the franchisee's set of repair orders submitted
513 pursuant to Subsections (3)(c) and (d) that the franchisee's submission for a retail labor rate or
514 retail parts markup is substantially higher than the franchisee's current warranty rate, the
515 franchisor may request, in writing, within 30 days after the franchisor's receipt of the notice
516 described in Subsection (3)(c), all repair orders closed within the period of 30 days
517 immediately preceding, or 30 days immediately following, the set of repair orders submitted by
518 the franchisee.

519 (B) All time periods under this section shall be suspended until the franchisee submits
520 the supplemental repair orders described in Subsection (3)(e)(ii)(A).

521 (iii) If a franchisor requests supplemental repair orders described in Subsection
522 (3)(e)(ii), the franchisor may, within 30 days after receiving the supplemental repair orders,
523 calculate a proposed adjusted retail labor rate or retail parts markup, as applicable, based upon
524 any set of the qualified repair orders submitted by the franchisee, if the franchisor:

525 (A) uses the same requirements applicable to the franchisee's submission described in
526 Subsection (3)(c);

527 (B) uses the formula to calculate the retail labor rate or retail parts markup described in
528 Subsection (3)(d); and

529 (C) omits all charges in the repair orders described in Subsection (3)(a)(ii).

530 (f) A franchisee may not seek to establish or modify the franchisee's:

531 (i) retail labor rate more frequently than once in a 12-month period; and

532 (ii) retail parts markup more frequently than once in a 12-month period.

533 (g) An approved adjusted retail labor rate or retail parts markup shall be effective on

534 the later of 30 days after a franchisor receives:

535 (i) a submission described in Subsection (3)(c); or

536 (ii) supplemental repair orders described in Subsection (3)(e)(ii).

537 (h) A franchisor shall begin compensating the franchisee according to the effective

538 retail labor rate and retail parts markup rate no later than 15 days after the effective date of the

539 rate or rates.

540 (4) A franchisor may not fail to:

541 (a) perform any warranty obligation;

542 (b) include in written notices of franchisor's recalls to new motor vehicle owners and

543 franchisees the expected date by which necessary parts and equipment will be available to

544 franchisees for the correction of the defects; or

545 (c) in accordance with Subsections (2) and (3), compensate a franchisee for all

546 diagnostic work, labor, and parts the franchisor requires to perform a recall repair.

547 (5) If a franchisor disallows a franchisee's claim for a defective part, alleging that the

548 part is not defective, the franchisor at the franchisor's option shall:

549 (a) return the part to the franchisee at the franchisor's expense; or

550 (b) pay the franchisee the cost of the part.

551 (6) (a) A claim made by a franchisee pursuant to this section for diagnostic work, labor,

552 or parts shall be paid within 30 days after the claim's approval.

553 (b) The franchisor shall approve or disapprove a claim within 30 days after receipt of

554 the claim on a form generally used by the franchisor and containing the generally required

555 information. Any claim not specifically disapproved of in writing within 30 days after the

556 receipt of the form is considered to be approved and payment shall be made within 30 days.

557 (7) A franchisor may conduct warranty service audits and recall repair audits of the

558 franchisor's franchisee records on a reasonable basis.

559 (8) A franchisor may deny a franchisee's claim for warranty compensation or recall

560 repair compensation only if:

561 (a) the franchisee's claim is based on a nonwarranty repair or a nonrecall repair;

562 (b) the franchisee lacks material documentation for the claim;
563 (c) the franchisee fails to comply materially with specific substantive terms and
564 conditions of the franchisor's warranty compensation program or recall repair compensation
565 program; or

566 (d) the franchisor has a bona fide belief based on competent evidence that the
567 franchisee's claim is intentionally false, fraudulent, or misrepresented.

568 (9) (a) Any charge back for a warranty part or service compensation, recall repair
569 compensation, or service incentive is only enforceable for the six-month period immediately
570 following the day on which the franchisor makes the payment compensating the franchisee for
571 the warranty part or service, recall repair, or service incentive.

572 (b) Except as provided in Subsection (9)(e), all charge backs levied by a franchisor for
573 sales compensation or sales incentives arising out of the sale or lease of a motor vehicle sold or
574 leased by a franchisee shall be compensable only if written notice of the charge back is
575 received by the franchisee within six months immediately following the sooner of:

- 576 (i) the day on which the franchisee reports the sale to the franchisor; or
- 577 (ii) the day on which the franchisor makes the payment for the sales compensation or
578 sales incentive to the franchisee.

579 (c) (i) Upon an audit, the franchisor shall provide the franchisee automated or written
580 notice explaining the amount of and reason for a charge back.

581 (ii) A franchisee may respond in writing within 30 days after the notice under
582 Subsection (9)(c)(i) to:

- 583 (A) explain a deficiency; or
- 584 (B) provide materials or information to correct and cure compliance with a provision
585 that is a basis for a charge back.

586 (d) A charge back:
587 (i) may not be based on a nonmaterial error that is clerical in nature; and
588 (ii) (A) shall be based on one or more specific instances of material noncompliance
589 with the franchisor's warranty compensation program, sales incentive program, recall repair

590 program, or recall compensation program; and

591 (B) may not be extrapolated from a sampling of warranty claims, recall repair claims,
592 or sales incentive claims.

593 (e) The time limitations of this Subsection (9) do not preclude charge backs for any
594 fraudulent claim that was previously paid.

595 (10) (a) If within 30 days after the day on which a franchisor issues an initial notice of
596 recall a part or remedy is not reasonably available to perform the recall repair on a used motor
597 vehicle, each calendar month thereafter the franchisor shall pay the franchisee an amount equal
598 to at least 1.35% of the value of the used motor vehicle, if:

599 (i) the franchisee holding the used motor vehicle for sale is authorized to sell and
600 service a new vehicle of the same line-make;

601 (ii) after May 7, 2018, the franchisor issues a stop-sale or do-not-drive order on the
602 used motor vehicle; and

603 (iii) (A) the used motor vehicle is in the franchisee's inventory at the time the
604 franchisor issued the order described in Subsection (10)(a)(ii); or

605 (B) after the franchisor issues the order described in Subsection (10)(a)(ii), the
606 franchisee takes the used motor vehicle into the franchisee's inventory at the termination of the
607 consumer lease for the vehicle, as a consumer trade-in accompanying the purchase of a new
608 vehicle from the franchisee, or for any other reason in the ordinary course of business.

609 (b) A franchisor shall pay the compensation described in Subsection (10)(a):

610 (i) beginning:

611 (A) 30 days after the day on which the franchisee receives the stop-sale or do-not-drive
612 order; or

613 (B) if a franchisee obtains the used motor vehicle more than 30 days after the day on
614 which the franchisee receives the stop-sale or do-not-drive order, the day on which the
615 franchisee obtains the used motor vehicle; and

616 (ii) ending the earlier of the day on which:

617 (A) the franchisor makes the recall part or remedy available for order and prompt

618 shipment to the franchisee; or

619 (B) the franchisee sells, trades, or otherwise disposes of the used motor vehicle.

620 (c) A franchisor shall prorate the first and last payment for a used motor vehicle to a
621 franchisee under this Subsection (10).

622 (d) A franchisor may direct the manner in which a franchisee demonstrates the
623 inventory status of an affected used motor vehicle to determine eligibility under this Subsection
624 (10), if the manner is not unduly burdensome.

625 (11) (a) A franchisee that offsets recall repair compensation received from a franchisor
626 under this section against recall repair compensation the franchisee receives under a state or
627 federal recall repair compensation remedy may pursue any other available remedy against the
628 franchisor.

629 (b) As an alternative to providing recall repair compensation under this section, a
630 franchisor may compensate a franchisee for a recall repair:

631 (i) under a national recall repair compensation program, if the compensation is equal to
632 or greater than the compensation provided under this section; or

633 (ii) as the franchisor and franchisee otherwise agree, if the compensation is equal to or
634 greater than the compensation provided under this section.

635 (c) Nothing in this section requires a franchisor to provide compensation to a
636 franchisee that exceeds the value of the used motor vehicle affected by a recall.

637 (12) During an audit under this section, a franchisor may not request a document from
638 the franchisee that originated from the franchisor or a subsidiary of the franchisor, unless the
639 document required additional information from the customer.