

CHAPTER 289
FORMERLY
SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 159

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO COMMERCE AND TRADE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 4902, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4902. Definitions.

~~The following words, terms and phrases when used in this chapter shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:~~ As used in this chapter:

(1) "Commission" means the Public Service Commission.

(2) "Dealership facilities" means the real estate, buildings, fixtures and improvements which have been devoted to the conduct of business under the franchise by the new motor vehicle dealer.

(3) "Designated family member" means the spouse, child, grandchild, parent, brother or ~~sister~~ sister, of the owner of a new motor vehicle dealership who, in the case of the owner's death, is entitled to inherit the ownership interest in the new motor vehicle dealership under the terms of the owner's will, or who has been nominated in any other written instrument, or who, in the case of an incapacitated owner of a new motor vehicle dealership, has been appointed by a court as the legal representative of the new motor vehicle dealership's property.

(4) "Established place of business" means a permanent, commercial building located within this State easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning and other land-use regulatory ordinances.

(5) "Franchise" means the written agreement or contract between any new motor vehicle manufacturer and any new motor vehicle dealer which purports to fix the legal rights and liabilities of the parties to such agreement or contract, and pursuant to which the dealer purchases and resells the franchise product or leases or rents the dealership premises.

(6) "Good faith" means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade as defined and interpreted in § 1-201(b)(20) of this title.

(7) "Manufacturer" means any person, resident or nonresident, who manufactures or assembles new motor vehicles, or imports for distribution through distributors of motor vehicles, including any person, partnership or corporation which acts for and is under the control of such manufacturer or assembler in connection with the distribution of said motor vehicles. ~~Additionally, the term "manufacturer" shall include~~ "Manufacturer" includes the following terms:

a. "Distributor" which means any person, resident or nonresident, who in whole or in part offers for sale, sells or distributes any new motor vehicle to new motor vehicle dealers or who maintains factory representatives or who controls any person, firm, association, corporation or trust, resident or nonresident, who in whole or in part offers for sale, sells or distributes any new motor vehicle to new motor vehicle dealers.

b. "Factory branch" which means a branch office maintained by a manufacturer for the purpose of selling, or offering for sale, vehicles to a distributor or new motor vehicle dealer, or for directing or supervising in whole or in part factory or distributor representatives.

c. "Franchiser" ~~means:~~ which means one or more of the following:

1. Any person, resident or nonresident, who directly or indirectly licenses or otherwise authorizes 1 or more new motor vehicle dealers to use a trademark or service mark associated with a make of motor vehicle in connection with the retail sale of new motor vehicles bearing such trademark or service ~~mark, or~~ mark.

2. Any person who in the ordinary course of business and on a recurring basis sells such new motor vehicles to a new motor vehicle dealer for resale.

(8)a. "Motor vehicle" means every vehicle intended primarily for use and operation on the public highways which is self-propelled, not including motor homes, motor home products and recreational vehicles, farm tractors and other machines and tools used in the production, harvesting and care of farm products.

b. "New motor vehicle" means a vehicle which has been sold to a new motor vehicle dealer and which has not been used for other than demonstration purposes and on which the original title has not been issued from the new motor vehicle dealer.

(9) "New motor vehicle dealer" or "dealer" means any person or entity engaged in the business of selling, offering to sell, soliciting or advertising the sale of new motor vehicles and who holds, or held at the time a cause of action under this chapter accrued, a valid sales and service agreement, franchise or contract granted by the manufacturer or distributor for the retail sale of said manufacturer's or distributor's new motor vehicles. ~~The Term "new~~ New motor vehicle dealer" or "dealer" ~~shall also include~~ includes any person who engages exclusively in the repair of motor vehicles, except motor homes, if such repairs are performed pursuant to the terms of a franchise or other agreement with a franchiser or such repairs are performed as part of a manufacturer's or franchiser's warranty. ~~The term "new~~ New motor vehicle dealer" or "dealer" does not mean any person engaged solely in the business of selling used motor vehicles.

(10) "Person" means every natural person, partnership, corporation, association, trust, ~~estate~~ estate, or any other legal entity.

(11) "Relevant market area" means the area within a radius of 10 miles from the intended site of a proposed additional dealership.

Section 2. Amend §4903, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4903. Sales incentives; warranty and predelivery obligations to new motor vehicle dealers.

(a)~~(1)~~ Each new motor vehicle manufacturer shall do all of the following:

a. Specify ~~specify~~ in writing to each of its new motor vehicle dealers licensed in this State the dealer's obligations for predelivery preparation and warranty service on its ~~products, shall compensate~~ products.

b. Compensate the new motor vehicle dealer for such service required of the dealer by the ~~manufacturer, manufacturer~~.

c. Provide the ~~and shall provide~~ dealer the schedule of compensation to be paid such dealer for parts, ~~work~~ work, and service in connection therewith, and the time allowance for the performance of such work and service.

(2) Notwithstanding the terms of any franchise agreement, it is unlawful for a new motor vehicle manufacturer to recover all or any portion of its costs for compensating its dealers in this State for recalls or warranty parts and service either by reduction in the amount due to the dealer, or by separate charge, surcharge, or other imposition.

(b) In no event shall such schedule of compensation fail to include reasonable compensation for diagnostic work, as well as parts, repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. With respect to parts and labor warranty reimbursement, reasonable compensation shall not be less than the rate charged by such dealer for like services to nonwarranty customers for nonwarranty parts, ~~service and repairs, provided such rate is reasonable~~ service, and repairs.

(1) For the purposes of this provision, the dealer's rate charged to nonwarranty customers for parts and labor shall be established by the dealer submitting to the manufacturer 100 sequential customer paid service repair orders or 90 days of customer paid service repair orders, whichever is less, covering like repairs made no more than 180 days before the submission of such customer paid service repair orders and declaring the schedule of compensation. The new schedule of compensation shall take effect within 30 days after the initial submission to the manufacturer and shall be presumed to be fair and reasonable. However, within 30 days following receipt of the declared schedule of compensation from the dealer, the manufacturer may make reasonable requests for additional information supporting the declared schedule of compensation. The 30-day time frame in which the manufacturer shall make the schedule of compensation effective shall commence following receipt from the dealer of any reasonably requested supporting information. No manufacturer shall require a motor vehicle dealer to establish a schedule of compensation by any other methodology or require supportive information that is unduly burdensome or time consuming to provide including, but not limited to, part by part or transaction by transaction calculations. The dealer shall not request a change in the schedule of compensation more than once every 9 months.

(2) For the purposes of this provision, all of the following parts or types of repairs ~~shall be~~ are excluded from the calculation:

a. Repairs for manufacturer special events and manufacturer discounted service ~~campaigns;~~ campaigns.

b. Parts sold at wholesale or parts discounted by a dealer for repairs made in group fleet, insurance, or other third-party payer service work or parts used in repairs of government agencies' repairs for which volume discounts have been ~~negotiated;~~ negotiated.

c. Tires replaced due to normal ~~wear;~~ or wear.

d. Routine maintenance not covered under any retail customer warranty such as alignments, flushes, oil changes, brakes, fluids, filters and belts not provided in the course of repairs.

e. Engine assemblies and transmission assemblies.

f. Vehicle reconditioning.

g. Batteries and lightbulbs.

h. Nuts, bolts, fasteners, and similar items that do not have an individual part number.

(3) A manufacturer shall not take or threaten to take adverse action against a dealer who seeks to obtain compensation pursuant to this provision, including but not limited to, creating or implementing an obstacle or process that is inconsistent with the manufacturer's obligations to the dealer under this provision.

(4) Within 30 days of receiving the manufacturer's notice of denial of the dealer's parts and/or labor submission pursuant to this subsection, any such new motor vehicle dealer may file with the Public Service Commission a protest to the manufacturer's denial. In the event a protest is filed, the manufacturer possesses the burden of proof to establish that the dealer's submission did not meet the respective submission requirements contained within this provision. In the event a dealer prevails in a protest filed under this provision, the dealer's increased parts and/or labor reimbursement shall be provided retroactive to the date the submission would have been effective pursuant to the terms of this section but for the manufacturer's denial.

(d)(1) All claims made by new motor vehicle dealers pursuant to this section for such labor and parts shall be paid within 30 days following their approval; provided, however, that the manufacturer retains the right to audit such claims and to charge back the dealer for claims due to fraud, work done unnecessarily, or work not properly performed for a period of 1 year following payment. All such claims shall be either approved or disapproved within 30 days after their receipt on forms and in the manner specified by the manufacturer, and any claim not specifically disapproved in writing within 30 days after the receipt shall be construed to be approved and payment must follow within 30 days. A manufacturer or distributor shall not deny a claim or reduce the amount to be reimbursed to the dealer as long as the dealer has provided reasonably sufficient documentation that the dealer did both of the following:

(1) ~~a. Performed~~ Made a good faith attempt to perform the work in compliance with the reasonable written policies and procedures of the ~~manufacturer; and~~ manufacturer.

(2) ~~b.~~ Actually performed the work.

(2) The manufacturer or distributor shall may not disapprove or charge back a reimbursement claim provided that the dealer can substantiate the claim either in accordance with the manufacturer's reasonable policies and procedures or by other reasonable means. A claim may not be denied or charged back due to an inadvertent administrative error by the dealer as long as the claim meets the above requirements. The 1-year limitation on the manufacturer's right to audit a claim shall not be effect in the case of fraudulent claims.

(3) Notwithstanding anything in this subsection to the contrary, a manufacturer may not fail to fully compensate a dealer for warranty or recall work or make any charge back to the dealer's account based on the dealer's failure to comply with the manufacturer's claim documentation procedures unless both of the following requirements have been met:

a. The dealer has, within the previous 12 months, failed to comply with the same specific documentation procedure.

b. The manufacturer has, within the previous 12 months, provided a written warning to the dealer by certified United States mail, return receipt requested, identifying the specific claim documentation procedure violated by the dealer.

(e) Any audit for sales incentives, service incentives, rebates or other forms of incentive compensation shall only be for a period of 1 year following the date of the termination of the sales incentives program, service incentives program, rebate program or other form of incentive compensation program. These limitations shall not be in effect in the case of fraudulent claims.

(f) A manufacturer may not do any of the following related to a claim by a new motor vehicle dealer, unless it can be shown that the claim was false or fraudulent or that the dealer failed to reasonably substantiate the claim either in accordance with the manufacturer's reasonable written procedures or by other reasonable means:

(1) Deny a new motor vehicle dealer's claim for sales incentives, service incentives, rebates, or other forms of incentive compensation.

(2) Reduce the amount to be paid to the dealer on the claim.

(3) Charge a dealer back subsequent to the payment of the claim.

(g)(1) A manufacturer that has entered into a franchise agreement with a new motor vehicle dealer must compensate the new motor vehicle dealer for a used motor vehicle in any of the following circumstances:

a. That is of the same make and model manufactured, imported, or distributed by the manufacturer.

b. That is subject to a recall notice issued by the manufacturer or an authorized governmental agency, regardless of whether the vehicle is identified by its vehicle identification number.

c. That is held by the new motor vehicle dealer in the dealer's inventory at the time a recall notice is issued or that is taken by the new motor vehicle dealer into the dealer's inventory after the recall notice as a result of a retail consumer trade-in or a lease return to the dealer inventory in accordance with an applicable lease contract.

d. That cannot be repaired due to the unavailability, within 30 days after issuance of the recall notice, of a remedy or parts necessary for the new motor vehicle dealer to make the recall repair.

e. For which the manufacturer has not issued a written statement to the new motor vehicle dealer indicating that the used motor vehicle may be sold or delivered to a retail customer before completion of the recall repair. The purpose of such written statement is to provide notice to the new motor vehicle dealer that the vehicle may be sold or delivered based solely on the specific recall notice and is not intended to address any other aspect of the vehicle unrelated to the recall notice.

(2) The manufacturer shall pay the required compensation within 30 days after the motor vehicle dealer's application for payment. Applications for payment must be submitted monthly, as necessary, through the manufacturer's existing warranty application system or another system or process established by the manufacturer which is not unduly burdensome or which does not require information unnecessary for the payment.

(3) Compensation under this section must be the greater of the following:

a. Payment at a rate of at least 1.5 percent per month of the motor vehicle value, as determined by the average Black Book value of the corresponding model year vehicle of average condition, of each eligible used motor vehicle in the new motor vehicle dealer's inventory for each month that the dealer does not receive a remedy and parts to complete the required recall repair. Such payment must be prorated for any period less than 1 month based on the number of days during the month each eligible used motor vehicle is in the motor vehicle dealer's inventory.

b. Payment under a national program applicable to all motor vehicle dealers holding a franchise agreement with the manufacturer for the motor vehicle dealer's costs associated with holding the eligible used motor vehicles.

Section 3. Amend § 4906, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4906. Termination, cancellation or nonrenewal of franchise — Requisites.

(e) Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain all of the following:

(1) A statement of intention to terminate, ~~cancel~~ cancel, or not to renew the ~~franchise; and franchise.~~

(2) A statement of the reasons for the termination, ~~cancellation~~ cancellation, or ~~nonrenewal; and nonrenewal.~~

(3) The date on which such termination, ~~cancellation~~ cancellation, or nonrenewal takes effect.

(f)(1) If a manufacturer provides notice of termination to a new motor vehicle dealer under subsection (e) of this section, the dealer may file with the Commission a protest to the proposed franchise termination on or before the stated effective date of the termination.

(2) If such a protest is filed, the Commission shall inform the manufacturer that a timely protest has been filed, and that the franchise in question continues in effect until the Commission holds a hearing, or thereafter, unless, the Commission determines that the manufacturer has complied with paragraphs (a)(2) and (a)(3) of this section.

(3) Until the termination of a dealer's franchise is effective, the dealer continues to have the same rights to assign, sell, or transfer the franchise to a third party under the franchise and as permitted under § 4910 and the transferee may not be subject to termination by reason of the failure of performance or breaches of the franchise on the part of the dealer.

(4) The non-prevailing party may appeal an adverse decision by the Commission to the Superior Court. The Commission may enter a stay of its order pending appeal, which remains in effect while the appeal is pending.

Section 4. Amend § 4907, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4907. Termination, cancellation or nonrenewal of franchise — Compensation by manufacturer.

Upon the termination, nonrenewal, ~~discontinuance~~ discontinuance, or cancellation of any franchise by the manufacturer or by the new motor vehicle dealer, the new motor vehicle dealership shall be compensated by the manufacturer as set forth below:

Section 5. Amend § 4910, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4910. Sale of dealership franchise, notice to franchiser, and right of first refusal.

(c) It ~~shall be a violation of the Delaware franchise statute~~ is unlawful for a motor vehicle franchiser to exercise the right of first refusal or other right to acquire a motor vehicle franchise from a motor vehicle franchisee as a means to influence the consideration or other terms offered by a person in connection with the acquisition of the motor vehicle franchise or to influence a person to refrain from entering into or to withdraw from, negotiations for the acquisition of the motor vehicle franchise.

Section 6. Amend § 4913, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4913. Unlawful acts by manufacturers.

(a) Notwithstanding the terms of any franchise agreement, it shall be a violation of this chapter for any manufacturer licensed under this chapter to require, attempt to require, coerce or attempt to coerce any new motor vehicle dealer in this State:

(8) To either establish or maintain exclusive facilities, ~~personnel~~ personnel, or display space ~~when such requirements would not be justified by reasonable business considerations. The burden of proof for this subsection shall be on the manufacturer.~~

(9) To expand, construct or significantly modify facilities without written assurances that the franchisor will provide a reasonable supply of new motor vehicles within a reasonable time so as to justify such an expansion, in light of the market and economic conditions. To require, coerce or attempt to coerce a dealer to construct or substantially alter a facility or premises if the facility or premises has been altered within the last ~~7~~ 10 years at a cost of more than \$250,000 and the alteration was required and approved by the manufacturer, except for improvements made to comply with health or safety laws, to accommodate the technology requirements necessary to sell or to service a motor vehicle or for alterations made pursuant to voluntary agreements between a dealer and a manufacturer where separate and valuable consideration has been offered and accepted.

a. If a manufacturer establishes a program, standard, or policy or in any manner offers a bonus, incentive, rebate, or other benefit to a new motor vehicle dealer which is based, in whole or in part, on the construction of new sales or service facilities or the remodeling, improvement, renovation, expansion,

replacement, or other alteration of the new motor vehicle dealer's existing sales or service facilities, including installation of signs or other image elements, a new motor vehicle dealer who completes such construction, alteration, or installation in reliance upon such program, standard, policy, bonus, incentive, rebate, or other benefit is deemed to be in full compliance with the manufacturer's requirements related to the new, remodeled, improved, renovated, expanded, replaced, or altered facilities, signs, and image elements for 10 years after such completion.

b. If, during such 10-year period, the manufacturer revises an existing, or establishes a new, program, standard, policy, bonus, incentive, rebate, or other benefit described in paragraph (a)(9)a. of this section, a motor vehicle dealer who completed a facility in reliance upon a prior program, standard, policy, bonus, incentive, rebate, or other benefit and elects not to comply with the applicant's or manufacturer's requirements for facilities, signs, or image elements under the revised or new program, standard, policy, bonus, incentive, rebate, or other benefit will not be eligible for any benefit under the revised or new program but remains entitled to all benefits under the prior program, plus any increase in benefits between the prior and revised or new programs, during the remainder of the 10-year period.

(14)a. To establish, implement, or enforce criteria for measuring the sales or service performance of any of its franchised new motor vehicle dealers in this State which have a material or adverse effect on any new motor vehicle dealer and which meet any of the following:

1. Are unfair, unreasonable, arbitrary, or inequitable.

2. Do not include all relevant and material local and regional criteria, data, and facts. Relevant and material criteria, data, or facts include those of motor vehicle dealerships of comparable size in comparable markets.

b. If such performance measurement criteria are based, in whole or in part, on a survey, such survey must be based on a statistically significant and valid random sample.

c. A manufacturer or common entity, or an affiliate thereof, which enforces against any motor vehicle dealer any such performance measurement criteria shall, upon the request of the motor vehicle dealer, describe in writing to the motor vehicle dealer, in detail, how the performance measurement criteria were designed, calculated, established, and uniformly applied.

(15)a. To fail to allocate its products within this State in a manner that does all of the following:

1. Provides each of its franchised dealers in this State an adequate supply of vehicles by series, product line, and model in a fair, reasonable, and equitable manner based on each dealer's historical selling pattern and reasonable sales standards as compared to other same line-make dealers in the State.

2. Allocates an adequate supply of vehicles to each of its dealers by series, product line, and model so as to allow the dealer to achieve any performance standards established by the manufacturer and distributor.

3. Is fair and equitable to all of its franchised dealers in this State.

4. Makes available to each of its franchised dealers in this State a minimum of one of each vehicle series, model, or product line that the manufacturer makes available to any dealer in this State and advertises in the State as being available for purchase.

5. Does not unfairly discriminate among its franchised dealers in its allocation process.

b. This paragraph (a)(15) of this section is not violated, however, if such failure is caused solely by the occurrence of temporary international, national, or regional product shortages resulting from natural disasters, unavailability of parts, labor strikes, product recalls, or other factors and events beyond the control of the manufacturer that temporarily reduce a manufacturer's product supply.

(16) 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 or repaired at the dealership if the provision of such a loaner vehicle is required by the manufacturer, or is otherwise included as a condition of participating in any program sponsored by the manufacturer.

(17) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver or other written instrument, to require, coerce, or attempt to coerce any of its franchised new motor vehicle dealers in this State to change the principal operator, general manager, or any other manager or supervisor employed by the dealer.

(18)a. Notwithstanding the terms, provisions, or conditions of any agreement or franchise, to discriminate against or otherwise penalize a new motor vehicle dealer located in this State for selling or offering for sale a service contract, debt cancellation agreement, maintenance agreement, or similar product not approved, endorsed, sponsored, or offered by the manufacturer, affiliate, or captive finance source.

b. For purposes of this paragraph (a)(18) of this section, “discrimination” includes any of the following:

1. Requiring or coercing a dealer to exclusively sell or offer for sale service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source.

2. Taking or threatening to take any adverse action against a dealer because the dealer does any of the following:

A. Sells or offers for sale any service contracts, debt cancellation agreements, maintenance agreements, or similar products not approved, endorsed, sponsored, or offered by the manufacturer, affiliate, or captive finance source.

B. Fails to sell or offer for sale service contracts, debt cancellation agreements, maintenance agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, its affiliate, or captive finance source.

3. Measuring a dealer's performance under a franchise in any part based upon the dealer's sale of service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, affiliate, or captive finance source.

4. Requiring a dealer to exclusively promote the sale of service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, affiliate, or captive finance source.

5. Requiring a dealer to disclose who is not the provider or sponsor of a service contract, debt cancellation agreement, or similar product.

6. Considering the dealer's sale of service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, affiliate, or captive finance source in determining any of the following:

A. The dealer's eligibility to purchase any vehicles, parts, or other products or services from the manufacturer.

B. The volume of vehicles or other parts or services the dealer shall be eligible to purchase from the manufacturer.

C. The price or prices of any vehicles, parts, or other products or services that the dealer shall be eligible to purchase from the manufacturer.

D. The availability or amount of any vehicle discount, credit, special pricing, rebate, or sales or service incentive the dealer shall be eligible to receive from the manufacturer, affiliate, or captive finance source in which the incentives are calculated or paid on a per-vehicle basis or any vehicle discount, credit, special pricing, or rebate that are calculated or paid on a per-vehicle basis.

c. For purposes of this paragraph (a)(18) of this section, "discrimination" does not include, and nothing prohibits a manufacturer, affiliate, or captive finance source from offering, discounts, rebates, or other incentives to dealers that voluntarily sell or offer for sale service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, affiliate, or captive finance source; provided, however, that such discounts, rebates, or other incentives are based solely on the sales volume of the service contracts, debt cancellation agreements, or similar products sold by the dealer and do not provide vehicle sales or service incentives.

(19)a. Notwithstanding the terms of any contract, franchise, novation, or agreement, to prevent, attempt to prevent, prohibit, coerce, or attempt to coerce, any new motor vehicle dealer located in this State from charging any administrative, origination, documentary, procurement, or other similar administrative fee related to the sale or lease of a motor vehicle.

b. It is unlawful for any manufacturer, manufacturer branch, distributor, or distributor branch, notwithstanding the terms of any contract, franchise, novation, or agreement, to prevent or prohibit any new motor vehicle dealer in this State from participating in any program relating to the sale of motor vehicles or reduce the amount of compensation to be paid to any dealer in this State, based upon the dealer's willingness to refrain from charging or reduce the amount of any administrative, origination, documentary, procurement, or other similar administrative fee related to the sale or lease of a motor vehicle.

Section 7. Amend § 4917, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4917. Applicability of chapter.

(f) The provisions of this chapter apply to all written agreements between a manufacturer and a new motor vehicle dealer, including the franchise offering, letter of intent, the franchise agreement, sales of goods, services or advertising, leases or deeds of trust of real or personal property, promises to pay, security interests, pledges,

insurance contracts, advertising contracts, construction or installation contracts, servicing contracts, and all other such agreements between a new motor vehicle dealer and a manufacturer.

Section 8. Amend Chapter 49, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4919. Consumer data protection.

(a) As used in this section:

(1) “Consumer data” means “nonpublic personal information,” as defined in 15 U.S.C. § 6809(4), that is collected by a motor vehicle dealer and is provided by the motor vehicle dealer directly to a manufacturer or third party acting on behalf of a manufacturer. “Consumer data” does not include the same or similar data which is obtained by a manufacturer from any other source.

(2)a. “Data management system” means a computer hardware or software system that meets both of the following:

1. Is owned, leased, or licensed by a motor vehicle dealer, including a system of web-based applications, computer software, or computer hardware, whether located at the motor vehicle dealership or hosted remotely.

2. Stores and provides access to consumer data collected or stored by a motor vehicle dealer.

b. “Data management system” includes dealership management systems and customer relations management systems.

(b) Notwithstanding the provisions of any franchise agreement, with respect to consumer data a manufacturer or a third party acting on behalf of a manufacturer must do all of the following:

(1) Comply with all, and not knowingly cause a motor vehicle dealer to violate any, applicable restrictions on reuse or disclosure of the consumer data established by federal or state law and provide a written statement to the motor vehicle dealer upon request describing the established procedures adopted by the manufacturer or third-party acting on behalf of the manufacturer which meet or exceed any federal or state requirements to safeguard the consumer data, including those established in the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801 et seq.

(2) Upon the written request of the motor vehicle dealer, provide a written list of the consumer data obtained from the motor vehicle dealer and all persons to whom any consumer data has been provided by the manufacturer or a third party acting on behalf of a manufacturer during the preceding 6 months. The dealer may

make such a request no more than once every 6 months. The list must indicate the specific fields of consumer data that were provided to each person. Notwithstanding the foregoing sentences of this paragraph (b)(2) of this section, such a list need not include:

a. A person to whom consumer data was provided, or the specific consumer data provided to such person, if the person was, at the time the consumer data was provided, 1 of the manufacturer's service providers, subcontractors, or consultants acting in the course of such person's performance of services on behalf of or for the benefit of the manufacturer or motor vehicle dealer, provided that the manufacturer has entered into an agreement with such person requiring that the person comply with the safeguard requirements of applicable state and federal law, including, but not limited to, those established in the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801 et seq.

b. A person to whom consumer data was provided, or the specific consumer data provided to such person, if the motor vehicle dealer has previously consented in writing to such person receiving the consumer data provided and the motor vehicle dealer has not withdrawn such consent in writing.

(3) Not require a motor vehicle dealer to grant the manufacturer or a third party direct or indirect access to the dealer's data management system to obtain consumer data as a part of any program or otherwise. A manufacturer must permit a motor vehicle dealer to furnish consumer data in a widely accepted file format, such as comma delimited, and through a third-party vendor selected by the motor vehicle dealer. However, a manufacturer may access or obtain consumer data directly from a motor vehicle dealer's data management system with the prior express written consent of the dealer. The consent must be in the form of a stand-alone written document that is separate from the parties' franchise agreement, is executed by the dealer principal, and may be withdrawn by the dealer upon 30 days' written notice to the manufacturer.

(4) Indemnify the motor vehicle dealer for any third-party claims asserted against or damages incurred by the motor vehicle dealer to the extent caused by access to, use of, or disclosure of consumer data in violation of this section by the manufacturer, a third-party acting on behalf of the manufacturer, or a third-party to whom the manufacturer has provided consumer data.

Approved June 30, 2018