

SECOND REGULAR SESSION

SENATE BILL NO. 724

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GRIESHEIMER.

Pre-filed December 31, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

4163S.011

AN ACT

To repeal sections 407.810, 407.815, 407.817, 407.822, 407.825, 407.828, 407.830, and 407.835, RSMo, and to enact in lieu thereof fourteen new sections relating to motor vehicle franchise practices.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 407.810, 407.815, 407.817, 407.822, 407.825, 407.828, 2 407.830, and 407.835, RSMo, are repealed and fourteen new sections enacted in 3 lieu thereof, to be known as sections 407.810, 407.811, 407.812, 407.813, 407.815, 4 407.817, 407.818, 407.819, 407.822, 407.825, 407.828, 407.831, 407.833, and 5 407.835, to read as follows:

407.810. Sections 407.810 to 407.835 shall be known and may be cited as 2 the "Motor Vehicle Franchise Practices Act" or the "MVFP Act".

407.811. **It is declared to be the public policy of the state to 2 provide for fair and impartial regulation of those persons engaged in 3 the manufacturing, distributing, importing, or selling of motor 4 vehicles. The provisions of the MVFP act shall be administered in such 5 a manner that will promote fair dealing and honesty in the motor 6 vehicle industry and among those engaged therein without unfair or 7 unreasonable discrimination or undue preference or advantage. It is 8 further declared to be the policy of the state to protect the public 9 interest in the purchase and trade of motor vehicles so as to ensure 10 protection against irresponsible vendors and dishonest or fraudulent 11 sales practices and to assist, provide, and secure a stable, efficient, 12 enforceable, and verifiable method for the distribution of motor 13 vehicles to consumers in the state. Given the importance of the motor**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

14 vehicle industry in the state, the provisions of the MVFP act shall be
15 liberally construed to protect motor vehicle dealers.

407.812. 1. Any franchisor obtaining or renewing its license after
2 August 28, 2010, shall be bound by the provisions of the MVFP act and
3 shall comply with it, and no franchise agreement made, entered,
4 modified, or renewed after August 28, 2010 shall avoid or circumvent
5 the requirements of the MVFP act, or violate its provisions, and no
6 franchise agreement shall be performed after the date the franchisor's
7 license is issued or renewed in such a manner that the franchisor
8 avoids, circumvents, or otherwise does not conform or comply with the
9 requirements of the MVFP act. Notwithstanding the effective date of
10 any franchise agreement, all franchisor licenses and renewals thereof
11 are issued subject to all provisions of the MVFP act and chapter 301
12 and any regulations in effect upon the date of issuance, as well as all
13 future provisions of the MVFP act and chapter 301 and any regulations
14 which may become effective during the term of the license.

15 2. The provisions of the MVFP act shall apply to each franchise
16 that a franchisor, manufacturer, importer, or distributor has with a
17 franchisee and all agreements between a franchisee and a common
18 entity or any person that is controlled by a franchisor including, but
19 not limited to, leases or mortgages of real or personal property,
20 promises to pay, security interests, pledges, insurance contracts,
21 advertising contracts, construction or installation contracts, servicing
22 contracts, and all other such agreements.

407.813. Notwithstanding any provision in a franchise to the
2 contrary:

3 (1) All funds received by a franchisee in a transaction involving
4 the purchase or trade-in, or both, of a motor vehicle intended by the
5 parties to the transaction to be used to:

6 (a) Satisfy obligations secured by a lien or other security interest
7 in a motor vehicle or other tangible personal property taken by the
8 franchisee as a trade-in in partial or complete consideration for the
9 purchase of a motor vehicle;

10 (b) Pay to the taxing authorities the sales or use tax collected by
11 the franchisee on the sale of a motor vehicle; or

12 (c) Pay the fees imposed for the transfer of title, registration and
13 licensing of the vehicle;

14 are trust funds held in trust by the franchisee for the benefit of the
15 purchaser, or the holder of the obligations secured by the lien or other
16 security interest, or the taxing authorities and registration officials, as
17 their respective interests may appear;

18 (2) Funds held by a franchisor that are necessary to perform the
19 obligations of the franchisor to franchisees or customers described in
20 this section are trust funds held in trust by the franchisor for the
21 benefit of any franchisee or customer to whom the obligation is owed:

22 (a) Dealer holdbacks that are funds owed to a franchisee by the
23 franchisor pursuant to an agreement between the parties calculated as
24 a percentage of the franchisor's suggested retail price of a vehicle sold
25 by the franchisor to the franchisee, that accrue at the time the
26 franchisee sells the motor vehicle to a customer at retail and are to be
27 paid to the franchisee in monthly, quarterly or other installments;

28 (b) Interest credits that are funds that become owed by a
29 franchisor to a franchisee in an amount or percentage agreed upon by
30 the parties at the time the franchisee takes delivery of a motor vehicle
31 purchased by the franchisee from the franchisor that are intended to
32 pay the franchisee a portion of the interest or other carrying charges
33 incurred by the franchisee in financing or floor planning its inventory
34 of new motor vehicles;

35 (c) Marketing stimulus credits that are funds the franchisor has
36 agreed to pay to the franchisee based upon a percentage of the
37 franchisor's invoices for certain model years of motor vehicles sold to
38 the franchisee by the franchisor that become payable upon the
39 franchisee taking delivery of the vehicles in accordance with the terms
40 of the agreement between the parties;

41 (d) Customer rebates that are funds in an amount that a
42 franchisor determines and agrees to extend to customers who purchase
43 certain motor vehicles and that become due and payable by the
44 franchisor at the time the customer purchases a qualifying motor
45 vehicle, whether the right to receipt of the rebate is retained by the
46 customer or assigned to the franchisee by the customer at the time the
47 sale of the vehicle takes place;

48 (e) Franchisee cash rebates including concessions that are
49 amounts of money that a franchisor has agreed to pay to a franchisee
50 that become due at the time of sale of a vehicle and payable to the

51 franchisee according to the terms of the agreement of the parties;

52 (f) Credit card rewards that are amounts of money that the
53 holder of a credit card sponsored by a franchisor can accrue and
54 accumulate that can be used by the holder as partial payment for the
55 purchase from a franchisee of a new motor vehicle made by the
56 franchisor or an affiliate of the franchisor and that the holder becomes
57 entitled to use by the purchase of the vehicle and has been assigned to
58 the franchisee by the holder or by operation of law or contract;

59 (g) Advertising funds that are amounts charged by the franchisor
60 to a franchisee as a percentage of the invoice price of a motor vehicle
61 sold by the franchisor to the franchisee that are intended to be held by
62 the franchisor for the benefit of the franchisee and used to reimburse
63 the dealer for advertising expenses incurred by the franchisee that
64 meet the requirements imposed by the agreement between the
65 franchisor and the franchisee;

66 (h) Employee or supplier discounts that are the amounts that a
67 franchisor has agreed to pay to a franchisee as additional consideration
68 for the sale of a motor vehicle computed as either a fixed amount or
69 percentage of the sales price of a motor vehicle sold by the franchisee
70 under a manufacturer's employees and suppliers plan and that become
71 due to the franchisee at the time of sale of a vehicle to the employee or
72 supplier pursuant to the franchisor's plan, and that become payable to
73 the franchisee in accordance with the terms of the plan or other
74 agreement between the franchisor and the franchisee;

75 (i) Employee buyout vouchers that are contractual arrangements
76 under which a franchisor provides to an employee upon termination or
77 as a bonus a voucher in a predetermined amount that the employee is
78 entitled to use as a means of payment or partial payment for a new
79 motor vehicle manufactured by the franchisor or an affiliate of the
80 franchisor, and that a franchisee has become entitled to be paid at the
81 time of its acceptance from the employee by the franchisee upon sale
82 of a qualifying motor vehicle;

83 (j) Warranty payments that are payments that a franchisor
84 becomes obligated to pay to a franchisee or other repair facility for the
85 cost of parts, labor, and associated taxes and other charges incurred in
86 performing repairs or other services to a motor vehicle covered by a
87 vehicle warranty extended or provided by the franchisor with respect

88 to the motor vehicle that become due at the time the parts, repairs, or
89 services are provided and are payable under the terms of the warranty
90 or other agreement; and

91 (k) Any other payments that a franchisor becomes obligated to
92 pay a franchisee immediately upon the occurrence of the event that
93 creates the obligation;

94 (3) Funds held in trust by a distributor and funds held by a
95 franchisor's distributor of motor vehicles that are described in one or
96 more of the provisions in subdivision (2) of this section, as to which the
97 distributor is obligated to a franchisee or customer, are trust funds
98 held in trust by the franchisor's distributor for the benefit of any
99 franchisee or customer to whom the obligation is owed;

100 (4) The trust fund status of any funds provided for under this
101 section shall not be defeated by an inability to identify and trace the
102 existence of the specific, precise funds in the account or accounts of the
103 party holding the funds;

104 (5) A party holding trust funds provided for under this section
105 may not grant to any third party any security or other interest in the
106 trust funds, and any attempt to do so shall be null and void.

407.815. As used in sections 407.810 to 407.835, unless the context
2 otherwise requires, the following terms mean:

3 (1) "Administrative hearing commission", the body established in chapter
4 621, RSMo, to conduct administrative hearings;

5 (2) "All-terrain vehicle", any motorized vehicle manufactured and used
6 exclusively for off-highway use which is fifty inches or less in width, with an
7 unladen dry weight of six hundred pounds or less, traveling on three, four or
8 more low pressure tires, with a seat designed to be straddled by the operator, and
9 handlebars for steering control;

10 (3) "Coerce", to [force a person to act in a given manner or to compel by
11 pressure or threat] **compel or attempt to compel a person to act in a given**
12 **manner or to refrain from acting in a given manner by pressure,**
13 **intimidation, or threat of harm, damage, breach of contract, or other**
14 **adverse consequences, including, but not limited to, the loss of any**
15 **benefit available to other franchisees of the same line-make in this**
16 **state, but shall not [be construed to] include the following:**

17 (a) Good faith recommendations, exposition, argument, persuasion or

18 attempts at persuasion **without conditions**;

19 (b) Notice given in good faith to any franchisee of such franchisee's
20 violation of terms or provisions of such franchise or contractual agreement; **or**

21 (c) [Any other conduct set forth in section 407.830 as a defense to an
22 action brought pursuant to sections 407.810 to 407.835; or

23 (d)] Any [other] conduct set forth in sections 407.810 to 407.835 that is
24 permitted of the franchisor [or is expressly excluded from coercion or a violation
25 of sections 407.810 to 407.835];

26 (4) **"Common entity", a person:**

27 (a) **Who is either controlled or owned, beneficially or of record,**
28 **by one or more persons who also control or own more than forty**
29 **percent of the voting equity interest of a franchisor; or**

30 (b) **Who shares directors or officers or partners with a**
31 **franchisor;**

32 (5) **"Control", to possess, directly or indirectly, the power to**
33 **direct or cause the direction of the management or policies of a person,**
34 **whether through the ownership of voting securities, by contract, or**
35 **otherwise; except that "control" does not include the relationship**
36 **between a franchisor and a franchisee under a franchise agreement;**

37 (6) **"Dealer-operator", the individual who works at the established**
38 **place of business of a dealer and who is responsible for and in charge**
39 **of day-to-day operations of that place of business;**

40 (7) **"Distributor", a person, resident or nonresident, who, in whole**
41 **or in part, sells or distributes new motor vehicles to motor vehicle**
42 **dealers in this state;**

43 (8) **"Franchise" or "franchise agreement", a written arrangement or**
44 **contract for a definite or indefinite period, in which a person grants to another**
45 **person a license to use, or the right to grant to others a license to use, a trade**
46 **name, trademark, service mark, or related characteristics, in which there is a**
47 **community of interest in the marketing of goods or services, or both, at wholesale**
48 **or retail, by agreement, lease or otherwise, and in which the operation of the**
49 **franchisee's business with respect to such franchise is substantially reliant on the**
50 **franchisor for the continued supply of franchised new motor vehicles, parts and**
51 **accessories for sale at wholesale or retail. The franchise includes all**
52 **portions of all agreements between a franchisor and a franchisee,**
53 **including but not limited to, a contract, new motor vehicle franchise,**

54 sales and service agreement, or dealer agreement, regardless of the
55 terminology used to describe the agreement or relationship between
56 the franchisor and franchisee, and also includes all provisions,
57 schedules, attachments, exhibits, manuals, and agreements
58 incorporated by reference therein;

59 [(5)] (9) "Franchisee", a person to whom a franchise is granted;

60 [(6)] (10) "Franchisor", a person who grants a franchise to another
61 person;

62 (11) "Good faith", the duty of each party to any franchise and all
63 officers, employees, or agents thereof, to act in a fair and equitable
64 manner toward each other so as to guarantee the one party freedom
65 from coercion, intimidation, or threat of coercion or intimidation from
66 the other party;

67 (12) "Importer", a person who has written authorization from a
68 foreign manufacturer of a line-make of motor vehicles to grant a
69 franchise to a motor vehicle dealer in this state with respect to that
70 line-make;

71 (13) "Line-make", motor vehicles that are offered for sale, lease,
72 or distribution under a common name, trademark, service mark, or
73 brand name;

74 (14) "Manufacturer", any person, whether a resident or
75 nonresident of this state, who manufactures or assembles motor
76 vehicles or who manufactures or installs on previously assembled truck
77 chassis special bodies or equipment which, when installed, form an
78 integral part of the motor vehicle and which constitute a major
79 manufacturing alteration. The term "manufacturer" includes a central
80 or principal sales corporation or other entity, other than a franchisee,
81 through which, by contractual agreement or otherwise, it distributes
82 its products;

83 [(7)] (15) "Motor vehicle", for the purposes of sections 407.810 to 407.835,
84 any motor-driven vehicle required to be registered pursuant to the provisions of
85 chapter 301, RSMo, except that, motorcycles and all-terrain vehicles as defined
86 in section 301.010, RSMo, shall not be included. The term "motor vehicle" shall
87 also include any engine, transmission, or rear axle, regardless of whether
88 attached to a vehicle chassis, that is manufactured for the installation in any
89 motor-driven vehicle with a gross vehicle weight rating of more than sixteen
90 thousand pounds that is registered for the operations on the highways of this

91 state under chapter 301, RSMo;

92 **[(8)] (16) "New", when referring to motor vehicles or parts, means those**
93 **motor vehicles or parts which have not been held except as inventory, as that**
94 **term is defined in subdivision (4) of section 400.9-109, RSMo;**

95 **[(9)] (17) "Person", a natural person, sole proprietor, partnership,**
96 **corporation, or any other form of business entity or organization;**

97 **(18) "Principal investor", the owner of the majority interest of**
98 **any franchisee;**

99 **(19) "Reasonable", shall be based on the circumstances of the**
100 **individual franchisee and the conditions in the market served by the**
101 **franchisee;**

102 **(20) "Require", to impose upon a franchisee a provision not**
103 **required by law or previously agreed to by a franchisee in a franchise**
104 **agreement;**

105 **(21) "Successor manufacturer", any manufacturer that succeeds,**
106 **or assumes any part of the business of, another manufacturer, referred**
107 **to as the "predecessor manufacturer", as the result of:**

108 **(a) A change in ownership, operation, or control of the**
109 **predecessor manufacturer by sale or transfer of assets, corporate stock,**
110 **or other equity interest, assignment, merger, consolidation,**
111 **combination, joint venture, redemption, court-approved sale, operation**
112 **of law, or otherwise;**

113 **(b) The termination, suspension or cessation of a part or all of**
114 **the business operations of the predecessor manufacturer;**

115 **(c) The noncontinuation of the sale of the product line; or**

116 **(d) A change in distribution system by the predecessor**
117 **manufacturer, whether through a change in distributor or the**
118 **predecessor manufacturer's decision to cease conducting business**
119 **through a distributor altogether.**

407.817. 1. **Notwithstanding any provision of a franchise to the**
2 **contrary, for purposes of [this section] the MVFP act, "relevant market area"**
3 **means the geographic area of responsibility defined in the franchise**
4 **agreement of an existing franchisee of the same line-make and:**

5 (1) For a proposed new motor vehicle dealer or a new motor vehicle dealer
6 who plans to **locate or** relocate his or her place of business in a county having
7 a population which is greater than one hundred thousand, the area within a

8 radius of six miles of the intended site of the proposed or relocated dealer. The
9 six-mile distance shall be determined by measuring the distance between the
10 nearest surveyed boundary of the existing new motor vehicle dealer's principal
11 place of business and the nearest surveyed boundary line of the proposed or
12 relocated new motor vehicle dealer's principal place of business; or

13 (2) For a proposed new motor vehicle dealer or a new motor vehicle dealer
14 who plans to **locate or** relocate his or her place of business in a county having
15 a population which is not greater than one hundred thousand, the area within a
16 radius of ten miles of the intended site of the proposed or relocated dealer[, or the
17 county line, whichever is closer to the intended site]. The ten-mile distance shall
18 be determined by measuring the distance between the nearest surveyed boundary
19 line of the existing new motor vehicle dealer's principal place of business and the
20 nearest surveyed boundary line of the proposed or relocated new motor vehicle
21 dealer's principal place of business.

22 2. As used in this section, "relocate" and "relocation" shall not include the
23 relocation of a new motor vehicle dealer within two miles of its established place
24 of business.

25 3. Before a franchisor enters into a franchise establishing **an additional**
26 **franchise, reopening a previously existing franchise,** or relocating [a new
27 motor vehicle dealer] **an existing franchise** within a relevant market area
28 where the same line-make is represented, the franchisor shall give written notice
29 to each [new motor vehicle dealer] **franchisee** of the same line-make in the
30 relevant market area of its intention to establish an additional [dealer]
31 **franchise, reopen a previously existing franchise,** or [to] relocate an
32 existing [dealer] **franchise** within that relevant market area. **Such notice**
33 **shall state:**

34 (1) **The specific location at which the additional, reopened, or**
35 **relocated franchise will be established;**

36 (2) **The date on or after which the franchisor intends to be**
37 **engaged in business with the additional, reopened, or relocated**
38 **franchise at the proposed location;**

39 (3) **The identity of all franchisees who are franchised to sell the**
40 **same line-make of vehicles with licensed locations in the relevant**
41 **market area where the additional, reopened, or relocated franchise is**
42 **proposed to be located; and**

43 (4) **The names and addresses of the dealer-operator and the**

44 **principal investor in the proposed additional, reopened, or relocated**
45 **franchise.**

46 4. Within thirty days after receiving the notice provided for in subsection
47 3 of this section, or within thirty days after the end of any appeal procedure
48 provided by the franchisor, a [new motor vehicle dealer] **franchisee to whom**
49 **notice was required in subsection 3 of this section** may bring an action
50 pursuant to section 407.822 to determine whether good cause exists for [the]
51 establishing **an additional franchise, reopening a previously existing**
52 **franchise**, or relocating [of a proposed new motor vehicle dealer] **an existing**
53 **franchise.**

54 5. This section shall not apply to the reopening or replacement in a
55 relevant market area of a closed [dealership] **franchise** that has been closed
56 within the preceding year, if the established place of business of the reopened or
57 replacement [dealer] **franchise** is within two miles of the established place of
58 business of the closed [dealership] **franchise and only if the reopened or**
59 **replaced franchise is offered to the franchisee who had previously**
60 **operated the closed franchise within the preceding year.**

61 6. In determining whether good cause exists for establishing an
62 **additional franchise, reopening a previously existing franchise**, or
63 relocating [an additional new motor vehicle dealer] **a franchise** for the same
64 line-make, the [court] **administrative hearing commission** shall take into
65 consideration [the existing] **all relevant** circumstances, including, but not
66 limited to, the following:

67 (1) **The size and permanency of the investment and obligations**
68 **incurred by the existing franchisees of the same line-make in the**
69 **relevant market area; and any damage that such existing franchisees**
70 **may suffer from the establishment, reopening, or relocation of a**
71 **franchise into the relevant market area;**

72 (2) **The effect on the retail motor vehicle business and the consuming**
73 **public in the relevant market area;**

74 (3) **Whether it is injurious or beneficial to the public welfare;**

75 (4) **Whether the [new motor vehicle dealers] existing franchisees of the**
76 **same line-make in that relevant market area are providing adequate competition**
77 **and convenient consumer care for the motor vehicles of that line-make in the**
78 **relevant market area, including the adequacy of motor vehicle sales and**
79 **qualified service personnel;**

80 (5) Whether the establishment, **reopening**, or relocation of [the new
81 motor vehicle dealer] **a franchise** would promote competition; **and whether the**
82 **benefits to the public from any such increased competition outweigh**
83 **the damage to the existing franchisees in the relevant market area;**

84 (6) Growth or decline of the population and the number of new motor
85 vehicle registrations in the relevant market area; and

86 (7) **The effect on the reopening or relocating [dealer] franchisee of a**
87 **denial of its relocation into the relevant market area.**

88 7. The remedies and relief available pursuant to **this section [407.835**
89 **shall apply to this section] are not exclusive and are in addition to those**
90 **provided in section 407.835 or otherwise permitted by law or equity.**

407.818. **No franchisor shall engage in business in this state**
2 **without a license therefor as provided in sections 301.550 to 301.573. No**
3 **motor vehicle, foreign or domestic, may be sold, leased, or offered for**
4 **sale or lease in this state unless the franchisor, which issues a**
5 **franchise to a franchisee in this state, is licensed under sections 301.550**
6 **to 301.573. Within thirty days after August 28, 2010, each franchisor**
7 **shall designate in writing the area of responsibility of each of its**
8 **franchisees in this state, and the franchisor shall provide a copy of the**
9 **same to the department of revenue and each of its franchisees in this**
10 **state. No franchisor shall modify the area of responsibility to avoid the**
11 **requirements of sections 407.817 or 407.833, or any other section of the**
12 **MVFP act. Within thirty days after August 28, 2010, each manufacturer,**
13 **importer, or distributor shall file with the department of revenue a**
14 **version of each franchise agreement used in this state and all**
15 **supplements and exhibits thereto or incorporated therein by reference,**
16 **along with all other filings required by the MVFP act or the department**
17 **of revenue. Each franchisor shall renew its license annually by the**
18 **date specified by the department of revenue.**

407.819. 1. **Notwithstanding any provision in a franchise to the**
2 **contrary, no successor manufacturer shall, for a period of five years**
3 **from the date of acquisition of control by that successor manufacturer**
4 **of a line-make from a predecessor manufacturer, offer a franchise to**
5 **any person for a line-make of a predecessor manufacturer in any**
6 **portion of the relevant market area in which the predecessor**
7 **manufacturer previously cancelled, terminated, noncontinued, failed to**
8 **renew, or otherwise ended a franchise agreement with a franchisee who**

9 had a franchise facility in that relevant market area without first
10 offering the franchise to the former franchisee at no cost, unless:

11 (1) Within thirty days of the former franchisee's cancellation,
12 termination, noncontinuance, or nonrenewal, the predecessor
13 manufacturer had consolidated the line-make with another of its line-
14 makes for which the predecessor manufacturer had a franchisee with
15 a then-existing franchise facility in that relevant market area;

16 (2) The successor manufacturer has paid the former franchisee
17 the fair market value of the former franchisee's motor vehicle
18 dealership in accordance with this section; or

19 (3) The successor manufacturer establishes that there are
20 grounds to terminate the former franchisee pursuant to subdivision (1)
21 of subsection 4 of section 407.822.

22 2. For purposes of this section, the fair market value of a former
23 franchisee's motor vehicle dealership shall be calculated as of the date
24 of the following that yields the highest fair market value: the date the
25 predecessor manufacturer announced the action that resulted in the
26 cancellation, termination, noncontinuance, or nonrenewal; the date the
27 action that resulted in cancellation, termination, noncontinuance, or
28 nonrenewal became final; or the date twelve months prior to the date
29 that the predecessor manufacturer announced the action that resulted
30 in the cancellation, termination, noncontinuance, or nonrenewal.

407.822. 1. Any party seeking relief pursuant to the provisions of sections
2 407.810 to 407.835 may file [an application for a hearing] a **complaint** with the
3 administrative hearing commission within the time periods specified in this
4 section. The [application for a hearing] **complaint** shall comply with the
5 requirements for a request for agency action set forth in chapter 536,
6 RSMo. Simultaneously, with the filing of the [application for a hearing]
7 **complaint** with the administrative hearing commission, the [applicant]
8 **petitioner** shall send by certified mail, return receipt requested, a copy of the
9 [application] **complaint** to the party or parties against whom relief is
10 sought. Upon receiving a timely [application for a hearing] **complaint**, the
11 administrative hearing commission shall enter an order fixing a date, time and
12 place for a hearing on the record. The administrative hearing commission shall
13 send by certified mail, return receipt requested, a copy of the order to the party
14 seeking relief and a **copy of the order and complaint** to the party or parties

15 against whom relief is sought. The order shall also state that the party against
16 whom relief is sought shall not proceed with the initiation of its activity or
17 activities until the administrative hearing commission issues its final decision or
18 order, and the party against whom relief is sought shall, within ~~[thirty]~~ **twenty**
19 days of such order, file an answer or other responsive pleading directed to each
20 claim for relief set forth in the [application for hearing] **complaint**. Failure to
21 answer or otherwise respond within such time frame may be deemed by the
22 administrative hearing commission as an admission of the grounds for relief set
23 forth in the [application for hearing] **complaint**.

24 2. Unless otherwise expressly provided in sections 407.810 to 407.835, the
25 provisions of chapter 536, RSMo, shall govern hearings and prehearing
26 procedures conducted pursuant to the authority of this section. Any party may
27 obtain discovery in the same manner, and under the same conditions and
28 requirements, as is or may hereafter be provided for with respect to discovery in
29 civil actions by rule of the supreme court of Missouri for use in the circuit courts,
30 and the administrative hearing commission may enforce discovery by the same
31 methods as provided by supreme court rule for use in civil cases. The
32 administrative hearing commission shall issue a final decision or order, in
33 proceedings arising pursuant to the provisions of sections 407.810 to 407.835,
34 within ninety days from the conclusion of the hearing. In any proceeding
35 initiated pursuant to sections 407.810 to 407.835 involving a matter requiring a
36 franchisor to show good cause for any intended action being protested by a
37 franchisee, the franchisor shall refrain from taking the protested action if, after
38 a hearing on the matter before the administrative hearing commission, the
39 administrative hearing commission determines that good cause does not exist for
40 the franchisor to take such action. The franchisee may, if necessary, seek
41 enforcement of the decision of the administrative hearing commission pursuant
42 to the provisions of section 407.835. Venue for such proceedings shall be in the
43 circuit court of Cole County, Missouri, or in the circuit court of the county in
44 which the franchisee resides or operates the franchise business. In determining
45 any relief necessary for enforcement of the decision of the administrative hearing
46 commission, the court shall defer to the commission's factual findings, and review
47 shall be limited to a determination of whether the commission's decision was
48 authorized by law and whether the commission abused its discretion. Any final
49 decisions of the administrative hearing commission shall be subject to review
50 pursuant to a petition for review to be filed in the court of appeals in the district

51 in which the hearing, or any part of the hearing, is held and by delivery of copies
52 of the petition to each party of record, within thirty days after the mailing or
53 delivery of the final decision and notice of the final decision in such a
54 case. Appeal of the administrative hearing commission's decision pursuant to
55 this section shall not preclude any action authorized by section 407.835, brought
56 in a court of competent jurisdiction, requesting an award of legal or equitable
57 relief, provided that if such an action is brought solely for the purpose of
58 enforcing a decision of the administrative hearing commission which is on appeal
59 pursuant to this subsection, the court in which such action is pending may hold
60 in abeyance its judgment pending issuance of a decision by the court of
61 appeals. Review pursuant to this section shall be exclusive and decisions of the
62 administrative hearing commission reviewable pursuant to this section shall not
63 be reviewable in any other proceeding, and no other official or court shall have
64 power to review any such decision by an action in the nature of mandamus or
65 otherwise, except pursuant to the provisions of this section. The party seeking
66 review shall be responsible for the filing of the transcript and record of all
67 proceedings before the administrative hearing commission with the appropriate
68 court of appeals.

69 3. Any franchisee receiving a notice from a franchisor pursuant to the
70 provisions of sections 407.810 to 407.835, or any franchisee adversely affected by
71 a franchisor's acts or proposed acts described in the provisions of sections 407.810
72 to 407.835, shall be entitled to file [an application for a hearing] **a complaint**
73 before the administrative hearing commission for a determination as to whether
74 the franchisor has good cause for its acts or proposed acts.

75 4. Not less than sixty days before the effective date of the initiation of any
76 enumerated act pursuant to subdivisions (5), (6), (7) and (14) of [subsection 1 of]
77 section 407.825, a franchisor shall give written notice to the affected franchisee
78 or franchisees, by certified mail, return receipt requested, except as follows:

79 (1) Upon the initiation of an act pursuant to subdivision (5) of [subsection
80 1 of] section 407.825, such notice shall be given not less than fifteen days before
81 the effective date of such act only if the grounds for the notice include the
82 following:

83 (a) Transfer of **more than fifty percent of** any ownership or interest
84 in the franchised dealership without the consent of the motor vehicle franchisor;

85 (b) Material misrepresentation by the motor vehicle franchisee in applying
86 for the franchise **that substantially and adversely affects the franchisor;**

87 (c) Insolvency of the motor vehicle franchisee or the filing of any petition
88 by or against the motor vehicle franchisee under any bankruptcy or receivership
89 law **that is not vacated within twenty days from the institution thereof;**

90 (d) Any unfair business practice by the motor vehicle franchisee after the
91 motor vehicle franchisor has issued a written **thirty-day** warning to the motor
92 vehicle franchisee to desist from such practice **and the franchisee has failed**
93 **to desist from the practice after having received the written thirty-day**
94 **warning;**

95 (e) Conviction of the motor vehicle franchisee of a crime which is a felony;

96 (f) Failure of the motor vehicle franchisee to conduct customary sales and
97 service operations during customary business hours for at least seven consecutive
98 business days unless such closing is due to an act of God, strike or labor difficulty
99 or other cause over which the motor vehicle franchisee has no control; or

100 (g) Revocation of the motor vehicle franchisee's license;

101 (2) Upon initiation of an act pursuant to subdivision (7) of subsection 1
102 of section 407.825, such notice shall be given within [~~sixty~~] **thirty** days of the
103 franchisor's receipt of a written proposal to consummate such sale or transfer and
104 the receipt of all necessary information and documents generally used by the
105 franchisor to conduct its review. The franchisor shall acknowledge in writing to
106 the applicant the receipt of the information and documents and if the franchisor
107 requires additional information or documents to complete its review, the
108 franchisor shall notify the applicant within fifteen days of the receipt of the
109 information and documents. If the franchisor fails to request additional
110 information and documents from the applicant within fifteen days after receipt
111 of the initial forms, the [~~sixty-day~~] **thirty-day** time period for approval shall be
112 deemed to run from the initial receipt date. Otherwise, the [~~sixty-day~~] **thirty-**
113 **day** time period for approval shall run from receipt of the supplemental
114 requested information. In no event shall the total time period for approval exceed
115 seventy-five days from the date of the receipt of [all necessary information and
116 documents generally used by the franchisor to conduct its review] **the written**
117 **proposal**. The franchisor's notice of disapproval shall also specify the reasonable
118 standard which the franchisor contends is not satisfied and the reason the
119 franchisor contends such standard is not satisfied. Failure on the part of the
120 franchisor to provide such notice shall be conclusively deemed an approval by the
121 franchisor of the proposed sale or transfer to the proposed transferee. A
122 franchisee's application for a hearing shall be filed with the administrative

123 hearing commission within twenty days from receipt of such franchisor's notice;
124 (3) Pursuant to paragraphs (a) and (b) of subdivision (14) of [subsection
125 1 of] section 407.825, such notice shall be given within [sixty] **thirty** days of the
126 franchisor's receipt of a deceased or incapacitated franchisee's designated family
127 member's intention to succeed to the franchise or franchises or of the franchisor's
128 receipt of the personal and financial data of the designated family member,
129 whichever is later.

130 5. A franchisor's notice to a franchisee or franchisees pursuant to
131 subdivisions (5), (6), (7) and (14) of [subsection 1 of] section 407.825 shall contain
132 a statement of the particular grounds supporting the intended action or activity
133 which shall include any reasonable standards which were not satisfied. The
134 notice [shall also contain at a minimum] **is not effective unless it also**
135 **contains**, on the first page thereof, a conspicuous statement which reads as
136 follows: "NOTICE TO FRANCHISEE: YOU MAY BE ENTITLED TO FILE A
137 PROTEST WITH THE MISSOURI ADMINISTRATIVE HEARING COMMISSION
138 IN JEFFERSON CITY, MISSOURI, AND HAVE A HEARING IN WHICH YOU
139 MAY PROTEST THE CONTENTS OF THIS NOTICE. ANY ACTION MUST BE
140 FILED WITHIN [TWENTY] **THIRTY** DAYS FROM RECEIPT OF THIS
141 NOTICE. YOU ALSO HAVE THE RIGHT TO DEMAND NONBINDING
142 MEDIATION. YOUR DEMAND FOR MEDIATION MAY BE MAILED TO
143 THE ADDRESS SHOWN ON THIS NOTICE. FOR FURTHER
144 INFORMATION, CONTACT YOUR ATTORNEY AND REFER TO
145 SECTIONS 407.810 TO 407.835, RSMO."

146 6. When more than one [application for a hearing] **complaint** is filed
147 with the administrative hearing commission, the administrative hearing
148 commission may consolidate the applications into one proceeding to expedite the
149 disposition of all relevant issues.

150 7. **Unless otherwise specifically required by another provision of**
151 **the MVFP act**, in all proceedings [before the administrative hearing
152 commission] pursuant to [this section, section 407.825 and section 621.053,
153 RSMo, where the franchisor is required to give notice pursuant to subsection 4
154 of this section] **sections 407.810 to 407.835**, the franchisor shall have the
155 burden of proving by a preponderance of the evidence that **it has acted in good**
156 **faith, that all required notices were given, that good cause exists for its**
157 **actions, and that its actions were fair and reasonable giving due regard**
158 **to the equities of the affected parties.** [In all other actions, the franchisee

159 shall have the burden of proof.]

160 **8. If a franchisee prevails in an action against a franchisor under**
161 **any provision of sections 407.810 to 407.835, then the franchisee shall**
162 **also have a cause of action against the franchisor for damages and**
163 **reasonable expenses of litigation, including, but not limited to,**
164 **depositions, transcripts, expert witnesses, and attorney fees.**

165 **9. A franchisee may mail a demand for mediation to its**
166 **franchisor at any time after it receives any notice from a franchisor as**
167 **required by any provision of the MVFP act. In addition, prior to,**
168 **contemporaneous with, or after the filing of a complaint with the**
169 **administrative hearing commission, a franchisee may mail a demand**
170 **for mediation to its franchisor for any violation by the franchisor of**
171 **any provision of the MVFP act. The mailing of the demand for**
172 **mediation is effective when mailed to the address shown on the notice**
173 **from the franchisor, the address shown on the franchise agreement, the**
174 **address of the franchisor shown on its license with the department of**
175 **revenue, the address of the franchisor's registered agent in this state,**
176 **or the address of its attorney in a proceeding pending at the**
177 **administrative hearing commission concerning the subject of the**
178 **demand for mediation. The demand for mediation shall contain a short**
179 **statement of the dispute and the relief sought by the franchisee;**
180 **however, the contents of the demand are not jurisdictional.**

181 **10. The mailing of a demand for mediation stays any time period**
182 **for the franchisee to initiate any action pursuant to the MVFP act. If**
183 **the parties fail to resolve the matter in dispute after meeting with the**
184 **mediator, then the time period for filing any action with the**
185 **administrative hearing commission shall start on the first business day**
186 **after the date of the last date of any meeting with the mediator.**

187 **11. If a proceeding is pending before the administrative hearing**
188 **commission concerning the subject of the demand for mediation, the**
189 **franchisee shall also file a copy of the demand for mediation with the**
190 **administrative hearing commission. The filing of a copy of the demand**
191 **for mediation with the administrative hearing commission shall stay**
192 **any further action by the administrative hearing commission, other**
193 **than the issuance of the order required of the administrative hearing**
194 **commission pursuant to subsection 1 of this section informing the**
195 **franchisor that it shall not proceed with the initiation of its activity or**

196 activities until the administrative hearing commission issues its final
197 decision or order. If the matter is not resolved after the meeting with
198 the mediator, then either party may inform the administrative hearing
199 commission that the matter is not resolved and the administrative
200 hearing commission shall issue its order terminating the stay of its
201 proceeding.

202 12. Within five business days after the date of mailing of the
203 demand for mediation, the franchisor shall contact the franchisee or its
204 legal representative reflected in the demand for mediation to exchange
205 suggested lists of mediators, who must be attorneys licensed to practice
206 law in this state. The parties shall mutually accept a mediator within
207 two business days after the date of exchanging suggested lists of
208 mediators. If the parties cannot agree on a mediator, then the
209 presiding judge in Cole County or in the circuit court for the county in
210 which the franchisee does business shall appoint the mediator. Within
211 twenty days after the mailing of the demand for mediation, the parties
212 shall meet with the mediator for the purpose of attempting to resolve
213 the dispute. The meeting shall take place in this state at a location
214 designated by the mediator. The mediator may extend the date of the
215 meeting upon the agreement of the parties or upon good cause shown
216 by either party.

217 13. The director of revenue shall require each franchisor to
218 establish and maintain a panel of mediators who may serve as
219 mediators for disputes that may arise in this state with its franchisees.

407.825. Notwithstanding the terms of any franchise agreement to the
2 contrary, the performance, whether by act or omission, by a motor vehicle
3 franchisor, whether directly or indirectly through an agent, employee,
4 affiliate, common entity, or representative, or through an entity
5 controlled by a franchisor, of any or all of the following acts enumerated in
6 this section are hereby defined as unlawful practices, the remedies for which are
7 set forth in section 407.835:

8 (1) To engage in any conduct which is capricious[, in bad faith,] or not
9 in good faith or unconscionable and which causes damage to a motor vehicle
10 franchisee or to the public; [provided, that good faith conduct engaged in by motor
11 vehicle franchisors as sellers of new motor vehicles or parts or as holders of
12 security interest therein, in pursuit of rights or remedies accorded to sellers of
13 goods or to holders of security interests pursuant to the provisions of chapter 400,

14 RSMo, uniform commercial code, shall not constitute unfair practices pursuant
15 to sections 407.810 to 407.835;]

16 (2) To coerce, **attempt to coerce, require or attempt to require** any
17 motor vehicle franchisee to accept delivery of any new motor vehicle or vehicles,
18 equipment, **tools**, parts or accessories therefor, or any other commodity or
19 commodities which such motor vehicle franchisee has not ordered after such
20 motor vehicle franchisee has rejected such commodity or commodities, **or which**
21 **is not required by law or the franchise agreement**. It shall not be deemed
22 a violation of this section for a motor vehicle franchisor to require a motor vehicle
23 franchisee to have an inventory of parts, tools, and equipment reasonably
24 necessary to service the motor vehicles sold by a motor vehicle franchisor; or new
25 motor vehicles reasonably necessary to meet the demands of dealers or the public
26 or to display to the public the full line of a motor vehicle franchisor's product
27 line. **However, if a franchisor requires a franchisee to purchase**
28 **essential tools with a purchase price in the aggregate of more than**
29 **seventy-five hundred dollars in order to receive a particular model of**
30 **new motor vehicle, the franchisor shall upon written request provide**
31 **such franchisee with a good faith estimate in writing of the number of**
32 **vehicles of that particular model that the franchisee will be allocated**
33 **during that model year in which the tools are required to be purchased**
34 **and the next two model years;**

35 (3) To [unreasonably] **withhold, reduce, delay, or** refuse to deliver in
36 reasonable quantities and within a reasonable time after receipt of orders for new
37 motor vehicles, such motor vehicles as are so ordered and as are covered by such
38 franchise and as are specifically publicly advertised by such motor vehicle
39 franchisor to be available for immediate delivery; provided, however, the failure
40 to deliver any motor vehicle shall not be considered a violation of sections 407.810
41 to 407.835 if such failure is due to an act of God, work stoppage, or delay due to
42 a strike or labor difficulty, shortage of products or materials, freight delays,
43 embargo or other [cause] **causes** of which such motor vehicle franchisor shall
44 have no control;

45 (4) To coerce, **attempt to coerce, require or attempt to require** any
46 motor vehicle franchisee to enter into any agreement with such motor vehicle
47 franchisor **or its agent, employee, affiliate, common entity or**
48 **representative, or a person controlled by the franchisor** or to do any other
49 act prejudicial to such motor vehicle franchisee[, by threatening to cancel any

50 franchise or any contractual agreement existing between such motor vehicle
51 franchisor and motor vehicle franchisee; provided, however, that notice in good
52 faith to any motor vehicle franchisee of such motor vehicle franchisee's violation
53 of any provisions of such franchise or contractual agreement shall not constitute
54 a violation of sections 407.810 to 407.835];

55 (5) To terminate, cancel [or], refuse to continue, **or refuse to renew** any
56 franchise without good cause, [directly or indirectly through the actions of the
57 franchisor,] unless such new motor vehicle franchisee, **without good cause and**
58 **without the fault of the franchisor**, substantially defaults in the performance
59 of such franchisee's reasonable [and], lawful, **and material** obligations under
60 such franchisee's franchise[, or such new motor vehicle franchisor discontinues
61 the sale in the state of Missouri of such franchisor's products which are the
62 subject of the franchise]. In determining whether good cause exists, the
63 administrative hearing commission shall take into consideration [the existing] **all**
64 **relevant** circumstances, including, but not limited to, the following factors:

- 65 (a) [The franchisee's sales in relation to sales in the market;
66 (b) The franchisee's investment and obligations;
67 (c) Injury to the public welfare;
68 (d) The adequacy of the franchisee's service facilities, equipment, parts
69 and personnel in relation to those of other franchisees of the same line-make;
70 (e) Whether warranties are being honored by the franchisee;
71 (f) The parties' compliance with their franchise agreement;
72 (g) The desire of a franchisor for market penetration or a market study,
73 if any, prepared by the franchisor or franchisee are two factors which may be
74 considered;
75 (h) The harm to the franchisor;] **The amount of business transacted**
76 **by the franchisee;**
77 **(b) The investments necessarily made and obligations incurred**
78 **by the franchisee, including but not limited to goodwill, in the**
79 **performance of its duties under the franchise agreement, together with**
80 **the duration and permanency of such investments and obligations;**
81 **(c) The potential for harm and inconvenience to consumers as a**
82 **result of disruption of the business of the franchisee;**
83 **(d) The franchisee's failure to provide adequate service facilities,**
84 **equipment, parts, and qualified service personnel;**
85 **(e) The franchisee's failure to perform warranty work on behalf**

86 **of the manufacturer, subject to reimbursement by the manufacturer;**

87 **(f) The franchisee's failure to substantially comply, in good faith,**
88 **with requirements of the franchise that are determined to be**
89 **reasonable, lawful, and material;**

90 **(g) The franchisor's failure to honor its requirements under the**
91 **franchise;**

92 **(h) The potential harm to the area that the franchisee serves,**
93 **including, but not limited to, the franchisee's contributions to**
94 **communities and charities it supports; and**

95 **(i) The demographic and geographic characteristics of the area**
96 **the franchisee serves;**

97 (6) To prevent by contract or otherwise, any motor vehicle franchisee from
98 changing the capital structure of the franchisee's franchise [of such motor vehicle
99 franchisee] or the means by or through which the franchisee finances the
100 operation of the franchisee's franchise, provided the motor vehicle franchisee at
101 all times meets any reasonable capital standards agreed to between the motor
102 vehicle franchisee and the motor vehicle franchisor and grants to the motor
103 vehicle franchisor a purchase money security interest in the new motor vehicles,
104 new parts and accessories purchased from the motor vehicle franchisor;

105 (7) (a) To prevent, by contract or otherwise, any sale or transfer of a
106 franchisee's franchise or [franchises or] interest or management thereof; provided,
107 if the franchise specifically permits the franchisor to approve or disapprove any
108 such proposed sale or transfer, a franchisor shall only be allowed to disapprove
109 a proposed sale or transfer if the interest being sold or transferred when added
110 to any other interest owned by the transferee constitutes fifty percent or more of
111 the ownership interest in the franchise and if the proposed transferee fails to
112 satisfy any standards of the franchisor which are in fact normally relied upon by
113 the franchisor prior to its entering into a franchise, and which relate to the
114 [proposed management or ownership of the franchise operations or to the]
115 qualification, capitalization, integrity or character of the proposed transferee and
116 which are reasonable. A franchisee **or proposed franchisee** may request, at
117 any time, that the franchisor provide a copy of the standards which are normally
118 relied upon by the franchisor to evaluate a proposed sale or transfer and a
119 proposed transferee. **In order for the franchisor to claim that any such**
120 **standards are normally relied upon, it shall have previously filed a**
121 **copy of those standards with the department of revenue with its**

122 **application for license and provided a copy to the franchisee and the**
123 **proposed transferee within ten days after receiving the request to sell**
124 **or transfer;**

125 (b) The [franchisee and the] prospective franchisee shall cooperate [fully]
126 with the franchisor in providing information relating to the prospective
127 transferee's qualifications, capitalization, integrity and character;

128 (c) In the event of a proposed sale or transfer of a franchise, the franchisor
129 shall be permitted to exercise a right of first refusal to acquire the franchisee's
130 assets or ownership if:

131 a. The franchise agreement permits the franchisor to exercise a right of
132 first refusal to acquire the franchisee's assets or ownership in the event of a
133 proposed sale or transfer;

134 b. Such sale or transfer is conditioned upon the franchisor or franchisee
135 entering a franchise agreement with the proposed transferee;

136 c. The exercise of the right of first refusal shall result in the franchisee
137 and the franchisee's owners receiving the same or greater consideration and the
138 same terms and conditions as contracted to receive in connection with the
139 proposed sale or transfer;

140 d. The sale or transfer does not involve the sale or transfer to an
141 immediate member or members of the family of one or more franchisee owners,
142 defined as a spouse, child, grandchild, spouse of a child or grandchild, brother,
143 sister or parent of the franchisee owner, or to the qualified manager, defined as
144 an individual who has been employed by the franchisee for at least two years and
145 who otherwise qualifies as a franchisee operator, or a partnership or corporation
146 controlled by such persons; and

147 e. The franchisor agrees to pay the reasonable expenses, including
148 attorney's fees which do not exceed the usual, customary and reasonable fees
149 charged for similar work done for other clients, incurred by the proposed
150 transferee prior to the franchisor's exercise of its right of first refusal in
151 negotiating and implementing the contract for the proposed sale or transfer of the
152 franchise or the franchisee's assets. Notwithstanding the foregoing, no payment
153 of such expenses and attorney's fees shall be required if the franchisee has not
154 submitted or caused to be submitted an accounting of those expenses within
155 fourteen days of the franchisee's receipt of the franchisor's written request for
156 such an accounting. Such accounting may be requested by a franchisor before
157 exercising its right of first refusal;

158 (d) For determining whether good cause exists for the purposes of this
159 subdivision, the administrative hearing commission shall take into consideration
160 [the existing] **all relevant** circumstances, including, but not limited to, the
161 following factors:

162 a. Whether the franchise agreement specifically permits the franchisor to
163 approve or disapprove any proposed sale or transfer;

164 b. Whether the interest to be sold or transferred when added to any other
165 interest owned by the proposed transferee constitutes fifty percent or more of the
166 ownership interest in the franchise;

167 c. Whether the proposed transferee **substantially** fails to satisfy [any]
168 **the material** standards of the franchisor which are in fact normally relied upon
169 by the franchisor prior to its entering into a franchise, and which related to the
170 [proposed management or ownership of the franchise operations or to the]
171 qualification, capitalization, integrity or character of the proposed transferee **and**
172 which are **lawful and** reasonable;

173 d. [Injury to the public welfare] **The amount of business transacted**
174 **by the franchisee;**

175 e. The [harm to the franchisor] **investments and obligations incurred**
176 **by the franchisee, including but not limited to goodwill, in the**
177 **performance of its duties under the franchise agreement, together with**
178 **the duration and permanency of such investments and obligations;**

179 f. **The investments and obligations that the proposed transferee**
180 **is prepared to make in the business;**

181 g. **The potential for harm and inconvenience to consumers as a**
182 **result of the franchisor's decision;**

183 h. **The franchisor's failure to honor its requirements under the**
184 **franchise;**

185 i. **The potential harm to the area that the franchisee serves,**
186 **including, but not limited to, the franchisee's contributions to**
187 **communities and charities it supports;**

188 j. **The ability or willingness of the franchisee to continue in the**
189 **business if the proposed transfer is not permitted; and**

190 k. **The demographic and geographic characteristics of the area**
191 **the franchisee serves;**

192 (8) To prevent by contract or otherwise any motor vehicle franchisee from
193 changing the executive management of the motor vehicle franchisee's business,

194 [except that any attempt by a] **unless the** motor vehicle franchisor [to
195 demonstrate by giving reasons] **demonstrates** that such change in executive
196 management will be detrimental to the distribution of the motor vehicle
197 franchisor's motor vehicles [shall not constitute a violation of this subdivision];

198 (9) To impose unreasonable standards of performance upon a motor
199 vehicle franchisee **or to require, attempt to require, coerce or attempt to**
200 **coerce a franchisee to adhere to performance standards that are not**
201 **applied uniformly to other similarly situated franchisees;**

202 (10) To require, **attempt to require, coerce, or attempt to coerce** a
203 motor vehicle franchisee at the time of entering into a franchise **or any other**
204 arrangement to assent to a release, assignment, novation, waiver or estoppel
205 which would relieve any person from liability imposed by sections 407.810 to
206 407.835;

207 (11) To prohibit directly or indirectly the right of free association among
208 motor vehicle franchisees for any lawful purpose;

209 (12) To provide any term or condition in any lease or other agreement
210 ancillary or collateral to a franchise, **including, but not limited to, any**
211 **agreement with a common entity or any person required by the**
212 **franchisor or controlled by or affiliated with the franchisor**, which term
213 or condition directly or indirectly violates the provisions of sections 407.810 to
214 407.835;

215 (13) Upon any termination, cancellation [or], refusal to continue, **or**
216 **refusal to renew** any franchise or any discontinuation of any line-make or parts
217 or products related to such line-make [by a franchisor, fail], **failing** to pay
218 reasonable compensation to a franchisee as follows:

219 (a) **The franchisee's net acquisition cost, for** any new, undamaged
220 and unsold vehicle in the franchisee's inventory [of either the current model year
221 or] purchased from the franchisor [within one hundred twenty days] **or another**
222 **franchisee of the same line-make within two years** prior to receipt of a
223 notice of termination or nonrenewal, provided the vehicle has less than [five
224 hundred] **one thousand** miles registered on the odometer, including mileage
225 incurred in delivery from the franchisor or in transporting the vehicle between
226 dealers for sale[, at the dealer's net acquisition cost, plus any cost to the dealer
227 for returning the vehicle inventory to the franchisor];

228 (b) The franchisee's cost of each new, unused, undamaged and unsold part
229 or accessory if the part or accessory is in the current parts catalog, less applicable

230 allowances[, plus five percent of the catalog price of the part for the cost of
231 packing and returning the part to the franchisor]. In the case of sheet metal, a
232 comparable substitute for the original package may be used. Reconditioned or
233 core parts shall be valued at their core value, the price listed in the current parts
234 catalog or the amount paid for expedited return of core parts, whichever is higher.
235 If the part or accessory was purchased by the franchisee from an outgoing
236 authorized franchisee, the franchisor shall purchase the part **or accessory** for
237 [either] the price in the current parts catalog [or the franchisee's actual purchase
238 price of the part, whichever is less]. In the case of parts **or accessories** which
239 no longer appear in the current parts catalog, the franchisor [may] **shall**
240 purchase the [part] **parts or accessories** for [either] the price in the last
241 version of the parts catalog in which the part **or accessory** appeared [or the
242 franchisee's actual purchase price of the part, whichever is less. The franchisee
243 shall maintain accurate records regarding the actual purchase price of parts
244 bought from an outgoing authorized franchisee. In the absence of such records,
245 the franchisor is not required to purchase parts which are not in the current
246 parts catalog];

247 (c) The [depreciated] **fair market** value [determined pursuant to
248 generally accepted accounting principles] of each undamaged sign owned by the
249 franchisee which bears a trademark or trade name used or claimed by the
250 franchisor if the sign was purchased from, or purchased at the request of, the
251 franchisor, **plus the costs of installing the sign and the costs of**
252 **purchasing and installing any pole upon which the sign is**
253 **located. During the first ten years after its purchase, the fair market**
254 **value of each sign shall be the franchisee's costs of purchasing the**
255 **sign. Thereafter, the fair market value of the sign shall be the greater**
256 **of its actual market value or its depreciated value on the books of the**
257 **franchisee;**

258 (d) The fair market value of all [special] **equipment**, tools, data
259 processing **programs and** equipment and automotive service equipment owned
260 by the franchisee which were recommended in writing and designated as [special]
261 **equipment**, tools, **data processing programs** and equipment, **and**
262 **automotive service equipment** and purchased from, or purchased at the
263 request of, the franchisor [within three years of the termination of the franchise],
264 if the **equipment**, tools, **programs** and equipment are in usable and good
265 condition, except for reasonable wear and tear. **During the first ten years**

266 after their purchase, the fair market value of each item of equipment,
267 tools, programs, and equipment shall be the franchisee's costs of
268 purchasing the item. Thereafter, the fair market value of each item
269 shall be the greater of its actual market value or its depreciated value
270 on the books of the franchisee;

271 (e) [Except as provided in paragraph (a) of this subdivision, the cost of
272 transporting,] **In addition to the costs referenced in paragraphs (a) to (d)**
273 **of this subdivision, the franchisor shall pay the franchisee an**
274 **additional five percent for handling, packing, storing and loading of any**
275 **property subject to repurchase pursuant to this section [shall not exceed**
276 **reasonable and customary charges; and], and the franchisor shall pay the**
277 **shipper for shipping the property subject to repurchase from the**
278 **location of the franchisee to the location directed by the franchisor;**

279 (f) [The franchisor shall pay the franchisee the amounts specified in this
280 subdivision within ninety days after the tender of the property subject to the
281 franchisee providing evidence of good and clear title upon return of the property
282 to the franchisor. The franchisor shall remove the property within one hundred
283 eighty days after the tender of the property from the franchisee's
284 property. Unless previous arrangements have been made and agreed upon, the
285 franchisee is under no obligation to provide insurance for the property left after
286 one hundred eighty days] **The amount remaining to be paid on any**
287 **equipment or service contracts required by or leased from the**
288 **franchisor or a subsidiary or company affiliated with or controlled or**
289 **recommended by the franchisor;**

290 (g) **If the dealer leases the dealership facilities, then the**
291 **franchisor shall be liable for two years payment of the gross rent or the**
292 **remainder of the term of the lease, whichever is less. If the dealership**
293 **facilities are not leased, then the franchisor shall be liable for the**
294 **equivalent of two years payment of gross rent. This paragraph shall**
295 **not apply when the termination, cancellation, or nonrenewed line was**
296 **pursuant to good cause related to a conviction and imprisonment for**
297 **a felony involving moral turpitude that is substantially related to the**
298 **qualifications, function, or duties of a franchisee. Gross rent is the**
299 **monthly rent plus the monthly cost of insurance and taxes. Such**
300 **reasonable rent shall be paid only to the extent that the dealership**
301 **premises are recognized in the franchise and only if they are used**

302 solely for performance in accordance with the franchise and not
303 substantially in excess of those facilities recommended by the
304 manufacturer or distributor. If the facility is used for the operations
305 of more than one franchise, the gross rent compensation shall be
306 adjusted based on the planning volume and facility requirements of the
307 manufacturers, distributors, or branch or division thereof. This
308 paragraph shall not apply to a termination, cancellation, or nonrenewal
309 due to a sale of the assets or stock of the motor vehicle dealership;

310 (h) The franchisor shall pay to the franchisee the amount
311 remaining to be paid on any leases of computer hardware or software
312 that is used to manage and report data to the manufacturer or
313 distributor for financial reporting requirements and the amount
314 remaining to be paid on any manufacturer or distributor required
315 equipment leases, service contracts, and sign leases;

316 (i) In addition to the other payments set forth in this section, if
317 a termination, cancellation, or nonrenewal is premised upon the
318 franchisor discontinuing the sale in this state of a line-make that was
319 the subject of the franchise, then the franchisor shall also be liable to
320 the franchisee for an amount at least equivalent to the fair market
321 value of the franchisee's goodwill for the discontinued line-makes of the
322 motor vehicle franchise on:

323 a. The date immediately preceding the date the franchisor
324 announces the action which results in termination, cancellation, or
325 nonrenewal; or

326 b. The day twelve months prior to the date on which the notice
327 of termination, cancellation, or nonrenewal is issued, whichever
328 amount is higher. At the franchisee's option, the franchisor may avoid
329 paying fair market value of the motor vehicle franchise to the
330 franchisee under this paragraph if the franchisor, or another motor
331 vehicle franchisor pursuant to an agreement with the franchisor, offers
332 the franchisee a replacement motor vehicle franchise with terms
333 substantially similar to that offered to other same line-make dealers;

334 (j) The franchisor shall pay the franchisee all amounts incurred
335 by the franchisee to upgrade its facilities at the request, suggestion, or
336 requirement of the franchisor within two years prior to receipt of a
337 notice of termination or nonrenewal; and

338 (k) The franchisor shall pay the franchisee the amounts specified

339 **in this subdivision along with any other amounts that may be due to**
340 **the franchisee under the franchise agreement within ten days after the**
341 **tender of the property subject to the franchisee providing evidence of**
342 **good and clear title upon return of the property to the franchisor. The**
343 **franchisor shall remove the property within thirty days after the**
344 **tender of the property from the franchisee's property. Unless previous**
345 **arrangements have been made and agreed upon, the franchisee is under**
346 **no obligation to provide insurance for the property left after thirty**
347 **days;**

348 (14) To prevent or refuse to honor the succession to a franchise or
349 franchises by any legal heir or devisee under the will of a franchisee, under any
350 written instrument filed with the franchisor designating any person as the
351 person's successor franchisee, or pursuant to the laws of descent and distribution
352 of this state; provided:

353 (a) Any designated family member of a deceased or incapacitated
354 franchisee shall become the succeeding franchisee of such deceased or
355 incapacitated franchisee if such designated family member gives the franchisor
356 written notice of such family member's intention to succeed to the franchise or
357 franchises within one hundred twenty days after the death or incapacity of the
358 franchisee, and agrees to be bound by all of the **lawful** terms and conditions of
359 the current franchise agreement, and the designated family member
360 **substantially** meets the current **lawful and** reasonable criteria generally
361 applied by the franchisor in qualifying franchisees. **In order for the**
362 **franchisor to claim that any such reasonable criteria are generally**
363 **applied by the franchisor in qualifying franchisees, it shall have**
364 **previously filed a copy of those criteria with the department of revenue**
365 **with its application for license and provided a copy to the proposed**
366 **successor franchisee within ten days after receiving the proposed**
367 **successor franchisee's notice.** A franchisee may request, at any time, that
368 the franchisor provide a copy of such criteria generally applied by the franchisor
369 in qualifying franchisees. **Failure of the franchisor to provide a copy of**
370 **those criteria to the franchisee within ten days after receiving the**
371 **request shall prohibit the franchisor from using such criteria to deny**
372 **the request by the proposed successor franchisee;**

373 (b) The franchisor may request from a designated family member such
374 personal and financial data as is reasonably necessary to determine whether the

375 existing franchise agreement should be honored. The designated family member
376 shall supply the personal and financial data promptly upon the request;

377 (c) If the designated family member does not **substantially** meet the
378 reasonable **and lawful** criteria generally applied by the franchisor in qualifying
379 franchisees, the discontinuance of the current franchise agreement shall take
380 effect not less than ninety days after the date the franchisor serves the required
381 notice on the designated family member pursuant to subsection 4 of section
382 407.822;

383 (d) The provisions of this subdivision shall not preclude a franchisee from
384 designating any person as the person's successor by written instrument filed with
385 the franchisor, and if such an instrument is filed, it alone shall determine the
386 succession rights to the management and operation of the franchise; and

387 (e) For determining whether good cause exists, the administrative hearing
388 commission shall take into consideration [the existing] **all** circumstances,
389 including, but not limited to, the following factors:

390 a. Whether the franchise agreement specifically permits the franchisor to
391 approve or disapprove any successor;

392 b. Whether the proposed successor **substantially** fails to satisfy [any]
393 **the material** standards of the franchisor which are in fact normally relied upon
394 by the franchisor prior to the successor entering into a franchise, and which
395 relate to the [proposed management or ownership of the franchise operation or
396 to the] qualification, capitalization, integrity or character of the proposed
397 successor and which are **lawful and** reasonable;

398 c. [Injury to the public welfare] **The amount of the business**
399 **transacted by the franchisee;**

400 d. The [harm to the franchisor] **investments in and the obligations**
401 **incurred by the franchisee, including but not limited to goodwill in the**
402 **performance of its duties under the franchise agreement, together with**
403 **the duration and permanency of such investments and obligations;**

404 e. **The investments and obligations that the proposed successor**
405 **franchisee is prepared to make in the business;**

406 f. **The potential for harm and inconvenience to consumers as a**
407 **result of the franchisor's decision;**

408 g. **The franchisor's failure to honor its requirements under the**
409 **franchise;**

410 h. **The potential harm to the area that the franchisee serves,**

411 **including, but not limited to, the franchisee's contributions to**
412 **communities and charities it supports;**

413 **i. The ability or willingness of the franchisee to continue in the**
414 **business if the proposed transfer is not permitted;**

415 **j. The demographic and geographic characteristics of the area**
416 **the franchisee serves;**

417 (15) To coerce, [threaten, intimidate or] **attempt to coerce, require, or**
418 **attempt to** require a franchisee under any condition affecting or related to a
419 franchise agreement, [or] to waive, limit or disclaim a right that the franchisee
420 may have pursuant to the provisions of sections 407.810 to 407.835. Any
421 contracts or agreements which contain such provisions shall be deemed against
422 the public policy of the state of Missouri and are void and unenforceable. Nothing
423 in this section shall prohibit voluntary settlement agreements **entered into**
424 **after a dispute arises that specifically identifies the provisions of**
425 **sections 407.810 to 407.835 that the franchisee is waiving, limiting, or**
426 **disclaiming;**

427 (16) To initiate any act enumerated in this [subsection] **section** on
428 grounds that it has advised a franchisee of its intention to discontinue
429 representation at the time of a franchisee change or require any franchisee to
430 enter into a site control agreement as a condition to initiating any act
431 enumerated in this [subsection] **section**. Such condition shall not be construed
432 to nullify an existing site control agreement for a franchisee's property;

433 (17) To require, **attempt to require**, coerce, or attempt to coerce any
434 franchisee in this state to refrain from, or to terminate, cancel, or refuse to
435 continue any franchise based upon participation by the franchisee in the
436 management of, investment in or the acquisition of a franchise for the sale of any
437 other line of new vehicle or related products in the same or separate facilities as
438 those of the franchisor. This subdivision does not apply unless the franchisee
439 maintains a reasonable line of credit for each make or line of new vehicle, the
440 franchisee remains in **substantial** compliance with the franchise and any
441 reasonable facilities requirements of the franchisor, and no change is made in the
442 principal management of the franchisee. The reasonable facilities requirement
443 shall not include any requirement that a franchisee establish or maintain
444 exclusive facilities, personnel, or display space, when such requirements [or any
445 of them] would not otherwise be justified by reasonable business
446 considerations. Before the addition of a line-make to the dealership facilities the

447 franchisee **[must]** **shall** first request consent of the franchisor, if required by the
448 franchise agreement. Any decision of the franchisor with regard to dualing of two
449 or more franchises shall be granted or denied within **[sixty]** **thirty** days of a
450 written request from the **[new vehicle dealer]** **franchisee**. The **[franchiser's]**
451 **franchisor's** failure to respond timely to a dualing request shall be deemed to
452 be approval of the franchisee's request;

453 (18) To fail or refuse to offer to sell to all franchisees for a line-make
454 **reasonable quantities of** every motor vehicle sold or offered for sale to any
455 franchisee of that line-make[. However, the failure to deliver any such motor
456 vehicle shall not be considered a violation of this section if the failure is not
457 arbitrary, or is due to a lack of manufacturing capacity or to a strike or labor
458 difficulty, a shortage of materials, a freight embargo or other cause over which
459 the franchisor has no control. A franchisor may impose reasonable requirements
460 on the franchisee including, but not limited to, the purchase of reasonable
461 quantities of advertising materials, the purchase of special tools required to
462 properly service a motor vehicle, the undertaking of sales person or service person
463 training related to the motor vehicle, the meeting of reasonable display and
464 facility requirements as a condition of receiving a motor vehicle, or other
465 reasonable requirements; provided, that if a franchisor requires a franchisee to
466 purchase essential service tools with a purchase price in the aggregate of more
467 than seventy-five hundred dollars in order to receive a particular model of new
468 motor vehicle, the franchisor shall upon written request provide such franchisee
469 with a good faith estimate in writing of the number of vehicles of that particular
470 model that the franchisee will be allocated during that model year in which the
471 tools are required to be purchased];

472 (19) **To directly or indirectly condition the awarding of a**
473 **franchise to a prospective franchisee, the addition of a line-make or**
474 **franchise to an existing franchisee, the renewal of a franchise of an**
475 **existing franchisee, the approval of the relocation of an existing**
476 **franchisee's facility, or the approval of the sale or transfer of the**
477 **ownership of a franchise on the willingness of a franchisee, proposed**
478 **franchisee, or owner of an interest in the dealership facility to enter**
479 **into a site control agreement or exclusive use agreement. For purposes**
480 **of this subdivision, the terms "site control agreement" and "exclusive**
481 **use agreement" include any agreement that has the effect of either**
482 **requiring that the franchisee establish or maintain exclusive dealership**

483 facilities or restricting the ability of the franchisee, or the ability of the
484 franchisee's lessor in the event the dealership facility is being leased,
485 to transfer, sell, lease, or change the use of the dealership premises,
486 whether by sublease, lease, collateral pledge of lease, right of first
487 refusal to purchase or lease, option to purchase, option to lease, or
488 other similar agreement, regardless of the parties to such
489 agreement. Any provision contained in any agreement entered into on
490 or after August 28, 2010, that is inconsistent with the provisions of this
491 subdivision shall be voidable at the election of the affected franchisee,
492 prospective franchisee, or owner of an interest in the dealership
493 facility;

494 (20) Except for the grounds listed in subdivision (1) of subsection
495 4 of section 407.822, any franchisor terminating, canceling, not
496 continuing, or not renewing a franchise agreement pursuant to the
497 MVFP act shall:

498 (a) Authorize the franchisee to continue servicing and supplying
499 parts, including service and parts pursuant to a warranty issued by the
500 franchisor for any goods or services marketed by the franchisee
501 pursuant to the motor vehicle franchise for a period of not less than
502 five years from the effective date of the termination, cancellation, or
503 nonrenewal; and

504 (b) Continue to reimburse the franchisee for warranty parts and
505 service in an amount and on terms not less favorable than those in
506 effect prior to the termination, cancellation, or nonrenewal;

507 (21) Except for the grounds listed in subdivision (1) of subsection
508 4 of section 407.822, prior to the issuance of any notice of intent to
509 terminate a franchise agreement under the MVFP act, the franchisor
510 shall provide the franchisee with no less than one hundred eighty days
511 written notice of the specific asserted grounds for
512 termination. Thereafter, the franchisee shall have one hundred eighty
513 days to cure the asserted grounds for termination, provided the
514 grounds are both reasonable and of material significance to the
515 franchise relationship. If the franchisee fails to cure the asserted
516 grounds for termination by the end of the cure period, then the
517 franchisor may give the sixty day notice required by subsection 4 of
518 section 407.822 if it intends to terminate the franchise;

519 (22) To require, attempt to require, coerce or attempt to coerce

520 a franchisee, by franchise agreement or otherwise, or as a condition to
521 the renewal or continuation of a franchise agreement, to:

522 (a) Exclude from the use of the franchisee's facilities a
523 dealership for which the franchisee has a franchise agreement to utilize
524 the facilities; or

525 (b) Materially change the franchisee's facilities or method of
526 conducting business if the change would impose substantial or
527 unreasonable financial hardship on the business of the franchisee;

528 (23) To fail to perform or cause to be performed any written
529 warranties made with respect to any motor vehicle or parts thereof;

530 (24) To coerce, attempt to coerce, require, or attempt to require
531 any franchisee to perform or allow to be performed any act that could
532 be financially detrimental to the franchisee or that would impair the
533 franchisee's goodwill or to enter into any agreement with a
534 manufacturer, distributor, importer, common entity, or any person
535 affiliated with or controlled by the franchisor that would be financially
536 detrimental to the franchisee or impair the franchisee's goodwill, by
537 threatening to cancel or not renew any franchise between a franchisor
538 and said franchisee;

539 (25) To withhold, reduce, or delay unreasonably or without just
540 cause services contracted for by franchisees;

541 (26) To coerce, attempt to coerce, require or attempt to require
542 any franchisee to provide installment financing with a specified
543 financial institution;

544 (27) To require, attempt to require, coerce, or attempt to coerce
545 any franchisee to close or change the location of the franchisee, or to
546 make any substantial alterations to the franchise premises or facilities
547 when doing so would be unreasonable under the current market and
548 economic conditions. Prior to suggesting the need for any such action,
549 the franchisor shall provide the franchisee with written assurance of
550 the minimum number of the models of new motor vehicles that the
551 franchisor will supply to the franchisee during a reasonable time
552 period, not less than five years, so the franchisee may determine if it
553 is a sufficient supply of motor vehicles so as to justify such changes, in
554 light of the current market and reasonably foreseeable projected and
555 economic conditions. A franchisor may, however, consistent with the
556 franchisor's allocation obligations at law and to its other same line-

557 make franchisees, provide to a franchisee a commitment to supply
558 additional vehicles or provide a loan or grant of money as an
559 inducement for the franchisee to expand, improve, remodel, alter, or
560 renovate its facilities if the provisions of the commitment are contained
561 in writing and are voluntarily agreed to by the franchisee and are made
562 available, on substantially similar terms, to any of the franchisor's
563 other same line-make franchisees in this state who voluntarily agree to
564 make a substantially similar facility expansion, improvement,
565 remodeling, alteration, or renovation. A franchisor or its common
566 entity or an entity controlled by or affiliated with the franchisor may
567 not take or threaten to take any action that is unfair or adverse to a
568 franchisee who does not enter into an agreement with the franchisor
569 pursuant to this subdivision. This subdivision does not affect any
570 contract between a franchisor and any of its franchisees regarding
571 relocation, expansion, improvement, remodeling, renovation, or
572 alteration which exists on August 28, 2010;

573 (28) To authorize or permit a person to perform warranty service
574 repairs on motor vehicles unless the person is a franchisee with whom
575 the manufacturer has entered into a franchise agreement for the sale
576 and service of the manufacturer's motor vehicles, unless authorized by
577 subdivision (20) of this section;

578 (29) To discriminate between or refuse to offer to its same line-
579 make franchisees all models manufactured for that line-make based
580 upon unreasonable sales and service standards;

581 (30) To fail to make practically available any incentive, rebate,
582 bonus, or other similar benefit to a franchisee that is offered to another
583 franchisee of the same line-make within this state;

584 (31) To condition a franchise agreement on improvements to a
585 facility unless reasonably required by the technology of a motor vehicle
586 being sold at the facility;

587 (32) To condition the sale, transfer, relocation, or renewal of a
588 franchise agreement, or to condition sales, services, parts, or finance
589 incentives, upon site control or an agreement to renovate or make
590 improvements to a facility; except that voluntary acceptance of such
591 conditions by the franchisee shall not constitute a violation;

592 (33) Failing to offer to all of its franchisees of the same line-make
593 any consumer rebates, dealer incentives, price or interest rate

594 reduction, or finance terms that the franchisor offers or advertises, or
595 allows its franchisees of the same line-make to offer or advertise;

596 (34) Offering rebates, cash incentives, or other promotional items
597 for the sale of a vehicle by its franchisees unless: the same rebate, cash
598 incentive, or promotion is offered to all of its franchisees of the same
599 line-make; and any rebate, cash incentive, or promotion that is based
600 on the sale of an individual vehicle is not increased for meeting a
601 performance standard;

602 (35) Discriminating among its franchisees in any program that
603 provides assistance to its franchisees, including internet listings, sales
604 leads, warranty policy adjustments, marketing programs, and dealer
605 recognition programs;

606 (36) A franchisor giving any incentive payment, reimbursement
607 payment, cash, gift, or anything of value totaling more than two
608 hundred dollars in any calendar year directly to an employee of the
609 franchisee. Any incentive payment, reimbursement payment, cash, gift,
610 or anything of value from a franchisor to an employee shall be made to
611 the franchisee who shall disburse the funds to the employee as part of
612 the payroll process after making the appropriate deductions. The
613 franchisee may retain a reasonable portion of any payments under this
614 subsection to cover the cost of processing the payments;

615 (37) To fail to include in any franchise with a franchisee the
616 following language: "If any provision herein contravenes the laws or
617 regulations of any state or other jurisdiction wherein this agreement
618 is to be performed, or denies access to the procedures, forums, or
619 remedies provided for by such laws or regulations, such provision shall
620 be deemed to be modified to conform to such laws or regulations, and
621 all other terms and provisions shall remain in full force," or words to
622 that effect;

623 (38) To withhold, reduce, or delay unreasonably or without just
624 cause delivery of motor vehicle parts and accessories, commodities, or
625 moneys due franchisees;

626 (39) To use or consider the performance of a franchisee relating
627 to the sale of the franchisor's vehicles or the franchisee's ability to
628 satisfy any minimum sales or market share quota or responsibility
629 relating to the sale of the new vehicles in determining:

630 (a) The franchisee's eligibility to purchase program, certified, or

631 other used motor vehicles from the franchisor;

632 (b) The volume, type, or model of program, certified, or other
633 used motor vehicles that a franchisee is eligible to purchase from the
634 franchisor;

635 (c) The price of any program, certified, or other used motor
636 vehicle that the franchisee purchased from the franchisor; or

637 (d) The availability or amount of any discount, credit, rebate, or
638 sales incentive that the franchisee is eligible to receive from the
639 franchisor, for the purpose of any program, certified, or other used
640 motor vehicle offered for sale by the franchisor;

641 (40) To refuse to allocate, sell, or deliver motor vehicles; to
642 charge back or withhold payments or other things of value for which
643 the franchisee is otherwise eligible under a sales promotion, program,
644 or contest; to prevent a franchisee from participating in any promotion,
645 program, or contest; or to take or threaten to take any adverse action
646 against a franchisee, including charge-backs, reducing vehicle
647 allocations, or terminating or threatening to terminate a franchise
648 because the franchisee sold or leased a motor vehicle to a customer
649 who exported the vehicle to a foreign country or who resold the
650 vehicle, unless the franchisor proves that the franchisee knew or
651 reasonably should have known that the customer intended to export or
652 resell the motor vehicle. There is a rebuttable presumption that the
653 franchisee neither knew nor reasonably should have known of its
654 customer's intent to export or resell the vehicle if the vehicle is titled
655 or registered in any state in this country. A franchisor may not take
656 any action against a franchisee, including reducing its allocations or
657 supply of motor vehicles to the franchisee, or charging back a
658 franchisee for an incentive payment previously paid, unless the
659 franchisor first meets in person, by telephone, or video conference with
660 an officer or other designated employee of the franchisee. At such
661 meeting, the franchisor shall provide a detailed explanation, with
662 supporting documentation, as to the basis for its claim that the
663 franchisee knew or reasonably should have known of the customer's
664 intent to export or resell the motor vehicle. Thereafter, the franchisee
665 shall have a reasonable period, commensurate with the number of
666 motor vehicles at issue, but not less than fifteen days, to respond to the
667 franchisor's claims. If, following the franchisee's response and

668 completion of all internal dispute resolution processes provided
669 through the franchisor, the dispute remains unresolved, the franchisee
670 may file a complaint with the administrative hearing commission
671 within thirty days after receipt of a written notice from the franchisor
672 that it still intends to take adverse action against the franchisee with
673 respect to the motor vehicles still at issue. If a complaint is timely
674 filed, the administrative hearing commission shall notify the franchisor
675 of the filing of the complaint, and the franchisor may not take any
676 action adverse to the franchisee until the administrative hearing
677 commission renders a final determination, which is not subject to
678 further appeal, that the franchisor's proposed action is in compliance
679 with the provisions of this subdivision. In any hearing pursuant to this
680 subdivision, the franchisor has the burden of proof on all issues raised
681 by this subdivision;

682 (41) To require a franchisee to allow customer information
683 obtained by a franchisee to be used by any person other than those
684 required to administer a franchisor's warranty and notice
685 obligations. Such customer information obtained by a franchisee is
686 owned by the franchisee;

687 (42) To mandate the use by the franchisee, or condition access
688 to any services offered by the franchisor on the franchisee's use, or
689 condition the acceptance of an order of any product or service offered
690 by the franchisor on the franchisee's use, or condition the acceptance
691 of any claim for payment from the franchisee on the franchisee's use,
692 or condition the franchisee's participation in any program offered by
693 the franchisor, a common entity or an entity controlled by the
694 franchisor on the franchisee's use of any form, equipment, part, tool,
695 furniture, fixture, data processing program or equipment, automotive
696 service equipment, or sign from the franchisor, a vendor recommended
697 by the franchisor, a common entity or an entity controlled by the
698 franchisor if the franchisee is able to obtain the identical or reasonably
699 equivalent product from another vendor;

700 (43) Establishing any performance standard or program for
701 measuring franchisee performance that may have a material impact on
702 a franchisee that is not fair, reasonable, and equitable, or applying any
703 such standard or program to a franchisee in a manner that is not fair,
704 reasonable, and equitable. Within five days of a request of a franchisee,

705 a franchisor shall disclose in writing to the franchisee a description of
706 how a performance standard or program is designed and all relevant
707 information used in the application of the performance standard or
708 program to that franchisee;

709 (44) Establishing or implementing a plan or system for the
710 allocation, scheduling, or delivery of new motor vehicles, parts, or
711 accessories to its franchisees that is not fair, reasonable, and equitable
712 or modifying an existing plan or system so as to cause the plan or
713 system to be unreasonable, unfair, or inequitable. Within five days of
714 any request of a franchisee, the franchisor shall disclose in writing to
715 the franchisee the basis upon which new motor vehicles, parts, and
716 accessories are allocated, scheduled, and delivered among the
717 franchisor's franchisees of the same line-make; and

718 (45) To violate any other provision of the MVFP act that
719 adversely impacts a franchisee.

407.828. 1. Notwithstanding any provision in a franchise to the
2 contrary, each franchisor shall specify in writing to each of its franchisees in
3 this state and the department of revenue the franchisee's obligations for
4 preparation, delivery, and warranty service on its products. The franchisor shall
5 fairly and reasonably compensate the franchisee for preparation, delivery,
6 and warranty service required of the franchisee by the franchisor. The franchisor
7 shall provide the franchisee and the department of revenue with the schedule
8 of compensation to be paid to the franchisee for parts, [work] labor, and service,
9 and the time allowance for the performance of the [work] labor and service for
10 the franchisee's obligations for preparation, delivery, and warranty
11 service.

12 2. The schedule of compensation shall include reasonable compensation
13 for diagnostic work, as well as repair service and labor[.] for the franchisee to
14 meet its obligations for preparation, delivery, and warranty
15 service. The schedule shall also include reasonable and adequate time
16 allowances for the diagnosis and performance of preparation, delivery, and
17 warranty [work and] service [shall be reasonable and adequate for the work] to
18 be performed in a careful and professional manner. In the determination
19 of what constitutes reasonable compensation for labor and service pursuant
20 to this section, the principal factor to be given consideration shall be the
21 prevailing wage rates being [paid] charged for similar labor and service by

22 franchisees in the [community] **market** in which the franchisee is doing
23 business, and in no event shall the compensation of a franchisee for [warranty]
24 labor **and service** be less than the rates charged by the franchisee for [like]
25 **similar labor and** service to retail customers for nonwarranty **labor and**
26 service [and repairs], provided that such rates are reasonable. **The primary**
27 **factor in determining a fair and reasonable compensation for parts**
28 **under this section shall be the prevailing amount charged for similar**
29 **parts by other franchisees in the market in which the franchisee is**
30 **doing business and the fair and reasonable compensation for parts shall**
31 **not be less than the amount charged by the franchisee for similar parts**
32 **to retail customers for nonwarranty parts.**

33 3. A franchisor shall [not:

34 (1) Fail to] perform [any] **all** warranty [obligation;

35 (2) Fail to] **obligations, including recall notices**; include in written
36 notices of franchisor recalls to new motor vehicle owners and franchisees the
37 expected date by which necessary parts and equipment will be available to
38 franchisees for the correction of the defects; [or

39 (3) Fail to] **and reasonably** compensate any of the franchisees in this
40 state for repairs [effected] **required** by the recall. **Reasonable compensation**
41 **for parts, labor, and service shall be determined pursuant to subsection**
42 **2 of this section.**

43 4. [All claims made by a franchisee pursuant to this section for labor and
44 parts shall be paid within thirty days after their approval. All claims shall be
45 either approved or disapproved by the franchisor within thirty days after their
46 receipt on a proper form generally used by the franchisor and containing the
47 usually required information therein. Any claims not specifically disapproved in
48 writing within thirty days after the receipt of the form shall be considered to be
49 approved and payment shall be made within thirty days. A claim which has been
50 approved and paid may not be charged back to the franchisee unless the
51 franchisor can show that the claim was fraudulent, false, or unsubstantiated,
52 except that a charge back for false or fraudulent claims shall not be made more
53 than two years after payment, and a charge back for unsubstantiated claims shall
54 not be made more than fifteen months after payment. A franchise shall maintain
55 all records of warranty repairs, including the related time records of its
56 employees, for at least two years following payment of any warranty claim.] **No**
57 **franchisor shall require a franchisee to submit a claim authorized**

58 **under this section sooner than ninety days after the franchisee**
59 **completes the preparation, delivery, or warranty service authorizing**
60 **the claim for preparation, delivery, or warranty service. All claims**
61 **made by a franchisee pursuant to this section shall be paid within**
62 **fifteen days after their approval. All claims shall be either approved**
63 **or disapproved by the franchisor within thirty days after their receipt**
64 **on a proper form generally used by the franchisor and containing the**
65 **usually required information therein. Any claims not specifically**
66 **disapproved in writing within thirty days after the receipt of the form**
67 **shall be considered to be approved and payment shall be made within**
68 **fifteen days thereafter. A franchisee shall not be required to maintain**
69 **records of any preparation, delivery, or warranty repair, including the**
70 **related time records of its employees, for more than one year following**
71 **payment of any claim; and, a franchisee shall not be required to**
72 **maintain defective parts for more than thirty days after submission of**
73 **a claim.**

74 5. A franchisor shall compensate the franchisee for franchisor-sponsored
75 sales or service promotion events, **including but not limited to, rebates,**
76 programs, or activities in accordance with established **written** guidelines for
77 such events, programs, or activities, **which guidelines shall be provided to**
78 **each franchisee and the department of revenue.**

79 6. No franchisor shall require a franchisee to submit a claim
80 **authorized under subsection 5 of this section sooner than ninety days**
81 **after the franchisee becomes eligible to submit the claim.** All claims
82 made by a franchisee pursuant to subsection 5 **of this section** for promotion
83 events, **including but not limited to rebates,** programs, or activities shall be
84 paid within ten days after their approval. All claims shall be either approved or
85 disapproved by the franchisor within thirty days after their receipt on a proper
86 form generally used by the franchisor and containing the usually required
87 information therein. Any claim not specifically disapproved in writing within
88 thirty days after the receipt of this form shall be considered to be approved and
89 payment shall be made within [thirty] **ten** days. [The franchisor has the right
90 to charge back any claim for twelve months after the later of either the close of
91 the promotion event, program, or activity, or the date of the payment.]

92 7. **In calculating the retail rate customarily charged by the**
93 **franchisee for parts, service, and labor, the following work shall not be**

94 included in the calculation:

95 (1) Repairs for franchisor, manufacturer, or distributor special
96 events, specials, or promotional discounts for retail customer repairs;

97 (2) Parts sold at wholesale;

98 (3) Engine assemblies and transmission assemblies;

99 (4) Routine maintenance not covered under any retail customer
100 warranty, such as fluids, filters, and belts not provided in the course of
101 repairs;

102 (5) Nuts, bolts, fasteners, and similar items that do not have an
103 individual part number;

104 (6) Tires; and

105 (7) Vehicle reconditioning.

106 8. If a franchisor, manufacturer, importer, or distributor
107 furnishes a part or component to a franchisee, at no cost, to use in
108 performing repairs under a recall, campaign service action, or
109 warranty repair, the franchisor shall compensate the franchisee for the
110 part or component in the same manner as warranty parts compensation
111 under this section by compensating the franchisee at the average
112 markup on the cost for the part or component as listed in the price
113 schedule of the franchisor, manufacturer, importer, or distributor, less
114 the cost for the part or component.

115 9. A franchisor may not require a franchisee to establish the
116 retail rate customarily charged by the franchisee for parts, service, or
117 labor by an unduly burdensome or time consuming method or by
118 requiring information that is unduly burdensome or time consuming to
119 provide, including, but not limited to, part-by-part or transaction-by-
120 transaction calculations. A franchisee may not request a franchisor to
121 approve a different labor rate or parts rate more than more than twice
122 in one calendar year.

123 10. If a franchisee submits any claim under this section to a
124 franchisor that is incomplete, inaccurate, or lacking any information
125 usually required by the franchisor, then the franchisor shall promptly
126 notify the franchisee, and the time limit to submit the claim shall be
127 extended for a reasonable length of time, not less than five business
128 days following notice by the franchisor to the franchisee, for the
129 franchisee to provide the complete, accurate, or lacking information to
130 the franchisor.

131 11. (1) A franchisor may only audit warranty, sales, or incentive
132 claims and charge-back to the franchisee unsubstantiated claims for a
133 period of six months following payment, subject to all of the provisions
134 of this section. Furthermore, if the franchisor has good cause to
135 believe that a franchisee has submitted fraudulent claims, then the
136 franchisor may only audit suspected fraudulent warranty, sales, or
137 incentive claims and charge-back to the franchisee fraudulent claims
138 for a period of one year following payment, subject to all provisions of
139 this section.

140 (2) A franchisor shall not require documentation for warranty,
141 sales, or incentive claims more than twelve months after the claim was
142 paid.

143 (3) Prior to requiring any charge-back, reimbursement, or credit
144 against a future transaction arising out of an audit, the franchisor shall
145 submit written notice to the franchisee along with a copy of its audit
146 and the detailed reason for each intended charge-back, reimbursement,
147 or credit. A franchisee may file a complaint with the administrative
148 hearing commission within thirty days after receipt of any such written
149 notice challenging such action. If a complaint is filed within the thirty
150 days, then the charge-back, reimbursement, or credit shall be stayed
151 pending a hearing and determination of the matter pursuant to section
152 408.822. If the administrative hearing commission determines that any
153 portion of the charge-back, reimbursement, or credit is improper, then
154 that portion of the charge-back, reimbursement, or credit shall be void
155 and not allowed.

 407.831. 1. Notwithstanding the terms of any franchise
2 agreement to the contrary, each franchisor, including any successor
3 manufacturer of that franchisor, shall indemnify and hold harmless
4 each franchisee obtaining a new motor vehicle from the franchisor from
5 and against any liability, including reasonable attorney's fees, expert
6 witness fees, court costs, and other expenses incurred in the litigation,
7 so long as such fees and costs are reasonable, that the franchisee may
8 be subjected to by the purchaser of the vehicle because of damage to
9 the motor vehicle that occurred before delivery of the vehicle to the
10 franchisee and that was not disclosed in writing to the franchisee prior
11 to delivery of the vehicle. This indemnity obligation of the franchisor
12 applies regardless of whether the damage falls below the six percent

13 threshold under subsection 2 of this section. The failure of the
14 franchisor to indemnify and hold harmless the franchisee is a violation
15 of this section.

16 2. If the cost of repairing damage to a new motor vehicle that
17 occurs before delivery to the franchisee's location exceeds six percent
18 of the manufacturer's suggested retail price, as measured by retail
19 repair costs, the franchisee may reject or, if title has passed to the
20 franchisee, require the franchisor who delivered the vehicle to
21 repurchase the vehicle within ten business days after delivery, unless
22 the damage occurred during shipment and the method of
23 transportation, carrier, or transporter of the motor vehicle was
24 designated by the franchisee. Upon repurchase, the franchisor shall be
25 subrogated to all of the franchisee's rights against the carrier or
26 transporter of the motor vehicle regarding damage. The cost of
27 repairing glass, tires, bumpers, moldings, and audio equipment with
28 identical manufacturer's original equipment shall not be included in
29 determining the cost of repairing damage under this subsection.

407.833. 1. Notwithstanding the term of any franchise to the
2 contrary, a franchisor may not modify a franchise during the term of
3 the franchise or upon its renewal if the modification substantially and
4 adversely affects the franchisee's rights, obligations, investment, or
5 return on investment without giving ninety days written notice of the
6 proposed modification to the franchisee and the director of revenue
7 unless the modification is required by law or court order. Within the
8 ninety-day notice period the franchisee may file with the
9 administrative hearing commission and serve upon the franchisor a
10 complaint for a determination of whether there is good cause for
11 permitting the proposed modification and whether the proposed
12 modification violates any provision of the MVFP act. The
13 administrative hearing commission shall promptly schedule a hearing
14 and decide the matter. Multiple complaints pertaining to the same
15 proposed franchise modification shall be consolidated for hearing. The
16 proposed franchise modification may not take effect pending the
17 determination of the matter.

18 2. The burden of proof shall be on the franchisor, except that the
19 burden of proof with regard to the factor set forth in subdivision (3) of
20 this subsection shall be on the franchisee, and the administrative

21 **hearing commission may consider any relevant factor including:**

22 **(1) The reasons for the proposed modification;**

23 **(2) Whether the proposed modification is applied to or affects all**
24 **franchisees in a nondiscriminating manner;**

25 **(3) The degree to which the proposed modification will have a**
26 **substantial and adverse effect upon the franchisee's rights, investment,**
27 **or return on investment;**

28 **(4) Whether the proposed modification is in the public interest;**

29 **(5) The degree to which the proposed modification is necessary**
30 **to the orderly and profitable distribution of products by the franchisor;**

31 **(6) Whether the proposed modification is offset by other**
32 **modifications beneficial to the franchisee;**

33 **(7) Whether the proposed modification violates any provision of**
34 **the MVFP act.**

35 **3. The decision of the administrative hearing commission shall**
36 **be in writing and shall contain findings of fact and a determination of**
37 **whether there is good cause for permitting the proposed modification**
38 **and whether the proposed modification violates any provision of the**
39 **MVFP act. The administrative hearing commission shall deliver copies**
40 **of the decision to the parties personally or by registered mail. If the**
41 **administrative hearing commission determines that there is not good**
42 **cause for permitting the proposed modification or that the proposed**
43 **modification violates any provision of the MVFP act, then the**
44 **franchisor shall not proceed with the proposed modification.**

45 **4. For purposes of this section, the term "modification" includes,**
46 **but is not limited to, any change, amendment, supplement, deletion,**
47 **addition, or replacement of any provision of the franchise.**

407.835. 1. **Notwithstanding any provision of the franchise to the**
2 **contrary, in addition to the administrative relief provided in sections 407.810**
3 **to 407.835, any [motor vehicle] franchisee may bring an action in any court of**
4 **competent jurisdiction against a [motor vehicle] franchisor [with whom the**
5 **franchisee has a franchise], manufacturer, distributor, or importer for an**
6 **act or omission which constitutes [an unlawful practice as defined in section**
7 **407.825] a violation of a franchise or the MVFP act to recover actual**
8 **damages sustained by reason thereof, plus actual and reasonable expenses**
9 **of litigation, including, but not limited to, depositions, transcripts,**
10 **expert witnesses, and attorney fees, and, where appropriate, such [motor**

11 vehicle] franchisee shall be entitled to injunctive relief, but the remedies set forth
12 in this section shall not be deemed exclusive and shall be in addition to any other
13 remedies permitted by law **or equity.**

14 **2. In any action wherein a franchisor, manufacturer, distributor,**
15 **or importer has been found liable in damages to any franchisee for a**
16 **willful violation of a franchise or the MVFP act, then any franchisee so**
17 **damaged shall be entitled to recover three times the amount of actual**
18 **damages sustained thereby, plus actual and reasonable expenses of**
19 **litigation, including, but not limited to, depositions, transcripts, expert**
20 **witnesses, and attorney fees, and, where appropriate, such motor**
21 **vehicle franchisee shall be entitled to injunctive relief, but the**
22 **remedies set forth in this section shall not be deemed exclusive and**
23 **shall be in addition to any other remedies permitted by law or equity.**

24 **3. In the event of a dispute between a franchisee and a**
25 **franchisor:**

26 **(1) At the option of the franchisee, venue of any civil action,**
27 **other than a proceeding before the administrative hearing commission,**
28 **shall be proper in the Circuit Court of Cole County or the circuit court**
29 **in the judicial circuit where the franchisee resides or has its principal**
30 **place of business;**

31 **(2) Missouri law shall govern the franchise and the dispute, both**
32 **substantively and procedurally;**

33 **(3) No mandatory arbitration provision in any franchise shall be**
34 **valid;**

35 **(4) No waiver of jury trial in any franchise shall be valid;**

36 **(5) No provision in any franchise providing for a franchisee to**
37 **pay a franchiser's attorney fees, mediation costs, arbitration costs, or**
38 **litigation costs shall be valid;**

39 **(6) No provision in any franchise providing for mediation,**
40 **arbitration, or litigation to occur outside this state shall be valid; and**

41 **(7) Unless otherwise provided in the MVFP act, the franchisor**
42 **shall have the burden of proving by a preponderance of the evidence**
43 **that it has acted in good faith, that all required notices were given, that**
44 **good cause exists for its actions, and that its actions were fair and**
45 **reasonable giving due regard to the equities of the affected parties,**
46 **except for the franchisee's damages and expenses of litigation.**

[407.830. It shall be a defense for a motor vehicle

2 franchisor, to any action brought under sections 407.810 to 407.835
3 by a motor vehicle franchisee, if it be shown that such motor
4 vehicle franchisee has failed to substantially comply with
5 reasonable and lawful requirements imposed by the franchise and
6 other agreements ancillary or collateral thereto, or if the motor
7 vehicle franchisee, or any of its officers, have been convicted of a
8 felony relevant to business honesty or business practices, or if the
9 motor vehicle franchisee has ceased conducting its business or has
10 abandoned the franchise, or is insolvent as that term is defined in
11 subdivision (23) of section 400.1-201, RSMo, or has filed a
12 voluntary petition in bankruptcy, or has made an assignment for
13 benefit of creditors, or has been the subject of an involuntary
14 proceeding under the federal bankruptcy act or under any state
15 insolvency law which is not vacated within twenty days from the
16 institution thereof, or there has been an appointment of a receiver
17 or other officer having similar powers for the motor vehicle
18 franchisee or the motor vehicle franchisee's business who is not
19 removed within twenty days from his appointment, or there has
20 been a levy under attachment, execution or similar process which
21 is not within ten days vacated or removed by payment or bonding,
22 and it shall be a defense to any action brought under sections
23 407.810 to 407.835 that the complained of conduct by a motor
24 vehicle franchisor was undertaken in good faith in pursuit of rights
25 or remedies accorded to a motor vehicle franchisor as a seller of
26 goods or a holder of a security interest under the provisions of
27 chapter 400, RSMo.]

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