

No. 2009-41

AN ACT

SB 921

Amending the act of December 22, 1983 (P.L.306, No.84), entitled "An act providing for the State Board of Vehicle Manufacturers, Dealers and Salespersons; and providing penalties," providing for the definitions of "dual" or "dualing" and "line-make"; further providing for mediation and arbitration, for unlawful acts by manufacturers or distributors and for manufacturer or distributor repurchase of inventory and equipment.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 2 of the act of December 22, 1983 (P.L.306, No.84), known as the Board of Vehicles Act, is amended by adding definitions to read:

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Dual" or "dualing." *A new vehicle dealership having two or more line-makes of new vehicles located in the same dealership facilities.*

"Line-make." *Groups of vehicles that are offered for sale, lease or distribution under a common name, trademark, service mark or brand name of the manufacturer or distributor of those same vehicles.*

Section 2. Section 11 of the act, added April 19, 1996 (P.L.104, No.27), is amended to read:

Section 11. Mediation and arbitration.

(a) Mediation of disputes between licensees.—

(1) A dealer or distributor may not file a complaint, petition or protest or bring an action in a court of competent jurisdiction against a manufacturer or distributor based on an alleged violation of this act or in a protest action under this act regarding an establishment, relocation or termination of a franchise agreement unless the dealer or distributor serves a demand for mediation upon the manufacturer or distributor before or contemporaneous with the filing of the complaint, petition or protest or the bringing of an action. A demand for mediation shall be in writing and served upon the manufacturer or distributor by certified mail at an address designated for that manufacturer or distributor within records of the dealer or distributor. The demand for mediation shall

contain a brief statement of the dispute and the relief sought by the dealer or distributor filing the demand.

(2) Within 20 days after the date a demand for mediation is served, the parties shall mutually select an independent mediator and meet with that mediator for the purpose of attempting to resolve the dispute. The meeting place shall be in this Commonwealth in a location selected by the mediator. The mediator may extend the date of the meeting for good cause shown by either party or upon stipulation of both parties.

(3) The service of a demand for mediation under paragraph (1) shall stay the time for the filing of any complaint, petition, protest or action under this act until representatives of both parties have met with a mutually selected mediator for the purpose of attempting to resolve the dispute. If a complaint, petition, protest or action is filed before the meeting, the board or court shall enter an order suspending the proceeding or action until the meeting has occurred and may, upon written stipulation of all parties to the proceeding or action that they wish to continue to mediate under this subsection, enter an order suspending the proceeding or action for as long a period as the board or court considers appropriate. A suspension order issued under this paragraph may be revoked upon motion of any party or upon motion of the board or the court.

(4) The board shall encourage dealers, manufacturers and distributors to establish, maintain and administer a panel of mediators who have the character, ability and training to serve as mediators and who have knowledge of the vehicle industry.

(5) Mandatory mediation under this section shall not be required of **[manufacturers,] any of the following:**

(i) A dealer seeking to dual two or more franchises or a dealer seeking a relocation involving a request to dual two or more franchises unless another dealer of the same line-make has a right to protest the proposed relocation under section 27.

(ii) Manufacturers, distributors or dealers of motorcycles.

(b) Arbitration of disputes between licensees.—After a dispute arises, the licensees may voluntarily agree to submit a dispute arising under this act pertaining to a complaint, petition, protest or action to binding or nonbinding arbitration. Any arbitration proceeding shall be voluntary, initiated by serving a written demand for arbitration on the other party, and shall be conducted under the provisions of 42 Pa.C.S. Ch. 73 Subch. A (relating to statutory arbitration) and administered by representatives of dealers, manufacturers or distributors.

(c) Immunity and presumption of good faith by mediators and arbitrators.—A mediator or arbitrator is immune from civil liability for any good faith act or omission within the scope of the mediator's or arbitrator's performance of his powers and duties under this section. Every act or omission of a mediator or arbitrator is presumed to be a good faith act or

omission. This presumption may be overcome only by clear and convincing evidence.

Section 3. Section 12 of the act, amended October 18, 2000 (P.L.577, No.75), is amended to read:

Section 12. Unlawful acts by manufacturers or distributors.

(a) Unlawful coercive acts.—It shall be a violation for any manufacturer, factory branch, distributor, field representative, officer, agent or any representative whatsoever of such manufacturer, factory branch or distributor licensed under this act to require, attempt to require, coerce or attempt to coerce any new vehicle dealer in this Commonwealth to:

(1) Order or accept delivery of any new vehicle, part or accessory thereof, equipment or any other commodity not required by law which shall not have been voluntarily ordered by the new vehicle dealer, except that this paragraph is not intended to modify or supersede any terms or provisions of the franchise requiring new vehicle dealers to market a representative line of those vehicles which the manufacturer or distributor is publicly advertising.

(2) Order or accept delivery of any new vehicle with special features, accessories or equipment not included in the list price of such vehicles as publicly advertised by the manufacturer or distributor.

(3) Participate monetarily in an advertising campaign or contest or to purchase unnecessary or unreasonable quantities of any promotional materials, training materials, showroom or other display decorations or materials at the expense of the new vehicle dealer.

(4) Enter into any agreement with the manufacturer or to do any other act prejudicial to the new vehicle dealer by threatening to terminate or not renew a franchise or any contractual agreement existing between the dealer and the manufacturer or distributor, except that this paragraph is not intended to preclude the manufacturer or distributor from insisting on compliance with the reasonable terms or provisions of the franchise or other contractual agreement and notice in good faith to any new vehicle dealer of the new vehicle dealer's violation of such terms or provisions shall not constitute a violation of the act.

(5) Change the capital structure of the new vehicle dealer or the means by or through which the new vehicle dealer finances the operation of the dealership, provided that the new vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer or distributor in accordance with uniformly applied criteria, and also provided that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor. The consent shall be granted or denied within 60 days of receipt of a written request from the new vehicle dealer.

(6)(i) Refrain from participation in the management of, investment in or the acquisition of any other line of new vehicle or related products.

This paragraph does not apply unless the new vehicle dealer maintains a reasonable line of credit for each make or line of new vehicle, the new vehicle dealer remains in compliance with the reasonable terms of the franchise agreement and any reasonable facilities requirements of the manufacturer or distributor, and no change is made in the principal management of the new vehicle dealer. The reasonable facilities requirements shall not include any requirement that a new vehicle dealer establish or maintain exclusive facilities, personnel or display space when such requirements or any of them would be unreasonable in light of economic conditions and would not otherwise be justified by reasonable business considerations. **[Before the addition of a line-make to the dealership facilities, the new vehicle dealer shall first request the consent of the manufacturer or distributor if required by the franchise agreement. Any decision of the manufacturer or distributor with regard to dualing of two or more franchises shall be rendered within 60 days of receipt of a written request from the new vehicle dealer. Failure on the part of the manufacturer or distributor to timely respond to a dualing request shall be deemed to be an approval of the new vehicle dealer's request. No automobile, motorcycle or truck manufacturer or distributor shall limit or restrict the addition of a line-make to the dealership facilities where the new vehicle dealer maintains a reasonable line of credit for each make or line of new vehicle and the new vehicle dealer remains in compliance with the reasonable terms of the franchise agreement and any reasonable facilities requirements of an automobile, motorcycle or truck manufacturer or distributor.]**

(ii) (A) Nothing in this paragraph shall permit the dualing or relocation and addition of a line-make to the dealership facilities without the new vehicle dealer providing written certification to the manufacturer or distributor that the new vehicle dealer, with the addition of a line-make by the new vehicle dealer, will maintain a reasonable line of credit for each make or line of new vehicle and the new vehicle dealer will remain in compliance with the reasonable terms of the franchise agreement and any reasonable facilities requirements of the manufacturer or distributor, excluding any exclusive facility or nondualing requirements.

(B) The dealer shall provide the following information:

- (I) the address of the proposed new location, if applicable;*
- (II) a brief description of the proposed facility; and*
- (III) the owner of the proposed new location.*

(C) Any objection by the manufacturer or distributor with regard to the dualing or relocation and dualing of two or more franchises shall be delivered to the dealer within 45 days of receipt of the written certification from the new vehicle dealer. Failure on

the part of the manufacturer or distributor to timely respond to a dualing or relocation and dualing certification shall be deemed to be an approval of the new vehicle dealer's certification notice of dualing or relocation and dualing of two or more franchises. The manufacturer or distributor shall execute and deliver a franchise reflecting the relocated address of the dealership facilities to the new vehicle dealer within 30 days of the date of the deemed approval.

(iii) A dealer may file a complaint, petition or protest, or bring an action in a court of competent jurisdiction against a manufacturer or distributor, based on a denial of a request by a dealer to dual or relocate and dual two or more franchises without first going through mediation required under section 11. If a dualing or relocation and dualing denial protest is filed with the board, a hearing shall be held within 45 days of the protest's filing and a final determination issued by the board within 90 days of the protest filing. The burden of proof shall be on the manufacturer or distributor to show that the dualing or relocation and dualing is unreasonable. No automobile, motorcycle or truck manufacturer or distributor may limit or restrict the addition of a line-make to the dealership facilities if the new vehicle dealer maintains a reasonable line of credit for each make or line of new vehicle and the new vehicle dealer remains in compliance with the reasonable terms of the franchise agreement and any reasonable facilities requirements of an automobile, motorcycle or truck manufacturer or distributor. This paragraph shall also apply if the dealer seeks to dual two or more line-makes and no relocation will occur. This paragraph shall not impair the rights of another dealer of the same line-make to protest a proposed relocation under section 27.

(7) Prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this act or to require any controversy between a new vehicle dealer and a manufacturer, distributor or representative to be referred to any person other than the duly constituted courts of the Commonwealth or the United States of America, if such referral would be binding upon the new vehicle dealer. A dealer and the manufacturer, distributor or representative, by themselves or through their respective counsel, are permitted to agree to execute a written agreement or to arbitrate in a binding or nonbinding manner after a controversy arises.

(8) Expand, construct or significantly modify facilities without assurances that the manufacturer or distributor will provide a reasonable supply of new vehicles within a reasonable time so as to justify such an expansion in light of the market and economic conditions **[or require a separate facility for the sale or service of a line-make of a new vehicle**

if the market and economic conditions do not clearly justify the separate facility].

(8.1) Unreasonably expand, construct or significantly modify facilities in light of the market and economic conditions or require a separate facility for the sale or service of a line-make of a new vehicle if the market and economic conditions do not clearly justify the separate facility.

(9) Agree as a condition to granting or renewing a franchise to waive, limit or disclaim a right that the dealer may have to protest the establishment or relocation of another vehicle dealer in the relevant market area as provided in section 27, unless such agreement is voluntary.

(b) Violations.—It shall be a violation of this act for any manufacturer, factory branch, distributor, field representative, officer, agent or any representative whatsoever of such manufacturer, factory branch or distributor licensed under this act to:

(1) Delay, refuse or fail to deliver new vehicles or new vehicle parts or accessories in a reasonable time and in reasonable quantity relative to the new vehicle dealer's facilities and sales potential after acceptance of an order from a new vehicle dealer having a franchise for the retail sale of any new vehicle sold or distributed of an order from a new vehicle dealer having a franchise for the retail sale of any new vehicle sold or distributed by the manufacturer or distributor as are covered by such franchise, if such vehicle, parts or accessories are publicly advertised as being available for immediate delivery. There is no violation if the failure is caused by acts or causes beyond the control of the manufacturer or distributor.

(2) Unfairly discriminate among its new vehicle dealers with respect to warranty, recall, service contract or any other service required by the manufacturer or distributor with regard to labor or parts reimbursement.

(3) Unreasonably withhold consent to the sale, transfer or exchange of the franchise to a qualified buyer capable of being licensed as a new vehicle dealer in this Commonwealth who meets the manufacturer's or distributor's reasonable requirements for appointment as a dealer.

(4) **[Arbitrarily and capriciously]** *Unreasonably* withhold consent to the relocation of an existing new vehicle dealer. ***If the relocation involves dualing of two or more franchises, the requirements of subsection (a)(6)(ii) and (iii) shall apply and paragraph (5) shall not apply.***

(5) Fail to respond in writing to a request for consent as specified in paragraphs (3) and (4) within 60 days of receipt of a written request on the forms, if any, generally utilized by the manufacturer or distributor for such purposes and containing the information required. The failure to respond within the time period set forth in this paragraph shall be deemed to be approval of the request, and the manufacturer or distributor shall execute and deliver a franchise to the applicant within 30 days of the expiration of this time period. A manufacturer or distributor shall

acknowledge in writing to the applicant the receipt of the forms, and, if the manufacturer or distributor requires additional information to complete its review, the manufacturer or distributor shall notify the applicant within 15 days of the receipt of the forms. If the manufacturer or distributor fails to request additional information from the applicant within 15 days after receipt of the initial forms, the 60-day time period for approval shall be deemed to run from the initial receipt date. Otherwise, the 60-day time period for approval shall run from receipt of the supplemental requested information. In no event shall the total time period for approval exceed 75 days from the date of the receipt of the initial forms.

(6) Prevent or attempt to prevent by contract or otherwise, any new vehicle dealer from changing the executive management control of the new vehicle dealer unless the manufacturer or distributor, having the burden of proof, can show that such change of executive management will result in executive management or control by a person or persons who are not of good moral character or who do not meet reasonable, preexisting, and, with consideration given to the volume of sales and service of the dealership, uniformly applied minimum business experience standards. Where the manufacturer or distributor rejects a proposed change in executive management control, the manufacturer or distributor shall give written notice of its reasons to the dealer within 60 days of notice to the manufacturer by the dealer of the proposed change; otherwise the change in the executive management of the new vehicle dealer shall be presumptively deemed approved.

(7) Offer in connection with a sale of a new vehicle or vehicles to the Federal Government, the Commonwealth or any political subdivision thereof, any discounts, refunds or any other type of inducement to any new vehicle dealer without making the same offer or offers available to all other of its new vehicle dealers within this Commonwealth. This paragraph shall not be construed to prevent the offering of incentive programs or other discounts if the discounts are equally available to all franchised vehicle dealers in this Commonwealth on a proportionally equal basis.

(8) Fail to indemnify its franchised dealers, notwithstanding the terms of any franchise agreement, against any judgment for damages or settlement approved in writing by the manufacturer or distributor, including, but not limited to, court costs and reasonable attorney fees of the new vehicle dealer, arising out of complaints, claims or lawsuits, including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty or rescission of the sale as defined in 13 Pa.C.S. § 2608 (relating to revocation of acceptance in whole or in part) to the extent that the judgment or settlement relates solely to the alleged defective or negligent functions by the manufacturer or distributor beyond the control of the dealer.

(9) Sell or exchange with a second or final stage manufacturer, retail consumer or end user except through a licensed new vehicle dealer. This paragraph shall not apply to manufacturer or distributor sales of new vehicles to the Federal Government, charitable organizations and employees of the manufacturer.

(10) (i) Modify a franchise during the term of the franchise or upon its renewal if the modification substantially and adversely affects the new vehicle dealer's rights, obligations, investment or return on investment without giving 60 days' written notice of the proposed modification to the new vehicle dealer unless the modification is required by law, court order or the board. Within the 60-day notice period, the new vehicle dealer may file with the board and serve notice upon the manufacturer or distributor a protest requesting a determination of whether there is good cause for permitting the proposed modification. The board shall promptly schedule a hearing and decide the matter within 180 days from the date the protest is filed. Multiple protests pertaining to the same proposed modification shall be consolidated for hearing. The proposed modification shall not take effect pending the determination of the matter. In determining whether there is good cause for permitting a proposed modification, the board shall consider any relevant factors, including, but not limited to:

(A) The reasons for the proposed modification.

(B) Whether the proposed modification is applied to or affects all new vehicle dealers in a nondiscriminatory manner.

(C) Whether the proposed modification will have a substantial and adverse effect upon the new vehicle dealer's investment or return on investment.

(D) Whether the proposed modification is in the public interest.

(E) Whether the proposed modification is necessary to the orderly and profitable distribution of products by the manufacturer or distributor.

(F) Whether the proposed modification is offset by other modifications beneficial to the new vehicle dealer.

(ii) This paragraph shall not apply to recreational vehicle manufacturers, distributors or dealers.

(11) Fail or refuse to offer to its new vehicle dealers all new model vehicles manufactured for that line-make franchise or require any of its new vehicle dealers to pay an unreasonable fee, unreasonably remodel or renovate the new vehicle dealer's existing facilities, unreasonably purchase or construct a new facility, unreasonably purchase parts, supplies, tools, equipment, operational services, other merchandise or unreasonably participate in training programs in order to receive any new model vehicles, parts or accessories. It shall not be a violation of this paragraph if the manufacturer or distributor fails to supply new vehicle dealers with model vehicles, parts or accessories due to circumstances

beyond the control of the manufacturer or distributor, including, but not limited to, strike or labor difficulty, shortage of materials, freight embargo or temporary lack of capacity.

(12) Operate a system for the allocation of new vehicles which is not reasonable or fair to a new vehicle dealer. Upon the written request of any of its new vehicle dealers, a manufacturer or distributor shall disclose to the new vehicle dealer the method on which new vehicles are allocated among the new vehicle dealers of the same line-make. The manufacturer distributor has the burden of establishing the fairness of its allocation.

(13) Own, operate or control, either directly or indirectly, any vehicle warranty facility. Nothing in this subsection shall prohibit any manufacturer or distributor from owning, operating or controlling any warranty facility for warranty repairs on vehicles owned or operated by the manufacturer or distributor.

(14) Compel a dealer through a finance subsidiary of the manufacturer or distributor to agree to unreasonable operating requirements or to directly or indirectly terminate a new vehicle dealer through the actions of a finance subsidiary of the manufacturer or distributor. This paragraph shall not limit the right of a financing entity to engage in business practices in accordance with the trade of retail or wholesale vehicle financing.

(15) Use any subsidiary corporation, affiliated corporation or any other controlled corporation, partnership, association, entity or person to accomplish what would otherwise be illegal conduct under this act on the part of the manufacturer or distributor.

(16) Release to any third party any customer information which has been provided by the new vehicle dealer to the manufacturer or distributor if the customer objects in writing to releasing the information, unless the information is necessary for the manufacturer or distributor to meet its obligations to customers or new vehicle dealers under requirements imposed by Federal or State law.

(17) Require or coerce or attempt to require or coerce a new vehicle dealer to pay attorney fees of the manufacturer or distributor related to hearings and appeals brought under this act.

(18) Vary the price charged to any of its new vehicle dealers, which has the effect of causing a difference in the price of any similarly equipped new vehicle to its new vehicle dealers or to the ultimate purchaser. This paragraph shall not be construed to prevent the offering of incentive programs or other discounts if the incentive or discounts are available to all competing new vehicle dealers of the same line-make in this Commonwealth on a proportionately equal basis.

(c) Restriction on ownership of dealer.—

(1) Except as otherwise provided in this subsection, a manufacturer or distributor shall not:

(i) own or hold an interest, other than a passive, minority interest in a publicly traded dealer held for investment purposes, in a dealer licensed under this act which is engaging in the business of buying, selling or exchanging vehicles; or

(ii) operate or control a dealer licensed under this act which is engaging in the business of buying, selling or exchanging vehicles.

(2) A manufacturer or distributor may own or hold an interest in a dealer or otherwise operate or control a dealer for a period not to exceed 12 months from the date the manufacturer or distributor acquires an interest in the dealer if:

(i) The person from whom the manufacturer or distributor acquired the dealer was a franchised dealer.

(ii) The dealer is for sale by the manufacturer or distributor at a reasonable price and on reasonable terms and conditions.

(3) On a showing by a manufacturer or distributor of good cause, the board may extend the time limit set forth in paragraph (2). An extension under this paragraph may not exceed 12 months. Where an extension under this paragraph is sought, the manufacturer or distributor shall provide notice delivered 30 days before the extension request is filed with the board to all the same line-make dealers within a ten-mile radius of the manufacturer or distributor owned, operated or controlled dealer. An application for an extension is subject to protest by a dealer of the same line-make who is within the ten-mile radius of the manufacturer or distributor owned, operated or controlled dealer.

(4) For the primary purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been underrepresented in its dealer body or other qualified persons who lack the resources to purchase a dealer outright, a manufacturer or distributor may temporarily own an interest in a dealer if the manufacturer's or distributor's participation in the dealer is in a bona fide relationship with a franchised dealer who:

(i) At or prior to the time the prospective dealer takes an equity interest in the dealer, the prospective dealer is obligated to make a significant investment in the dealer, subject to loss.

(ii) Has an ownership interest in the dealer.

(iii) Operates the dealer under a written agreement to acquire full ownership of the dealer within a reasonable time and under reasonable terms and conditions.

(5) A manufacturer or distributor shall not unfairly discriminate or compete in terms of any sales, service or operational activities with a new vehicle dealer of the same line-make when a manufacturer or distributor operates a new vehicle dealer under this subsection.

(6) A manufacturer may own, directly or indirectly, an interest in an entity that owns, operates or controls a motor vehicle dealership trading solely in motor vehicles having a gross vehicle weight less than 8,500

pounds that are of the same line-make franchised by the manufacturer, provided that each of the following conditions are met:

(i) All of the motor vehicle dealerships selling such manufacturer's motor vehicles in this Commonwealth trade exclusively in the manufacturer's line-make.

(ii) All of the manufacturer's franchise agreements confer rights on the dealer of the line-make to develop and operate, within a defined geographic territory or area, as many dealership facilities as the dealer and manufacturer shall agree are appropriate.

(iii) Not fewer than half of the dealers of the line-make within this Commonwealth own and operate two or more dealership facilities in the geographic territory or area covered by the franchise agreement with the manufacturer.

(iv) During any period in which the manufacturer has such an ownership interest, the manufacturer has no more than 12 franchise agreements with new motor vehicle dealers licensed by the board to do business within this Commonwealth.

(v) Except as otherwise permitted under other provisions of this act, the manufacturer does not acquire or hold, either directly or indirectly, an ownership interest of more than 45% in any motor vehicle dealership that the manufacturer did not already own, directly or indirectly, as of the effective date of this subsection.

(vi) As of the effective date of this subsection, the manufacturer shall have continuously owned, directly or indirectly, for a period of not less than 18 months, one or more new motor vehicle dealerships in this Commonwealth of the same line-make as the manufacturer.

(d) Applicability.—

(1) Subsections (b)(11) through (17) and (c) shall not apply to manufacturers, distributors or dealers of manufactured housing or recreational vehicles.

(2) Subsections (b)(13) and (15) and (c) shall not apply to the ownership or activities of a manufacturer in the operation of a licensed dealer or a licensed dealer that fulfills the following conditions:

(i) The manufacturer maintains an ownership interest in, operates or controls a licensed dealer whose primary business purpose is the rental of vehicles.

(ii) Vehicles sold by the licensed dealer primarily engaged in the business of rental vehicles are limited to those vehicles used for rental purposes or vehicles obtained in trade for such vehicles.

(iii) Any warranty repairs are limited to those repairs conducted on the vehicles used in the vehicle rental business or vehicles sold by the licensed dealer.

Section 4. Section 17 of the act, added April 19, 1996 (P.L.104, No.27), is amended to read:

Section 17. Manufacturer or distributor repurchase of inventory and equipment.

(a) Return of property for repurchase.—A new vehicle dealer shall return property, including, but not limited to, vehicle inventory, parts, equipment, tools and signs, as permitted under this section or as set forth in the franchise agreement, to the manufacturer or distributor within 90 days of the effective date of any termination or nonrenewal of a franchise or upon a termination or cessation of a part of a manufacturer's or distributor's business operations throughout the United States which is not part of any change in ownership, operation or control of all or any part of the manufacturer's or distributor's business under section 14. The manufacturer or distributor shall supply the new vehicle dealer with instructions on the method by which the new vehicle dealer must return the property to the manufacturer or distributor. Within 60 days of tender of the property to the manufacturer or distributor, the manufacturer or distributor, including medium and heavy-duty truck component and engine manufacturers or distributors who provide integral parts of vehicles or provide major components by selling directly to dealers, shall repurchase from the new vehicle dealer and remit payment to the new vehicle dealer in accordance with their respective interest in:

(1) Any new, undamaged and unsold vehicle inventory **[of the current model year or purchased from a manufacturer or distributor within 120 days prior to receipt of notice of termination or nonrenewal], whether acquired from the manufacturer or distributor or from another dealer of the same line-make in the ordinary course of business within 18 months of the termination date**, provided the vehicle has less than **[500] 750** miles registered on the odometer, not including mileage incurred in delivery from the manufacturer or in transporting the vehicle between dealers for sale, at the dealer's net acquisition cost, plus any cost to the dealer for returning the vehicle inventory to the manufacturer or distributor. ***A dealer shall be entitled to the payment under this paragraph for new and undamaged motor vehicles having a gross vehicle weight rating of at least 10,001 pounds of current and two prior model years as determined on a model-by-model basis within the line-make.***

(2) All new, unused, undamaged parts listed in the current price catalog acquired from a manufacturer or distributor or a source approved or recommended by the manufacturer or distributor at the dealer price listed in the current parts catalog, less applicable allowances, plus 5% of the catalog price of the part for the cost of packing and returning the parts to the manufacturer or distributor. Reconditioned or core parts shall be valued at their core value, the price listed in the current parts catalog or the amount paid for expedited return of core parts, whichever is higher.

(3) Any special tools or equipment offered for sale during the three years preceding termination or nonrenewal and each trademark or trade name bearing signs which was recommended or required by the

manufacturer or distributor at fair market value at the time the notice of termination or nonrenewal is given.

In the event the inventory is subject to a security interest, the manufacturer may make payment jointly to the dealer and the holder of the security interest.

(b) Failure to pay sums due.—A manufacturer or distributor who fails to pay those sums due the dealer within the prescribed time or at such time as the dealer proffers good title prior to the prescribed time for payment is liable to the new vehicle dealer for:

(1) the greater of dealer net acquisition cost, fair market value or current price of inventory;

(2) interest on the amount due, calculated at the rate applicable to a judgment of court; and

(3) reasonable attorney fees and costs.

(c) Limited applicability.—This section shall not apply to manufacturers, distributors or dealers of recreational vehicles or manufactured housing, nor shall it apply to motorcycle manufacturers, distributors or dealers except when the unilateral termination or failure to renew is by the manufacturer or distributor.

Section 5. This act shall take effect in 60 days.

APPROVED—The 3rd day of September, A.D. 2009.

EDWARD G. RENDELL