

House Bill 469

By: Representatives Shaw of the 176th, Epps of the 144th, Tanner of the 9th, Caldwell of the 131st, Blackmon of the 146th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Article 22 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to motor vehicle franchise practices, so as to provide for definitions; to provide for restrictions, limitations, and guidelines for the use of consumer data by a franchisor, manufacturer, distributor, or third party; to provide standards for reasonable compensation by a franchisor, manufacturer, distributor, or third party for parts and labor for warranty service work by a dealer; to provide for payments after a stop-sale of a motor vehicle in certain instances; to provide for right of first refusal; to correct a cross-reference; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 22 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to motor vehicle franchise practices, is amended by adding a new Code section to read as follows:

"10-1-629.

(a) As used in this Code section, the term:

(1) 'Affiliate' means any company that controls, is controlled by, or is under common control with another company.

(2) 'Consumer data' means the nonpublic personal information, as such term is defined in 15 U.S.C. Section 6809(4), that is collected by a dealer and provided by the dealer directly to a manufacturer or third party acting on behalf of a manufacturer. Consumer data does not include the same or similar data which is obtained by a manufacturer from a source other than a dealer.

(3) 'Data management system' means a computer hardware or software system that is owned, leased, or licensed by a dealer, including a system of web-based applications, computer software, or computer hardware, whether located at the dealership or hosted remotely, and that stores and provides access to consumer data collected or stored by a

dealer. The term includes, but is not limited to, dealership management systems and customer relations management systems.

(4) 'Subsidiary' means a corporation controlled by a franchisor, manufacturer, or distributor which owns at least a majority of voting stock.

(b) Notwithstanding any provisions of a franchise agreement to the contrary, a franchisor, manufacturer, distributor, or third party acting on behalf of such franchisor, manufacturer, or distributor:

(1) Shall comply with all applicable restrictions on reuse or disclosure of consumer data established by federal or state law;

(2) Shall not knowingly cause a dealer to violate any restrictions on reuse or disclosure of consumer data established by federal or state law;

(3) Shall, upon written request of the dealer, provide a written list of the consumer data obtained from the dealer and all persons to whom any consumer data has been provided by the franchisor, manufacturer, distributor, or third party acting on behalf of a franchisor, manufacturer, or distributor during the preceding 12 months. The dealer may make such request no more than once every 12 months. The list must indicate the specific fields of consumer data which were provided and identify each person to whom such data was provided. Notwithstanding the foregoing, such a list need not include:

(A) A person to whom consumer data was provided, or the specific consumer data provided to such person, if the person was, at the time the consumer data was provided, a service provider, subcontractor, or consultant acting in the course of performance of services on behalf of or for the benefit of the franchisor, manufacturer, distributor, or dealer, provided that such franchisor, manufacturer, or distributor entered into an agreement with such person requiring compliance with applicable state and federal law;

(B) A person to whom consumer data was provided, or the specific consumer data provided to such person, if the dealer has previously consented in writing to such person receiving consumer data, provided that the dealer has not withdrawn such consent in writing; or

(C) A person who is an affiliate or subsidiary of the franchisor, manufacturer, or distributor;

(4) Shall not require that a dealer grant the franchisor, manufacturer, distributor, or third party acting on behalf of such franchisor, manufacturer, or distributor, direct or indirect access to the dealer's data management system to obtain consumer data. If a dealer elects to grant such franchisor, manufacturer, distributor, or third party access to consumer data, such access shall be through a format widely accepted by the industry, such as comma delimited, and through a third-party vendor selected by the dealer in writing subject to approval by the franchisor, manufacturer, or distributor in writing within 14 days of such

dealer's written notice of selection. Denial by a franchisor, manufacturer, or distributor shall be in writing and include the reason for such denial. Failure of a manufacturer, franchisor, or distributor to approve a dealer's vendor request within 14 days shall be deemed approval. A franchisor, manufacturer, or distributor may access or obtain consumer data directly from a dealer's data management system with the express consent of the dealer. Such consent shall be executed in writing and separate from the parties' franchise agreement. Such consent may be withdrawn by the dealer upon 60 days' written notice to the franchisor, manufacturer, or distributor; and

(5) Shall indemnify a dealer for any claims asserted against or damages incurred by the dealer to the extent caused by access to, use of, or disclosure of consumer data in violation of this Code section by the franchisor, manufacturer, distributor, its affiliates or subsidiaries, or third party acting on behalf of such franchisor, manufacturer, or distributor with which such franchisor, manufacturer, or distributor has an agreement requiring compliance with disclosure and reuse requirements in applicable state or federal law.

(c) In any cause of action against a franchisor, manufacturer, or distributor for a violation of this Code section, the person bringing the action has the burden of proving that the violation was willful or with sufficient frequency to establish a pattern of wrongdoing with respect to such person's consumer data."

SECTION 2.

Said article is further amended by revising Code Section 10-1-641, relating to dealer's predelivery preparation, warranty service, and recall work obligations to be provided in writing, and recovery costs, as follows:

"10-1-641.

(a)(1) Each ~~distributor~~ franchisor, manufacturer, or distributor or ~~warrantor~~:

(A) Shall specify in writing to each of its dealers in this state the dealer's obligations for predelivery preparation including the repair of damages incurred in the transportation of vehicles as set forth in Code Section 10-1-642, recall work, and warranty service on its products;

(B) Shall reasonably compensate the dealer for parts and labor provided for such warranty service work and service required of the dealer by the distributor, manufacturer, or warrantor as provided in paragraph (2) of this subsection;

(C) Shall provide the dealer with a schedule of compensation to be paid such dealer for parts, work, and service in connection therewith; and

(D) Shall provide the dealer with a schedule of the time allowance for the performance of such work and service. Any such schedule of compensation shall include reasonable

compensation for diagnostic work, repair service, and labor. Time allowances for the diagnosis and performance of such work and service shall be reasonable and adequate for the work to be performed.

(2)(A) In the determination of what constitutes reasonable compensation for parts reimbursement and labor rates under this Code section, the principal factors to be considered shall be the retail price paid to dealers for parts and the prevailing hourly labor rates paid to dealers doing the repair, work, or service and to other dealers in the community in which the dealer doing the repair, work, or service is doing business for the same or similar repair, work, or service. However, in no event shall parts reimbursement paid to the dealer be less than the retail price for such parts being paid to such dealer by nonwarranty customers for nonwarranty parts replacement, and in no event shall the hourly labor rate paid to a dealer for such warranty repair, work, or service be less than the rate charged by such dealer for like repair, work, or service to nonwarranty customers for nonwarranty repair, work, or service rates customarily charged by the dealer, as established pursuant to this paragraph, and the rates for parts and labor charged by other similarly situated franchised dealers in a comparable geographic area in this state offering the same line-make vehicles.

(B) The retail rate customarily charged by the dealer for parts shall be established by the dealer submitting to the franchisor, manufacturer, or distributor 100 sequential nonwarranty customer-paid service repair orders which contain warranty-like repairs or 90 consecutive days of nonwarranty customer-paid service repair orders which contain warranty-like parts, whichever is less. Such service repair orders shall cover repairs made no more than 180 days before the submission. The dealer's retail rate percentage for parts shall be calculated by determining the dealer's total parts sales in the submitted repair orders and dividing that amount by the dealer's total cost for purchase of those parts, subtracting one from that amount, and then multiplying by 100. The declared retail rate shall be approved or disapproved within 30 days following submission by the dealer. The declared retail rate shall go into effect 30 days following approval by the franchisor, manufacturer, or distributor, unless such franchisor, manufacturer, or distributor disapproves and timely contests the dealer's declared rate. If a franchisor, manufacturer, or distributor fails to disapprove within 30 days following submission by the dealer, the declared retail rate shall be deemed approved. A franchisor, manufacturer, or distributor may contest the dealer's declared parts rate not later than 30 days after submission and declaration of the parts rate by the dealer by reasonably substantiating that the rate is unreasonable in light of the practices of all other similarly situated franchised dealers in a comparable geographic area in this state offering the same line-make vehicles. In contesting the dealer's declared rate, a

franchisor, manufacturer, or distributor shall provide a written explanation of the reasons for disagreement with the declared rate. If the declared parts rate is contested, then the franchisor, manufacturer, or distributor shall propose an adjustment of the rate. If the franchisor, manufacturer, or distributor contests the dealer's declared parts rate, the parties shall attempt to resolve the dispute through an internal dispute resolution procedure of the franchisor, manufacturer, or distributor, if available, provided that such procedure occurs within a reasonable amount of time, not to exceed 30 days after notification of disagreement with the dealer's declared rate. If the internal dispute resolution procedure is unsuccessful or does not occur in a timely manner, the dealer may file a petition with the commissioner not later than 60 days after receipt of the proposed adjustment by the franchisor, manufacturer, or distributor or not later than 30 days after conclusion of the internal dispute resolution procedure, whichever is later. If such a petition is filed, the commissioner shall inform the franchisor, manufacturer, or distributor that a timely petition has been filed and that a hearing will be held on such issue. In any hearing held pursuant to this subparagraph, the burden of proof shall be upon the franchisor, manufacturer, or distributor to demonstrate that the parts rate declared by the dealer was unreasonable and not in accordance with this subparagraph.

(C) The retail rate customarily charged by the dealer for labor may be established by submitting to the franchisor, manufacturer, or distributor 100 sequential nonwarranty customer-paid service repair orders for warranty-like repairs or 90 consecutive days of customer-paid service repair orders for warranty-like repairs, whichever is less. Such service repair orders shall cover repairs made no more than 180 days before the submission. The retail rate for labor shall be calculated by determining the dealer's total labor sales from the submitted repair orders and dividing that amount by the total number of hours that generated those sales. The declared retail labor rate shall be approved or disapproved within 30 days following submission by the dealer. The declared retail labor rate shall take effect 30 days following approval by the franchisor, manufacturer, or distributor unless such franchisor, manufacturer, or distributor disapproves and timely contests the dealer's declared rate. A franchisor, manufacturer, or distributor may contest the dealer's declared labor rate not later than 30 days after submission and declaration of the labor rate by the dealer by reasonably substantiating that such rate is unreasonable in light of the practices of all other similarly situated franchised motor vehicle dealers in a comparable geographic area in this state offering the same line-make vehicles. If the declared labor rate is contested, then the franchisor, manufacturer, or distributor shall propose an adjustment of the declared retail labor rate. If the franchisor, manufacturer, or distributor contests the dealer's declared labor rate, the parties shall attempt to resolve the dispute through an internal dispute resolution

procedure of the franchisor, manufacturer, or distributor, if available, provided that such procedure occurs within a reasonable amount of time not to exceed 30 days after notification of disagreement with the dealer's declared rate. If the internal dispute resolution procedure is unsuccessful or does not occur in a timely manner, the dealer may file a petition with the commissioner not later than 60 days after receipt of the proposed adjustment by the franchisor, manufacturer, or distributor or not later than 30 days after conclusion of the internal dispute resolution procedure, whichever is later. If such a petition is filed, the commissioner shall inform the franchisor, manufacturer, or distributor that a timely petition has been filed and that a hearing will be held on such issue. In any hearing held pursuant to this subparagraph, the burden of proof shall be upon the franchisor, manufacturer, or distributor to demonstrate that the labor rate declared by the dealer was unreasonable and not in accordance with this subparagraph. (D) In calculating the retail rate customarily charged by the dealer for parts and labor for purposes of this paragraph, the following work shall not be included in the calculation:

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

(ii) Parts sold at wholesale;

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

(iv) Nuts, bolts, fasteners, and similar items which contain no individual part number;

(v) Tires; and

(vi) Vehicle reconditioning.

(E) If a franchisor, manufacturer, or distributor furnishes a part or component to a dealer to use in performing repairs under a recall, campaign service action, or warranty repair at no cost to the dealer, the franchisor, manufacturer, or distributor shall compensate the dealer for the part or component in the same manner as warranty parts compensation under this Code section by paying the dealer the retail rate markup on the cost for the part or component as listed in the price schedule of the franchisor, manufacturer, or distributor less the cost for the part or component.

(F) No franchisor, manufacturer, or distributor shall require a dealer to establish the retail rate customarily charged by the dealer for parts and labor by an unduly burdensome or time consuming method or by requiring information that is unduly burdensome or time consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations. No dealer shall declare a retail rate for parts or labor or both more than once in one calendar year.

(b)(1) ~~Manufacturers~~ Franchisors, manufacturers, and distributors shall include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of such defects. ~~Manufacturers~~ Franchisors, manufacturers, and distributors shall compensate any dealers in this state for repairs affected by all recalls.

~~(c)~~(2) All such claims shall be either approved or disapproved within 30 days after their receipt on forms and in the manner specified by the franchisor, manufacturer, or distributor, or warrantor, and any claim not specifically disapproved in writing within 30 days after the receipt shall be construed to be approved and payment must follow within 30 days.

~~(d)~~(c) Subject to subsection (c) of Code Section 10-1-645, a franchisor, manufacturer, or distributor shall not otherwise recover its costs from dealers within this state, including an increase in the wholesale price of a vehicle or surcharge imposed on a dealer solely intended to recover the cost of reimbursing the dealer for parts and labor pursuant to this Code section, provided that a franchisor, manufacturer, or distributor shall not be prohibited from increasing prices for vehicles or parts in the normal course of business.

(d)(1) For purposes of this subsection, the term 'stop-sale' means a notification issued by a vehicle manufacturer to its franchised dealerships stating that certain used motor vehicles in inventory should not be sold or leased, at retail or wholesale or both, due to a federal safety recall for a defect or a noncompliance or a federal emissions recall.

(2)(A) A franchisor, manufacturer, or distributor shall compensate the dealer for a stop-sale if:

(i) A franchisor, manufacturer, or distributor issued a stop-sale to a dealer which pertains to a safety related defect on a used motor vehicle manufactured or distributed by such franchisor, manufacturer, or distributor;

(ii) The dealer holds an active sales and service agreement with the franchisor, manufacturer, or distributor for the line-make of the used motor vehicle covered by a stop-sale;

(iii) The used motor vehicle covered by the stop-sale is held in the used motor vehicle inventory of the dealer for resale as of the date such stop-sale was issued or was purchased or taken in trade by the dealer within five days of the date the stop-sale was issued; or

(iv) The franchisor, manufacturer, or distributor has not provided a remedy procedure or made parts available to repair the used motor vehicle for 30 or more days after the date of such stop-sale.

(B) If compensation to a dealer for a stop-sale is warranted under this subsection, the amount paid shall be equal to 1.25 percent per month of the average trade-in value of

a model of motor vehicle, as established by an industry accepted independent third-party used motor vehicle valuation guide, prorated from the date that is 30 days after the date on which the stop-sale was provided to the dealer to the earlier of:

(i) The date on which the franchisor, manufacturer, or distributor provided the dealer with a remedy procedure and, if applicable, available parts for ordering by the dealer to repair the affected used motor vehicle; or

(ii) The date the dealer sells, trades, transfers, or otherwise disposes of the used motor vehicle.

(3) Nothing in this subsection shall prevent a franchisor, manufacturer, or distributor from requiring that a motor vehicle not be subject to an open recall or stop-sale in order to be qualified, remain qualified, or be sold as a certified preowned vehicle or similar designation.

(4) Nothing in this subsection shall require a franchisor, manufacturer, or distributor to provide total compensation to a dealer which would exceed the total average retail value of the affected used motor vehicle, as established by an industry accepted independent third party used motor vehicle valuation guide.

(5) A franchisor, manufacturer, or distributor may determine the documentation by which a dealer may demonstrate the inventory status of a used motor vehicle to determine eligibility hereunder, provided that such documentation requirements are not unduly burdensome or time consuming.

(6) All applications for compensation pursuant to this subsection submitted by a dealer to a franchisor, manufacturer, or distributor shall be either approved or disapproved within 30 days after submission to the manufacturer. Any claim not specifically disapproved in writing within 30 days after receipt by a franchisor, manufacturer, or distributor shall be deemed to be approved. Payments under this subsection shall be made within 30 days following approval.

(7) It shall be a violation of this subsection for a franchisor, manufacturer, or distributor to reduce the amount of compensation otherwise owed to a dealer, whether through a chargeback, removal from an incentive program, reduction in amount owed under an incentive program, or any other means, because the dealer has submitted a claim for compensation under this subsection or was otherwise compensated for a vehicle subject to a recall.

(8) A franchisor, manufacturer, or distributor shall be authorized to compensate its franchised dealers under a national recall compensation program provided that the compensation under such program is equal to or greater than compensation that would be provided under this subsection or the manufacturer and dealer otherwise agree. Any

283 remedy provided to a dealer under this subsection is exclusive and may not be combined
284 with any other state or federal remedy."

285 **SECTION 3.**

286 Said article is further amended by revising Code Section 10-1-663.1, relating to right of first
287 refusal, as follows:

288 "10-1-663.1.

289 ~~There shall be a right of first refusal to purchase in favor of the franchisor if the dealer has~~
290 ~~entered into an agreement to transfer the dealership or its assets, provided that all the~~
291 ~~following qualifications and requirements are met:~~

292 (a) Notwithstanding the terms of any franchise agreement, sales and services agreement,
293 or similar agreement, a franchisor, manufacturer, or distributor shall be permitted to
294 exercise a right of first refusal to acquire a dealer's assets or ownership, in the event of a
295 proposed change of ownership, or transfer of dealership assets, if all of the following
296 requirements are met:

297 (1) The proposed transfer of the dealership or its assets is of more than 50 percent of the
298 ownership or assets;

299 (2) The franchisor notifies the dealer in writing within 60 days of its receipt of the
300 complete written proposal for the proposed sale or transfer on forms generally utilized
301 by the franchisor for such purpose and containing the information required therein and
302 all documents and agreements relating to the proposed sale or transfer;

303 (3) The exercise of the right of first refusal will result in the dealer and dealer's owners
304 receiving the same or greater consideration as ~~is provided in the documents and~~
305 ~~agreements submitted to the franchisor under paragraph (2) of this Code section~~ provided
306 for through the terms of the contract related to the proposed change of ownership or
307 transfer of dealership assets;

308 (4) The proposed change of 50 percent or more of the ownership or of the dealership
309 assets does not involve the transfer or sale of assets or the transfer or issuance of stock
310 by the dealer or one or more dealer owners to a designated family member or members,
311 including a spouse, child, grandchild, spouse of a child or grandchild, brother, sister, or
312 parent of the dealer owner; to a manager who has been employed in the dealership for at
313 least four years and is otherwise qualified as a dealer operator; or to a partnership or
314 corporation owned and controlled by one or more of such persons;

315 (5) The franchisor agrees to pay the reasonable expenses, including reasonable attorney's
316 fees, which do not exceed the usual customary, and reasonable fees charged for similar
317 work done for other clients incurred by the proposed new owner and transferee before the
318 franchisor's exercise of its right of first refusal in negotiating and implementing the

contract for the proposed change of ownership or transfer of dealership assets. However, payment of such expenses and attorney's fees shall not be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within 20 days after the dealer's receipt of the franchisor's written request for such an accounting. Such an accounting may be requested by the franchisor before exercising its right of first refusal; and

(6) The franchisor agrees to comply with and be subject to the requirements and restraints as set forth in paragraphs (1) and (2) of subsection (a) of Code Section 10-1-664.1 and in subsection (b) of Code Section 10-1-664.1.

(b) Within the terms of a right of first refusal contract related to the proposed change of ownership or transfer of dealership assets:

(1) The franchisor, manufacturer, or distributor shall have the right to assume the dealer's lease for, or acquire the real property on which the franchise is located, on the same terms as those on which the real property or lease was to be sold or transferred to the proposed new owner in connection with the sale of the franchise, unless otherwise agreed to by the dealer and manufacturer or distributor. The franchisor, manufacturer, or distributor shall have the right to assign the lease or to convey the real property; and

(2) The franchisor, manufacturer, or distributor shall assume all of the duties, obligations, and liabilities contained in the agreements that were to be assumed by the proposed new owner and with respect to which the franchisor, manufacturer, or distributor exercised the right of first refusal, provided that the franchisor, manufacturer, or distributor has knowledge of such obligations at the time of the exercise of the right of first refusal."

SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.