

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 959

AN ACT

To repeal sections 347.048 and 407.825, RSMo, and to enact in lieu thereof three new sections relating to regulation of certain business organizations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 347.048 and 407.825, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as
3 sections 347.048, 407.824, and 407.825, to read as follows:

4 347.048. 1. (1) Any limited liability company that owns
5 and rents or leases real property, or owns unoccupied real
6 property, located within:

7 (a) Any home rule city with a population of more than four
8 hundred thousand inhabitants which is located in more than one
9 county; [or]

10 (b) Any home rule city with more than one hundred sixteen
11 thousand but fewer than one hundred fifty-five thousand
12 inhabitants; or

13 (c) Any home rule city with more than seventy-one thousand
14 but fewer than seventy-nine thousand inhabitants

1 shall file with that city's clerk an affidavit listing the name
2 and street address of at least one natural person who has
3 management control and responsibility for the real property owned
4 and leased or rented by the limited liability company, or owned
5 by the limited liability company and unoccupied.

6 (2) Within thirty days following the cessation of
7 management control and responsibility of any natural person named
8 in an affidavit described in this section, the limited liability
9 company shall file a successor affidavit listing the name and
10 street address of a natural person successor.

11 2. No limited liability company shall be charged a fee for
12 filing an affidavit or successor affidavit required under this
13 section.

14 3. If a limited liability company required by this section
15 to file an affidavit or a successor affidavit fails or refuses to
16 file such completed affidavit with the appropriate clerk, any
17 person who is adversely affected by the failure or refusal or the
18 home rule city may petition the circuit court in the county where
19 the property is located to direct the execution and filing of
20 such document.

21 407.824. 1. As used in this section, the following terms
22 mean:

23 (1) "Goods", the same meaning as is ascribed to such term
24 under section 400.2-105, except that such term shall not include
25 moveable displays, brochures, and promotional materials
26 containing material subject to the intellectual property rights
27 of a manufacturer or franchisor;

28 (2) "Substantial reimbursement", a reimbursement in an

1 amount equal to or greater than the cost of the savings that
2 would result if the franchisee were to utilize a vendor of the
3 franchisee's own selection instead of using the vendor identified
4 by the manufacturer or franchisor.

5 2. No manufacturer or franchisor shall coerce or otherwise
6 require any franchisee to construct improvements to facilities or
7 install new signs or other franchise or image elements that
8 replace or substantially alter improvements, signs, or franchise
9 elements completed within the last ten years that were required
10 and approved by the manufacturer or franchisee. For purposes of
11 this subsection, the term "substantially alter" shall not include
12 routine maintenance that is reasonably necessary to keep a
13 franchisee's dealership facility in a safe and attractive
14 condition.

15 3. Unless the manufacturer or franchisor provides
16 substantial reimbursement for the goods or services, no
17 manufacturer or franchisor shall require a franchisee to purchase
18 goods or services to make improvements to the franchisee's
19 facilities from a vendor selected, identified, or designated by
20 the manufacturer or franchisor by agreement, program, incentive
21 provision, bulletin, or otherwise, without allowing or making
22 available to the franchisee the option to obtain goods or
23 services of comparable grade, kind, quality, and overall design
24 and the same materials and characteristics from a vendor chosen
25 by the franchisee and approved by the manufacturer or franchisor.
26 Approval by a manufacturer or franchisor shall not be
27 unreasonably withheld. This subsection shall not be construed to
28 eliminate, impair, damage, or otherwise limit a manufacturer's or

1 franchisor's intellectual property rights in any way.

2 4. The ten-year period set forth in this section shall
3 commence for a franchisee, including such franchisee's successors
4 and assigns, on the date that the manufacturer or franchisor gave
5 final written approval of the facility, facility improvements, or
6 installation of signs or other franchise or image elements or on
7 the date that the franchisee receives a certificate of occupancy
8 for the improved facility, whichever is later.

9 5. Nothing in this section shall prohibit a manufacturer or
10 franchisor from requiring changes or updates to signs that
11 contain the manufacturer or franchisor's brand, logo, or other
12 intellectual property protected by federal intellectual property
13 law more frequently than every ten years, provided that the
14 manufacturer or franchisor shall offer the franchisee
15 compensation for the sign or pay for the sign if sign changes are
16 required less than five years apart.

17 407.825. Notwithstanding the terms of any franchise
18 agreement to the contrary, the performance, whether by act or
19 omission, by a motor vehicle franchisor, whether directly or
20 indirectly through an agent, employee, affiliate, common entity,
21 or representative, or through an entity controlled by a
22 franchisor, of any or all of the following acts enumerated in
23 this section are hereby defined as unlawful practices, the
24 remedies for which are set forth in section 407.835:

25 (1) To engage in any conduct which is capricious or not in
26 good faith or unconscionable and which causes damage to a motor
27 vehicle franchisee or to the public; provided, that good faith
28 conduct engaged in by motor vehicle franchisors as sellers of new

1 motor vehicles or parts or as holders of security interest
2 therein, in pursuit of rights or remedies accorded to sellers of
3 goods or to holders of security interests pursuant to the
4 provisions of chapter 400, uniform commercial code, shall not
5 constitute unfair practices pursuant to sections 407.810 to
6 407.835;

7 (2) To coerce, attempt to coerce, require or attempt to
8 require any motor vehicle franchisee to accept delivery of any
9 new motor vehicle or vehicles, equipment, tools, parts or
10 accessories therefor, or any other commodity or commodities which
11 such motor vehicle franchisee has not ordered after such motor
12 vehicle franchisee has rejected such commodity or commodities, or
13 which is not required by law or the franchise agreement. It
14 shall not be deemed a violation of this section for a motor
15 vehicle franchisor to require a motor vehicle franchisee to have
16 an inventory of parts, tools, and equipment reasonably necessary
17 to service the motor vehicles sold by a motor vehicle franchisor;
18 or new motor vehicles reasonably necessary to meet the demands of
19 dealers or the public or to display to the public the full line
20 of a motor vehicle franchisor's product line;

21 (3) To withhold, reduce, delay, or refuse to deliver in
22 reasonable quantities and within a reasonable time after receipt
23 of orders for new motor vehicles, such motor vehicles as are so
24 ordered and as are covered by such franchise and as are
25 specifically publicly advertised by such motor vehicle franchisor
26 to be available for immediate delivery; provided, however, the
27 failure to deliver any motor vehicle shall not be considered a
28 violation of sections 407.810 to 407.835 if such failure is due

1 to an act of God, work stoppage, or delay due to a strike or
2 labor difficulty, shortage of products or materials, freight
3 delays, embargo or other causes of which such motor vehicle
4 franchisor shall have no control;

5 (4) To coerce, attempt to coerce, require or attempt to
6 require any motor vehicle franchisee to enter into any agreement
7 with such motor vehicle franchisor or its agent, employee,
8 affiliate, or representative, or a person controlled by the
9 franchisor or to do any other act prejudicial to such motor
10 vehicle franchisee;

11 (5) To terminate, cancel, refuse to continue, or refuse to
12 renew any franchise without good cause, unless such new motor
13 vehicle franchisee, without good cause, substantially defaults in
14 the performance of such franchisee's reasonable, lawful, and
15 material obligations under such franchisee's franchise. In
16 determining whether good cause exists, the administrative hearing
17 commission shall take into consideration all relevant
18 circumstances, including, but not limited to, the following
19 factors:

20 (a) The amount of business transacted by the franchisee;

21 (b) The investments necessarily made and obligations
22 incurred by the franchisee, including but not limited to
23 goodwill, in the performance of its duties under the franchise
24 agreement, together with the duration and permanency of such
25 investments and obligations;

26 (c) The potential for harm and inconvenience to consumers
27 as a result of disruption of the business of the franchisee;

28 (d) The franchisee's failure to provide adequate service

1 facilities, equipment, parts, and qualified service personnel;

2 (e) The franchisee's failure to perform warranty work on
3 behalf of the manufacturer, subject to reimbursement by the
4 manufacturer;

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

8 (g) The franchisor's failure to honor its requirements
9 under the franchise;

10 (h) The potential harm to the area that the franchisee
11 serves;

12 (i) The demographic and geographic characteristics of the
13 area the franchisee serves; and

14 (j) The harm to the franchisor;

15 (6) To prevent by contract or otherwise, any motor vehicle
16 franchisee from changing the capital structure of the
17 franchisee's franchise or the means by or through which the
18 franchisee finances the operation of the franchisee's franchise,
19 provided the motor vehicle franchisee at all times meets any
20 reasonable capital standards agreed to between the motor vehicle
21 franchisee and the motor vehicle franchisor and grants to the
22 motor vehicle franchisor a purchase money security interest in
23 the new motor vehicles, new parts and accessories purchased from
24 the motor vehicle franchisor;

25 (7) (a) To prevent, by contract or otherwise, any sale or
26 transfer of a franchisee's franchise or interest or management
27 thereof; provided, if the franchise specifically permits the
28 franchisor to approve or disapprove any such proposed sale or

1 transfer, a franchisor shall only be allowed to disapprove a
2 proposed sale or transfer if the interest being sold or
3 transferred when added to any other interest owned by the
4 transferee constitutes fifty percent or more of the ownership
5 interest in the franchise and if the proposed transferee fails to
6 satisfy any standards of the franchisor which are in fact
7 normally relied upon by the franchisor prior to its entering into
8 a franchise, and which relate to the qualification,
9 capitalization, integrity or character of the proposed transferee
10 and which are reasonable. A franchisee or proposed franchisee
11 may request, at any time, that the franchisor provide a copy of
12 the standards which are normally relied upon by the franchisor to
13 evaluate a proposed sale or transfer and a proposed transferee;

14 (b) The franchisee and the prospective franchisee shall
15 cooperate with the franchisor in providing information relating
16 to the prospective transferee's qualifications, capitalization,
17 integrity and character;

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

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

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

28 c. The exercise of the right of first refusal shall result

1 in the franchisee and the franchisee's owners receiving the same
2 or greater consideration and the same terms and conditions as
3 contracted to receive in connection with the proposed sale or
4 transfer;

5 d. The sale or transfer does not involve the sale or
6 transfer to an immediate member or members of the family of one
7 or more franchisee owners, defined as a spouse, child,
8 grandchild, spouse of a child or grandchild, brother, sister or
9 parent of the franchisee owner, or to the qualified manager,
10 defined as an individual who has been employed by the franchisee
11 for at least two years and who otherwise qualifies as a
12 franchisee operator, or a partnership or corporation controlled
13 by such persons; and

14 e. The franchisor agrees to pay the reasonable expenses,
15 including attorney's fees which do not exceed the usual,
16 customary and reasonable fees charged for similar work done for
17 other clients, incurred by the proposed transferee prior to the
18 franchisor's exercise of its right of first refusal in
19 negotiating and implementing the contract for the proposed sale
20 or transfer of the franchise or the franchisee's assets.
21 Notwithstanding the foregoing, no payment of such expenses and
22 attorney's fees shall be required if the franchisee has not
23 submitted or caused to be submitted an accounting of those
24 expenses within fourteen days of the franchisee's receipt of the
25 franchisor's written request for such an accounting. Such
26 accounting may be requested by a franchisor before exercising its
27 right of first refusal;

28 (d) For determining whether good cause exists for the

1 purposes of this subdivision, the administrative hearing
2 commission shall take into consideration all relevant
3 circumstances, including, but not limited to, the following
4 factors:

5 a. Whether the franchise agreement specifically permits the
6 franchisor to approve or disapprove any proposed sale or
7 transfer;

8 b. Whether the interest to be sold or transferred when
9 added to any other interest owned by the proposed transferee
10 constitutes fifty percent or more of the ownership interest in
11 the franchise;

12 c. Whether the proposed transferee fails to satisfy the
13 standards of the franchisor which are in fact normally relied
14 upon by the franchisor prior to its entering into a franchise,
15 and which related to the qualification, capitalization, integrity
16 or character of the proposed transferee and which are lawful and
17 reasonable;

18 d. The amount of business transacted by the franchisee;

19 e. The investments and obligations incurred by the
20 franchisee, including but not limited to goodwill, in the
21 performance of its duties under the franchise agreement, together
22 with the duration and permanency of such investments and
23 obligations;

24 f. The investments and obligations that the proposed
25 transferee is prepared to make in the business;

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

28 h. The franchisor's failure to honor its requirements under

1 the franchise;

2 i. The potential harm to the area that the franchisee
3 serves;

4 j. The ability or willingness of the franchisee to continue
5 in the business if the proposed transfer is not permitted;

6 k. The demographic and geographic characteristics of the
7 area the franchisee serves; and

8 l. The harm to the franchisor;

9 (8) To prevent by contract or otherwise any motor vehicle
10 franchisee from changing the executive management of the motor
11 vehicle franchisee's business, unless the motor vehicle
12 franchisor demonstrates that such change in executive management
13 will be detrimental to the distribution of the motor vehicle
14 franchisor's motor vehicles;

15 (9) To impose unreasonable standards of performance upon a
16 motor vehicle franchisee or to require, attempt to require,
17 coerce or attempt to coerce a franchisee to adhere to performance
18 standards that are not applied uniformly to other similarly
19 situated franchisees;

20 (10) To require, attempt to require, coerce, or attempt to
21 coerce a motor vehicle franchisee at the time of entering into a
22 franchise or any other arrangement to assent to a release,
23 assignment, novation, waiver or estoppel which would relieve any
24 person from liability imposed by sections 407.810 to 407.835;

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

28 (12) To provide any term or condition in any lease or other

1 agreement ancillary or collateral to a franchise, including, but
2 not limited to, any agreement with a common entity or any person
3 required by the franchisor or controlled by or affiliated with
4 the franchisor, which term or condition directly or indirectly
5 violates the provisions of sections 407.810 to 407.835;

6 (13) Upon any termination, cancellation, refusal to
7 continue, or refusal to renew any franchise or any
8 discontinuation of any line-make or parts or products related to
9 such line-make, failing to pay reasonable compensation to a
10 franchisee as follows:

11 (a) The franchisee's net acquisition cost for any new,
12 undamaged and unsold vehicle in the franchisee's inventory of
13 either the current model year or one year-prior model year
14 purchased from the franchisor or another franchisee of the same
15 line-make in the ordinary course of business prior to receipt of
16 a notice of termination or nonrenewal, provided the vehicle has
17 less than seven hundred fifty miles registered on the odometer,
18 including mileage incurred in delivery from the franchisor or in
19 transporting the vehicle between dealers for sale;

20 (b) The franchisee's cost of each new, unused, undamaged
21 and unsold part or accessory if the part or accessory is in the
22 current parts catalog, less applicable allowances. In the case
23 of sheet metal, a comparable substitute for the original package
24 may be used. Reconditioned or core parts shall be valued at
25 their core value, the price listed in the current parts catalog
26 or the amount paid for expedited return of core parts, whichever
27 is higher. If the part or accessory was purchased by the
28 franchisee from an outgoing authorized franchisee, the franchisor

1 shall purchase the part or accessory for the price in the current
2 parts catalog. In the case of parts or accessories which no
3 longer appear in the current parts catalog, the franchisor shall
4 purchase the parts or accessories for the price in the last
5 version of the parts catalog in which the part or accessory
6 appeared;

7 (c) The fair market value of each undamaged sign owned by
8 the franchisee which bears a trademark or trade name used or
9 claimed by the franchisor if the sign was purchased from, or
10 purchased at the request of, the franchisor. During the first
11 seven years after its purchase, the fair market value of each
12 sign shall be the franchisee's costs of purchasing the sign, less
13 depreciation, using straight-line depreciation and a seven-year
14 life of the asset;

15 (d) The fair market value of all equipment, tools, data
16 processing programs and equipment and automotive service
17 equipment owned by the franchisee which were recommended in
18 writing and designated as equipment, tools, data processing
19 programs and equipment, and automotive service equipment and
20 purchased from, or purchased at the request of, the franchisor,
21 if the equipment, tools, programs and equipment are in usable and
22 good condition, except for reasonable wear and tear. During the
23 first seven years after their purchase, the fair market value of
24 each item of equipment, tools, and automotive service equipment
25 shall be the franchisee's costs of purchasing the item, less
26 depreciation, using straight-line depreciation and a seven-year
27 life of the asset. During the first three years after its
28 purchase, the fair market value of each item of required data

1 processing programs and equipment shall be the franchisee's cost
2 of purchasing the item, less depreciation, using straight-line
3 depreciation and a three-year life of the asset;

4 (e) In addition to the costs referenced in paragraphs (a)
5 to (d) of this subdivision, the franchisor shall pay the
6 franchisee an additional five percent for handling, packing,
7 storing and loading of any property subject to repurchase
8 pursuant to this section, and the franchisor shall pay the
9 shipper for shipping the property subject to repurchase from the
10 location of the franchisee to the location directed by the
11 franchisor;

12 (f) The amount remaining to be paid on any equipment or
13 service contracts required by or leased from the franchisor or a
14 subsidiary or company affiliated with or controlled or
15 recommended by the franchisor. However, if the franchise
16 agreement is voluntarily terminated by the franchisee, without
17 coercion by the franchisor, then:

18 a. If the amount remaining to be paid on any equipment or
19 service contract is owed to the franchisor, the franchisor shall
20 cancel the obligation rather than paying the amount to the
21 franchisee; and

22 b. If the amount remaining to be paid on any equipment or
23 service contract is owed to a subsidiary or a company affiliated
24 with or controlled or recommended by the franchisor, the
25 franchisor may pay such amount to the subsidiary or the company
26 affiliated with or controlled by the franchisor, but if the
27 franchisor does not pay such amount to the subsidiary or the
28 company affiliated with or controlled by the franchisor, such

1 amount may be paid to the franchisee by the subsidiary or company
2 affiliated with or controlled by the franchisor;

3 (g) If the dealer leases the dealership facilities, then
4 the franchisor shall be liable for twelve months' payment of the
5 gross rent or the remainder of the term of the lease, whichever
6 is less. If the dealership facilities are not leased, then the
7 franchisor shall be liable for the equivalent of twelve months'
8 payment of gross rent. This paragraph shall not apply when the
9 termination, cancellation, or nonrenewed line was under good
10 cause related to a conviction and imprisonment for a felony
11 involving moral turpitude that is substantially related to the
12 qualifications, function, or duties of a franchisee as well as
13 fraud and voluntary terminations of a franchise. Gross rent is
14 the monthly rent plus the monthly cost of insurance and taxes.
15 Such reasonable rent shall be paid only to the extent that the
16 dealership premises are recognized in the franchise and only if
17 they are used solely for performance in accordance with the
18 franchise and not substantially in excess of those facilities
19 recommended by the manufacturer or distributor. If the facility
20 is used for the operations of more than one franchise, the gross
21 rent compensation shall be adjusted based on the planning volume
22 and facility requirements of the manufacturers, distributors, or
23 branch or division thereof;

24 (h) The franchisor shall pay to the franchisee the amount
25 remaining to be paid on any leases of computer hardware or
26 software that is used to manage and report data to the
27 manufacturer or distributor for financial reporting requirements
28 and the amount remaining to be paid on any manufacturer or

1 distributor required equipment leases, service contracts, and
2 sign leases. The franchisor's obligation shall not exceed one
3 year on any such lease. However, if the franchise agreement is
4 voluntarily terminated by the franchisee, without coercion by the
5 franchisor, then:

6 a. If the amount remaining to be paid is owed to the
7 franchisor, the franchisor shall cancel the obligation rather
8 than paying the amount to the franchisee; and

9 b. If the amount remaining to be paid is owed to a
10 subsidiary or a company affiliated with or controlled or
11 recommended by the franchisor, the franchisor may pay such amount
12 to the subsidiary or the company affiliated with or controlled by
13 the franchisor, subject to the limit of the franchisor's one-year
14 obligation, but if the franchisor does not pay such amount to the
15 subsidiary or the company affiliated with or controlled by the
16 franchisor, such amount may be paid to the franchisee by the
17 subsidiary or company affiliated with or controlled by the
18 franchisor, subject to the limit of the franchisor's one-year
19 obligation;

20 (i) In addition to the other payments set forth in this
21 section, if a termination, cancellation, or nonrenewal is
22 premised upon the franchisor discontinuing the sale in this state
23 of a line-make that was the subject of the franchise, then the
24 franchisor shall also be liable to the franchisee for an amount
25 at least equivalent to the fair market value of the franchisee's
26 goodwill for the discontinued line-makes of the motor vehicle
27 franchise on the date immediately preceding the date the
28 franchisor announces the action which results in termination,

1 cancellation, or nonrenewal, whichever amount is higher. At the
2 franchisee's option, the franchisor may avoid paying fair market
3 value of the motor vehicle franchise to the franchisee under this
4 paragraph if the franchisor, or another motor vehicle franchisor
5 under an agreement with the franchisor, offers the franchisee a
6 replacement motor vehicle franchise with terms substantially
7 similar to that offered to other same line-make dealers;

8 (j) The franchisor shall pay the franchisee all amounts
9 incurred by the franchisee to upgrade its facilities that were
10 required by the franchisor within twelve months prior to receipt
11 of a notice of termination or nonrenewal; however, a franchisee
12 shall not receive any benefits under this subdivision if it was
13 terminated for the grounds set forth in subdivision (1) of
14 subsection 4 of section 407.822. However, if the franchise
15 agreement is voluntarily terminated by the franchisee, without
16 coercion by the franchisor, and for a reason other than the death
17 or incapacitation of the dealer principal, then the franchisor
18 shall have no obligation under this paragraph; [and]

19 (k) The franchisor shall pay the franchisee the amounts
20 specified in this subdivision along with any other amounts that
21 may be due to the franchisee under the franchise agreement within
22 sixty days after the tender of the property subject to the
23 franchisee providing evidence of good and clear title upon return
24 of the property to the franchisor. The franchisor shall remove
25 the property within sixty days after the tender of the property
26 from the franchisee's property. Unless previous arrangements
27 have been made and agreed upon, the franchisee is under no
28 obligation to provide insurance for the property left after sixty

1 days;

2 (1) This subdivision shall not apply to a termination,
3 cancellation or nonrenewal due to a sale of the assets or stock
4 of the motor vehicle dealership;

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

11 (a) Any designated family member of a deceased or
12 incapacitated franchisee shall become the succeeding franchisee
13 of such deceased or incapacitated franchisee if such designated
14 family member gives the franchisor written notice of such family
15 member's intention to succeed to the franchise or franchises
16 within one hundred twenty days after the death or incapacity of
17 the franchisee, and agrees to be bound by all of the lawful terms
18 and conditions of the current franchise agreement, and the
19 designated family member meets the current lawful and reasonable
20 criteria generally applied by the franchisor in qualifying
21 franchisees. In order for the franchisor to claim that any such
22 reasonable criteria are generally applied by the franchisor in
23 qualifying franchisees, it shall have previously provided a copy
24 to the proposed successor franchisee within ten days after
25 receiving the proposed successor franchisee's notice. A
26 franchisee may request, at any time, that the franchisor provide
27 a copy of such criteria generally applied by the franchisor in
28 qualifying franchisees;

1 (b) The franchisor may request from a designated family
2 member such personal and financial data as is reasonably
3 necessary to determine whether the existing franchise agreement
4 should be honored. The designated family member shall supply the
5 personal and financial data promptly upon the request;

6 (c) If the designated family member does not meet the
7 reasonable and lawful criteria generally applied by the
8 franchisor in qualifying franchisees, the discontinuance of the
9 current franchise agreement shall take effect not less than
10 ninety days after the date the franchisor serves the required
11 notice on the designated family member pursuant to subsection 4
12 of section 407.822;

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

18 (e) For determining whether good cause exists, the
19 administrative hearing commission shall take into consideration
20 all circumstances, including, but not limited to, the following
21 factors:

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

24 b. Whether the proposed successor substantially fails to
25 satisfy the material standards of the franchisor which are in
26 fact normally relied upon by the franchisor prior to the
27 successor entering into a franchise, and which relate to the
28 proposed management or ownership of the franchise operation or to

1 the qualification, capitalization, integrity or character of the
2 proposed successor and which are lawful and reasonable;

3 c. The amount of the business transacted by the franchisee;

4 d. The investments in and the obligations incurred by the
5 franchisee, including but not limited to goodwill in the
6 performance of its duties under the franchise agreement, together
7 with the duration and permanency of such investments and
8 obligations;

9 e. The investments and obligations that the proposed
10 successor franchisee is prepared to make in the business;

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

13 g. The franchisor's failure to honor its requirements under
14 the franchise;

15 h. The potential harm and injury to the public welfare in
16 the area that the franchisee serves;

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

19 j. The demographic and geographic characteristics of the
20 area the franchisee serves; and

21 k. The harm to the franchisor;

22 (15) To coerce, attempt to coerce, require, or attempt to
23 require a franchisee under any condition affecting or related to
24 a franchise agreement, to waive, limit or disclaim a right that
25 the franchisee may have pursuant to the provisions of sections
26 407.810 to 407.835. Any contracts or agreements which contain
27 such provisions shall be deemed against the public policy of the
28 state of Missouri and are void and unenforceable. Nothing in

1 this section shall prohibit voluntary settlement agreements that
2 specifically identify the provisions of sections 407.810 to
3 407.835 that the franchisee is waiving, limiting, or disclaiming;

4 (16) To initiate any act enumerated in this section on
5 grounds that it has advised a franchisee of its intention to
6 discontinue representation at the time of a franchisee change or
7 require any franchisee to enter into a site control agreement as
8 a condition to initiating any act enumerated in this section.
9 Such condition shall not be construed to nullify an existing site
10 control agreement for a franchisee's property;

11 (17) To require, attempt to require, coerce, or attempt to
12 coerce any franchisee in this state to refrain from, or to
13 terminate, cancel, or refuse to continue any franchise based upon
14 participation by the franchisee in the management of, investment
15 in or the acquisition of a franchise for the sale of any other
16 line of new vehicle or related products in the same or separate
17 facilities as those of the franchisor. This subdivision does not
18 apply unless the franchisee maintains a reasonable line of credit
19 for each make or line of new vehicle, the franchisee remains in
20 compliance with the franchise and any reasonable facilities
21 requirements of the franchisor, and no change is made in the
22 principal management of the franchisee. The reasonable
23 facilities requirement shall not include any requirement that a
24 franchisee establish or maintain exclusive facilities, personnel,
25 or display space, when such requirements would not otherwise be
26 justified by reasonable business considerations. Before the
27 addition of a line-make to the dealership facilities the
28 franchisee shall first request consent of the franchisor, if

1 required by the franchise agreement. Any decision of the
2 franchisor with regard to dualing of two or more franchises shall
3 be granted or denied within sixty days of a written request from
4 the franchisee. The franchisor's failure to respond timely to a
5 dualing request shall be deemed to be approval of the
6 franchisee's request;

7 (18) To fail or refuse to offer to sell to all franchisees
8 for a line-make reasonable quantities of every motor vehicle sold
9 or offered for sale to any franchisee of that line-make;
10 however, the failure to deliver any such motor vehicle shall not
11 be considered a violation of this section if the failure is due
12 to a cause over which the franchisor has no control. A
13 franchisor may impose reasonable requirements on the franchisee
14 including, but not limited to, the purchase of reasonable
15 quantities of advertising materials, the purchase of special
16 tools required to properly service a motor vehicle, the
17 undertaking of sales person or service person training related to
18 the motor vehicle, the meeting of reasonable display and facility
19 requirements as a condition of receiving a motor vehicle, or
20 other reasonable requirements; provided, that if a franchisor
21 requires a franchisee to purchase essential service tools with a
22 purchase price in the aggregate of more than seventy-five hundred
23 dollars in order to receive a particular model of new motor
24 vehicle, the franchisor shall upon written request provide such
25 franchisee with a good faith estimate in writing of the number of
26 vehicles of that particular model that the franchisee will be
27 allocated during that model year in which the tools are required
28 to be purchased;

1 (19) To directly or indirectly condition the awarding of a
2 franchise to a prospective franchisee, the addition of a
3 line-make or franchise to an existing franchisee, the renewal of
4 a franchise of an existing franchisee, the approval of the
5 relocation of an existing franchisee's facility, or the approval
6 of the sale or transfer of the ownership of a franchise on the
7 willingness of a franchisee, proposed franchisee, or owner of an
8 interest in the dealership facility to enter into a site control
9 agreement or exclusive use agreement. For purposes of this
10 subdivision, the terms "site control agreement" and "exclusive
11 use agreement" include any agreement that has the effect of
12 either requiring that the franchisee establish or maintain
13 exclusive dealership facilities or restricting the ability of the
14 franchisee, or the ability of the franchisee's lessor in the
15 event the dealership facility is being leased, to transfer, sell,
16 lease, or change the use of the dealership premises, whether by
17 sublease, lease, collateral pledge of lease, right of first
18 refusal to purchase or lease, option to purchase, option to
19 lease, or other similar agreement, regardless of the parties to
20 such agreement. Any provision contained in any agreement entered
21 into on or after August 28, 2010, that is inconsistent with the
22 provisions of this subdivision shall be voidable at the election
23 of the affected franchisee, prospective franchisee, or owner of
24 an interest in the dealership facility, provided this subdivision
25 shall not apply to a voluntary agreement where separate,
26 adequate, and reasonable consideration have been offered and
27 accepted;

28 (20) Except for the grounds listed in subdivision (1) of

1 subsection 4 of section 407.822, prior to the issuance of any
2 notice of intent to terminate a franchise agreement under the
3 MVFP act for unsatisfactory sales or service performance, the
4 franchisor shall provide the franchisee with no less than one
5 hundred twenty days written notice of the specific asserted
6 grounds for termination. Thereafter, the franchisee shall have
7 one hundred twenty days to cure the asserted grounds for
8 termination, provided the grounds are both reasonable and of
9 material significance to the franchise relationship. If the
10 franchisee fails to cure the asserted grounds for termination by
11 the end of the cure period, then the franchisor may give the
12 sixty-day notice required by subsection 4 of section 407.822 if
13 it intends to terminate the franchise;

14 (21) To require, attempt to require, coerce, or attempt to
15 coerce a franchisee, by franchise agreement or otherwise, or as a
16 condition to the renewal or continuation of a franchise
17 agreement, to:

18 (a) Exclude from the use of the franchisee's facilities a
19 line-make for which the franchisee has a franchise agreement to
20 utilize the facilities; or

21 (b) Materially change the franchisee's facilities or method
22 of conducting business if the change would impose substantial or
23 unreasonable financial hardship on the business of the
24 franchisee;

25 (22) To fail to perform or cause to be performed any
26 written warranties made with respect to any motor vehicle or
27 parts thereof;

28 (23) To withhold, reduce, or delay unreasonably or without

1 just cause services contracted for by franchisees;

2 (24) To coerce, attempt to coerce, require, or attempt to
3 require any franchisee to provide installment financing with a
4 specified financial institution;

5 (25) To require, attempt to require, coerce, or attempt to
6 coerce any franchisee to close or change the location of the
7 franchisee[, or to make any substantial alterations to the
8 franchise premises or facilities when doing so would be
9 unreasonable under the current market and economic conditions.
10 Prior to suggesting the need for any such action, the franchisor
11 shall provide the franchisee with a written good faith estimate
12 of the minimum number of the models of new motor vehicles that
13 the franchisor will supply to the franchisee during a reasonable
14 time period, not less than three years, so the franchisee may
15 determine if it is a sufficient supply of motor vehicles so as to
16 justify such changes, in light of the current market and
17 reasonably foreseeable projected and economic conditions. A
18 franchisor or its common entity or an entity controlled by or
19 affiliated with the franchisor may not take or threaten to take
20 any action that is unfair or adverse to a franchisee who does not
21 enter into an agreement with the franchisor under this
22 subdivision. This subdivision does not affect any contract
23 between a franchisor and any of its franchisees regarding
24 relocation, expansion, improvement, remodeling, renovation, or
25 alteration which exists on August 28, 2010];

26 (26) To authorize or permit a person to perform warranty
27 service repairs on motor vehicles unless the person is a
28 franchisee with whom the manufacturer has entered into a

1 franchise agreement for the sale and service of the
2 manufacturer's motor vehicles unless:

3 (a) For emergency repairs when a franchisee is not
4 available;

5 (b) For repairs pursuant to a fleet contract as long as all
6 parts and labor to perform the repairs are less than one thousand
7 five hundred dollars at retail per repaired vehicle; or

8 (c) For repairs performed by a facility under subsection 2
9 of section 407.826;

10 (27) To discriminate between or refuse to offer to its same
11 line-make franchisees all models manufactured for that line-make
12 based upon unreasonable sales and service standards;

13 (28) To fail to make practically available any incentive,
14 rebate, bonus, or other similar benefit to a franchisee that is
15 offered to another franchisee of the same line-make within this
16 state;

17 (29) To condition a franchise agreement on improvements to
18 a facility unless reasonably required by the technology of a
19 motor vehicle being sold at the facility;

20 (30) To condition the sale, transfer, relocation, or
21 renewal of a franchise agreement, or to condition sales,
22 services, parts, or finance incentives, upon site control or an
23 agreement to renovate or make improvements to a facility; except
24 that voluntary acceptance of such conditions by the franchisee
25 shall not constitute a violation;

26 (31) Failing to offer to all of its franchisees of the same
27 line-make any consumer rebates, dealer incentives, price or
28 interest rate reduction, or finance terms that the franchisor

1 offers or advertises, or allows its franchisees of the same
2 line-make to offer or advertise;

3 (32) Offering rebates, cash incentives, or other
4 promotional items for the sale of a vehicle by its franchisees
5 unless: the same rebate, cash incentive, or promotion is offered
6 to all of its franchisees of the same line-make; and any rebate,
7 cash incentive, or promotion that is based on the sale of an
8 individual vehicle is not increased for meeting a performance
9 standard;

10 (33) Unreasonably discriminating among its franchisees in
11 any program that provides assistance to its franchisees,
12 including internet listings, sales leads, warranty policy
13 adjustments, marketing programs, and dealer recognition programs;

14 (34) To fail to include in any franchise with a franchisee
15 the following language: "If any provision herein contravenes the
16 laws or regulations of any state or other jurisdiction wherein
17 this agreement is to be performed, or denies access to the
18 procedures, forums, or remedies provided for by such laws or
19 regulations, such provision shall be deemed to be modified to
20 conform to such laws or regulations, and all other terms and
21 provisions shall remain in full force," or words to that effect;

22 (35) To withhold, reduce, or delay unreasonably or without
23 just cause delivery of motor vehicle parts and accessories,
24 commodities, or moneys due franchisees;

25 (36) To use or consider the performance of a franchisee
26 relating to the sale of the franchisor's vehicles or the
27 franchisee's ability to satisfy any minimum sales or market share
28 quota or responsibility relating to the sale of the new vehicles

1 in determining:

2 (a) The franchisee's eligibility to purchase program,
3 certified, or other used motor vehicles from the franchisor;

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

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

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

15 (37) To refuse to allocate, sell, or deliver motor
16 vehicles; to charge back or withhold payments or other things of
17 value for which the franchisee is otherwise eligible under a
18 sales promotion, program, or contest; to prevent a franchisee
19 from participating in any promotion, program, or contest; or to
20 take or threaten to take any adverse action against a franchisee,
21 including charge-backs, reducing vehicle allocations, or
22 terminating or threatening to terminate a franchise because the
23 franchisee sold or leased a motor vehicle to a customer who
24 exported the vehicle to a foreign country or who resold the
25 vehicle, unless the franchisor proves that the franchisee knew or
26 reasonably should have known that the customer intended to export
27 or resell the motor vehicle. There is a rebuttable presumption
28 that the franchisee neither knew nor reasonably should have known

1 of its customer's intent to export or resell the vehicle if the
2 vehicle is titled or registered in any state in this country. A
3 franchisor may not take any action against a franchisee,
4 including reducing its allocations or supply of motor vehicles to
5 the franchisee, or charging back a franchisee for an incentive
6 payment previously paid, unless the franchisor first meets in
7 person, by telephone, or video conference with an officer or
8 other designated employee of the franchisee. At such meeting,
9 the franchisor shall provide a detailed explanation, with
10 supporting documentation, as to the basis for its claim that the
11 franchisee knew or reasonably should have known of the customer's
12 intent to export or resell the motor vehicle. Thereafter, the
13 franchisee shall have a reasonable period, commensurate with the
14 number of motor vehicles at issue, but not less than fifteen
15 days, to respond to the franchisor's claims. If, following the
16 franchisee's response and completion of all internal dispute
17 resolution processes provided through the franchisor, the dispute
18 remains unresolved, the franchisee may file a complaint with the
19 administrative hearing commission within thirty days after
20 receipt of a written notice from the franchisor that it still
21 intends to take adverse action against the franchisee with
22 respect to the motor vehicles still at issue. If a complaint is
23 timely filed, the administrative hearing commission shall notify
24 the franchisor of the filing of the complaint, and the franchisor
25 shall not take any action adverse to the franchisee until the
26 administrative hearing commission renders a final determination,
27 which is not subject to further appeal, that the franchisor's
28 proposed action is in compliance with the provisions of this

1 subdivision. In any hearing under this subdivision, the
2 franchisor has the burden of proof on all issues raised by this
3 subdivision;

4 (38) To require a franchisee to provide its customer lists
5 or service files to the franchisor, unless necessary for the sale
6 and delivery of a new motor vehicle to a consumer, to validate
7 and pay consumer or dealer incentives, for reasonable marketing
8 purposes or for the submission to the franchisor for any services
9 supplied by the franchisee for any claim for warranty parts or
10 repairs. Nothing in this section shall limit the franchisor's
11 ability to require or use customer information to satisfy any
12 safety or recall notice obligation;

13 (39) To mandate the use by the franchisee, or condition
14 access to any services offered by the franchisor on the
15 franchisee's use, or condition the acceptance of an order of any
16 product or service offered by the franchisor on the franchisee's
17 use, or condition the acceptance of any claim for payment from
18 the franchisee on the franchisee's use, or condition the
19 franchisee's participation in any program offered by the
20 franchisor, a common entity or an entity controlled by the
21 franchisor on the franchisee's use of any form, equipment, part,
22 tool, furniture, fixture, data processing program or equipment,
23 automotive service equipment, or sign from the franchisor, a
24 vendor recommended by the franchisor, a common entity or an
25 entity controlled by the franchisor if the franchisee is able to
26 obtain the identical or reasonably equivalent product from
27 another vendor;

28 (40) Establishing any performance standard or program for

1 measuring franchisee performance that may have a material impact
2 on a franchisee that is not fair, reasonable, and equitable, or
3 applying any such standard or program to a franchisee in a manner
4 that is not fair, reasonable, and equitable. Within ten days of
5 a request of a franchisee, a franchisor shall disclose in writing
6 to the franchisee a description of how a performance standard or
7 program is designed and all relevant information used in the
8 application of the performance standard or program to that
9 franchisee unless the information is available to the franchisee
10 on the franchisor's website;

11 (41) Establishing or implementing a plan or system for the
12 allocation, scheduling, or delivery of new motor vehicles, parts,
13 or accessories to its franchisees that is not fair, reasonable,
14 and equitable or modifying an existing plan or system so as to
15 cause the plan or system to be unreasonable, unfair, or
16 inequitable. Within ten days of any request of a franchisee, the
17 franchisor shall disclose in writing to the franchisee the method
18 and mode of distribution of that line-make among the franchisor's
19 franchisees of the same line-make within the same metro area for
20 franchisees located in a metropolitan area and within the county
21 and contiguous counties of any franchisee not located in a
22 metropolitan area; and

23 (42) To violate any other provision of the MVFP act that
24 adversely impacts a franchisee.