§ 463. Unfair business practices by franchisors. 1. It shall be unlawful for any franchisor to directly or indirectly coerce or attempt to coerce any franchised motor vehicle dealer:

(a) To order or accept delivery of any motor vehicle or vehicles, appliances, tools, machinery, equipment, parts or accessories therefor or any other commodity or commodities which shall not have been voluntarily ordered by said franchised motor vehicle dealer except any such items required by a recall campaign.

(b) To order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of said motor vehicle as publicly advertised by the franchisor.

(c) To contribute or pay money or anything of value into any cooperative or other advertising program or fund unless such program or fund shall be controlled by a dealer or group of dealers.

(d) To participate in any training program unless such program is expressly limited to specific information necessary to sell or service the models of vehicles the dealer is authorized to sell or service under the dealer's franchise with that franchisor. A franchisor shall not unreasonably require an owner or dealer principal of a dealership to attend any meeting or training program. A franchisor who requires participation in a training program as authorized by this paragraph shall to the largest extent practicable make all reasonable efforts to limit or reimburse the expenses of a dealer incurred in attending such program. Nothing in this paragraph shall be deemed to prohibit any training program located within a dealer's own principal place of business.

(e) To sell, or sell exclusively an extended service contract, extended maintenance plan or similar product, including, but not limited to, gap products offered, endorsed or sponsored by the franchisor by the following means:

(1) by a statement made by the franchisor that failure to do so will substantially and adversely impact the dealer; or

(2) by a provision in a franchise agreement that the dealer sell, or sell exclusively an extended service contract, extended maintenance plan or similar product offered, endorsed or sponsored by the franchisor; or

(3) by measuring the dealer's performance under the franchise based on the sale of extended service contracts, extended maintenance plans or

similar products offered, endorsed or sponsored by the manufacturer or distributor; or

(4) by requiring the dealer to exclusively promote the sale of extended service contracts, extended maintenance plans or similar products offered, endorsed or sponsored by the franchisor.

Nothing in this section shall prohibit a franchisor from:

(A) providing incentives to a dealer that makes the voluntary decision to sell or sell exclusively an extended service contract, extended maintenance plan or similar product, including, but not limited to, gap products offered, endorsed or sponsored by the franchisor, or

(B) requiring that a dealer that sells an extended service contract, extended maintenance plan, or similar product that is not offered, endorsed or sponsored by the franchisor, disclose to the consumer the disclosures required under section seven thousand nine hundred five of the insurance law, and a separate statement, acknowledged by the consumer, that the extended service contract, extended maintenance plan or similar product is not offered, endorsed or sponsored by the franchisor, if that is the case.

2. It shall be unlawful for any franchisor, notwithstanding the terms of any franchise contract:

(a) To refuse to deliver in reasonable quantity and within a reasonable time after receipt of a dealer's order to any franchised motor vehicle dealer any vehicle covered by such franchise which is publicly advertised by such franchisor to be available for immediate delivery. Provided, however, the failure to deliver any motor vehicle shall not be considered a violation of this article if such failure be due to acts of God, work stoppages or delays due to strikes or labor difficulties, freight embargoes, shortage of materials, a lack of manufacturing capacity or other causes over which the franchisor shall have no control.

(b) To directly or indirectly coerce or attempt to coerce any franchised motor vehicle dealer to enter into any agreement with such franchisor or officer, agent or other representative thereof, or to do any other act prejudicial to the monetary interests or property rights of said dealer by threatening to terminate said dealer. Provided,

however, that good faith notice to any franchised motor vehicle dealer of said dealer's violation of any terms or provisions of such franchise shall not constitute a violation of this article.

(c) (1) To condition the renewal or extension of a franchise on a franchised motor vehicle dealer's substantial renovation of the dealer's place of business or on the construction, purchase, acquisition or rental of a new place of business by the franchised motor vehicle dealer unless the franchisor has advised the franchised motor vehicle dealer in writing of its intent to impose such a condition within a reasonable time prior to the effective date of the proposed date of renewal or extension (but in no case less than one hundred eighty days) and provided the franchisor demonstrates the need for such change in the place of business and the reasonableness of such demand in view of the need to service the public and the economic conditions existing in the automobile industry at the time such action would be required of the franchised motor vehicle dealer. As part of any such condition the franchisor shall agree, in writing, to supply the dealer with a reasonable quantity and mix of additional new motor vehicles which, as determined by a reasonable analysis of market conditions, are projected to meet the sales levels necessary to support the increased overhead incurred by the franchised motor vehicle dealer by reason of such renovation, construction, purchase, acquisition or rental of a new place of business.

(2) To require a franchised motor vehicle dealer to purchase goods, building materials, or services for the dealer's place of business, including, but not limited to, office furniture, design features, flooring, and wall coverings, from a vendor chosen by the franchisor if goods, building materials, or services of substantially similar quality and design are available from other sources, provided, however, that the goods or building materials are not subject to the franchisor's intellectual property or trademark rights and the franchised motor vehicle dealer has received the franchisor's approval, which approval may not be unreasonably withheld. Nothing in this subdivision shall be construed to allow a franchised motor vehicle dealer to impair or eliminate a franchisor's intellectual property or trademark rights and trade dress usage guidelines, or to impair other intellectual property interests owned or controlled by the franchisor.

(3) Except as necessary to comply with a health or safety law, or to comply with a technology requirement, which is necessary to sell or service a motor vehicle that the franchised motor vehicle dealer is authorized or licensed by the franchisor to sell or service, to require a franchised motor vehicle dealer to construct a new dealer facility or substantially alter or remodel an existing dealer facility before the date that is ten years after the date the construction of the new dealer facility or such alteration or remodeling at that location was completed and shall continue with any successor owner provided such owner has been designated and approved by the franchisor in the franchise agreement, and such construction, alteration or remodeling substantially complied with the franchisor's brand image standards or plans that the franchisor provided at the time the construction, alteration, or remodeling was completed.

(i) As used in this subparagraph, "substantially alter":

(A) refers to an alteration that has a major impact on the architectural features, characteristics, or integrity of a structure or lot; and

(B) does not include routine maintenance, such as interior painting, reasonably necessary to keep a dealership facility in attractive condition.

(ii) Nothing in this paragraph shall prohibit a franchisor from:

(A) continuing a facility improvement program that is in effect as of the effective date of this paragraph with more than one franchised motor vehicle dealer in the state or to renewing or modifying such program; or

(B) providing lump sum or regularly-scheduled payments to assist a franchised motor vehicle dealer in making a facility improvement, including construction, alteration or remodeling, or installing signage or a franchisor image element;

(C) providing reimbursement to a franchised motor vehicle dealer on reasonable, written terms for a portion of the franchised motor vehicle dealer's cost of making a facility improvement, including construction, alteration or remodeling, the purchase of goods, building materials or services, or installing signage or a franchisor image element.

(4) To deny a franchised motor vehicle dealer a franchisor image element payment, incentive or allowance if the franchised motor vehicle dealer, with the franchisor's approval, began construction, alterations

or remodeling intended to comply with the franchisor's image element program before the franchisor substantially changed or terminated the program prior to the program's scheduled ending date provided the dealer is otherwise eligible for program payments and provided that after such substantial change or termination, the compensation payable to the dealer shall be limited to image element payments, incentives or allowances that the dealer would have earned through program's scheduled ending date, provided that the dealer complies with all program requirements, and provided, further, that such program or payments are not otherwise prohibited by law or regulation.

(5) To require or attempt to require a franchised motor vehicle dealer to establish or maintain exclusive dealership facilities unless justified by current and reasonably expected future economic conditions existing in the dealer's relevant market area at the time the request for exclusive facilities is made; provided that the foregoing shall not restrict the terms and conditions of any agreement for which the dealer has voluntarily accepted valuable consideration separate from the franchised motor vehicle dealer's right to sell and service motor vehicles for the franchisor. The fact that local market share, facing competitive brand dealerships have exclusive dealership facilities shall constitute evidence that current economic conditions may justify the requirement to establish and maintain exclusive dealership facilities.

(6) To require a site control provision regarding the dealer's place of business to survive or continue after the termination of such dealer's franchise if the termination is due to the discontinuation of the line-make that was the subject of the agreement.

(d) (1) To terminate, cancel or refuse to renew the franchise of any franchised motor vehicle dealer except for due cause, regardless of the terms of the franchise. A franchisor shall notify a franchised motor vehicle dealer, in writing, of its intention to terminate, cancel or refuse to renew the franchise of such dealer at least ninety days before the effective date thereof, stating the specific grounds for such termination, cancellation or refusal to renew. In no event shall the term of any such franchise expire without the written consent of the franchised motor vehicle dealer involved prior to the expiration of at least ninety days following such written notice except as hereinafter provided.

(2) A change in ownership of a manufacturer or distributor that contemplates a continuation of that line make in the state shall not directly or indirectly, through actions of any parent of the manufacturer or distributor, subsidiary of the manufacturer or distributor, or common entity cause a termination, cancellation, or nonrenewal of a dealer agreement by a present or previous manufacturer or distributor of an existing agreement unless the manufacturer or distributor offers the new vehicle dealer an agreement substantially similar to that offered to other dealers of the same line make.

(3) The provisions of subparagraphs one and two of this paragraph notwithstanding, a franchisor may terminate its franchise with a franchised motor vehicle dealer upon at least fifteen days written notice upon the occurrence of any of the following: (i) conviction of a franchised motor vehicle dealer, or one of its principal owners, of a felony or a crime punishable by imprisonment which substantially adversely affects the business of the franchisor, or (ii) the failure of the franchised motor vehicle dealer to conduct its customary sales and service operations for a continuous period of seven business days, except for acts of God or circumstances beyond the direct control of the franchised motor vehicle dealer or when any license required by the franchised motor vehicle dealer is suspended for a period of thirty days or less, or (iii) insolvency of the franchised motor vehicle dealer, or filing of any petition by or against the franchised motor vehicle dealer under any bankruptcy or receivership law.

(e) (1) Any franchised motor vehicle dealer who receives a written notice of termination or a written notice of a franchisor's demand that the dealer substantially renovate an existing place of business, or buy, construct or rent a new place of business as a condition of franchise renewal or extension may have a review of the demand to change the place of business or the threatened termination by instituting an action, as provided in section four hundred sixty-nine of this article. If such action is commenced within four months of receipt of notice, such action shall serve to stay, without bond, the proposed termination or renovation or demand to change the place of business until the final judgment has been rendered in an adjudicatory proceeding or action, as provided in section four hundred sixty-nine of this article.

(2) The issues to be determined in an action commenced pursuant to

subparagraph one of this paragraph are whether the franchisor's notice of termination was issued with due cause and in good faith. The burden of proof shall be upon the franchisor to prove that due cause and good faith exist. The franchisor shall also have the burden of proving that all portions of its current or proposed sales and service requirements for the protesting franchised new motor vehicle dealer are reasonable.

The determination of due cause shall be that there exists a material breach by a new motor vehicle dealer of a reasonable and necessary provision of a franchise if the breach is not cured within a reasonable time after written notice of the breach has been received from the manufacturer or distributor.

(3) The franchisor shall provide notification in writing to the dealer that the dealer has one hundred eighty days to correct dealer sales and service performance deficiencies or breaches and that the franchise is subject to termination under this section if the dealer does not correct those deficiencies or breaches. If the termination is based upon performance of the dealer in sales and service then there shall be no due cause if the dealer substantially complies with the reasonable performance provisions of the franchise during such cure period and, no due cause if the failure to demonstrate such substantial compliance was due to factors which were beyond the control of such dealer.

(f) To intentionally resort to or use any false or misleading advertisements.

(g) To sell or offer to sell any new motor vehicle to any franchised motor vehicle dealer at a lower actual price therefor than the actual price offered to any other franchised motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device including, but not limited to, sales promotion plans or programs which result in such lesser actual price. Provided, however, the provisions of this paragraph shall not apply to sales to a franchised motor vehicle dealer for: (i) resale to any unit of government; or (ii) donation or use by said dealer in a driver education program. This paragraph shall not be construed to prevent the offering of incentive programs or other discounts provided such incentives or discounts are reasonably available to all franchised motor vehicle dealers in this state on a proportionately equal basis.

(h) To sell or offer to sell any new motor vehicle to any person,

except a distributor, at a lower actual price therefor than the actual price offered and charged to a franchised motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device which results in such lesser actual price.

(i) To sell or offer to sell parts and/or accessories to any franchised motor vehicle dealer at a lower actual price therefor than the actual price offered to any other franchised motor vehicle dealer for similar parts and/or accessories for use in his own business. Provided, however, that nothing herein contained shall be construed to prevent a manufacturer or distributor, or any agent thereof, from selling to a franchised motor vehicle dealer, who operates and serves as a wholesaler of parts and accessories, such parts and accessories as may be ordered by such franchised motor vehicle dealer for resale to retail outlets at a lower actual price than the actual price offered a franchised motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories. This paragraph shall not be construed to prevent the offering of incentive programs or other discounts provided the franchisor demonstrates that such incentives or discounts are reasonably available to all franchised motor vehicle dealers in the state on a proportionately equal basis.

(j) To prevent or attempt to prevent, by contract or otherwise, any franchised motor vehicle dealer from changing the capital structure of its dealership, or the means by or through which it finances the operation of its dealership, or finances the acquisition or retention of inventory, provided the dealer at all times meets any capital standards agreed to between the dealer and the franchisor and as applied by the franchisor to all other comparable franchised motor vehicle dealers of the franchisor located within the state.

(k) To unreasonably withhold consent to the sale or transfer of an interest, in whole or in part, to any other person or party by any franchised motor vehicle dealer or any partner or stockholder of any franchised motor vehicle dealer. If such consent to sale or transfer shall be withheld by the franchisor, the franchisor shall provide specific reasons for its withholding of consent within sixty days of receipt of the request for such consent provided such request is accompanied by proper documentation as may reasonably be required by the franchisor. Upon receipt of notice and reasons for the franchisor's

withholding of consent, the franchised motor vehicle dealer may within one hundred twenty days have a review of the manufacturer's decision as provided in section four hundred sixty-nine of this article.

(l) To require a franchised motor vehicle dealer to assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed under this article, provided that this paragraph shall not be construed to prevent a franchised motor vehicle dealer from entering into a valid release or settlement agreement with a franchisor.

(m) (1) To deny to the surviving spouse or heirs of an individual franchised motor vehicle dealer or of a partner of an unincorporated franchised motor vehicle dealer or of a stockholder of a corporate franchised motor vehicle dealer the right to succeed to the interest of the decedent in such franchised motor vehicle dealership enterprise or directly or indirectly to interfere with, hinder or prevent the continuance of the business of the franchised motor vehicle dealer by reason of such succession to the interest of the decedent. Provided, however, that the continuation of the business of the franchised motor vehicle dealer shall be conducted under competent management acceptable to the franchisor, whose acceptance shall not be unreasonably withheld.

(2) Notwithstanding the foregoing, in the event the franchised motor vehicle dealer and franchisor have duly executed an agreement concerning succession rights prior to the individual dealer's, partner's or stockholder's death and if such agreement has not been revoked by the franchised motor vehicle dealer, such agreement shall be observed, even if it designates an individual other than the surviving spouse or heirs of the decedent.

(n) To fail to indemnify and hold harmless its franchised motor vehicle dealers against any losses or damages including, but not limited to, court costs and attorneys' fees arising out of actions, claims or proceedings including, but not limited to, those based upon strict liability, negligence, misrepresentation, warranty (expressed or implied) or revocation as described in section 2-608 of the uniform commercial code, where the action, claim or proceeding directly relates to the manufacture, assembly or design of new motor vehicles, parts or accessories or other functions of the franchisor including, without limitation, the selection by the franchisor of parts or components for

the vehicle or any damages to merchandise or vehicles occurring in transit where the carrier is designated by the franchisor, notwithstanding the terms of any franchise. If the action, claim or proceeding includes independent allegations against the franchised motor vehicle dealer, the franchisor shall bear only that portion of the costs, fees and judgment which is directly related to the manufacture, assembly or design of the vehicle, parts or accessories, or other function of the franchisor beyond the control of the franchised motor vehicle dealer.

(o) (1) Upon a termination of a franchise by a franchisor or franchised motor vehicle dealer under this article, to refuse to accept a return of new and unused current model motor vehicle inventory which has been acquired from the franchisor, new and unused noncurrent model motor vehicle inventory which has been acquired from the franchisor within one hundred eighty days of the effective date of the termination; supplies, parts, equipment, signage, special tools, and furnishings purchased from the franchisor or its approved sources. The obligation of the franchisor, except with respect to signage shall be limited to the repurchase of the above property which is unaltered and undamaged, in good and useable condition, and, in the case of supplies, parts and equipment to those items which are currently listed in the franchisor's supplies and parts list. In the case of signage, the franchisor shall be obligated to repurchase any franchisor required signage, purchased within the five years preceding termination and which is in good and useable condition less depreciation as set forth in the Internal Revenue Code of one-fifteenth of the initial cost per year starting the year following the dealer's acquisition of the item. Furthermore, the obligation of the franchisor to repurchase supplies upon a termination, cancellation or nonrenewal by a franchised motor vehicle dealer shall be limited to supplies mandated by the franchisor. Parts eligible for repurchase shall include parts which have been renumbered in the current parts list but which are identical in design and material to the currently numbered part. The return rights afforded the franchised motor vehicle dealer under the provisions of the paragraph shall be in addition to those, if any, provided in the franchise agreement.

(2) The franchisor shall pay fair and reasonable compensation for the above described property upon repurchase. In the case of new motor

vehicle inventory, accessories and parts, fair and reasonable compensation shall in no instance be less than the net acquisition price paid by the franchised motor vehicle dealer to the franchisor or its approved sources. Upon a termination of a franchise by a franchisor, within thirty days of such termination, the franchisor shall send to the franchised motor vehicle dealer instructions on the methodology by which the franchised motor vehicle dealer must ship the above described property to the franchisor; the franchisor shall then remit payment for such property to the franchised motor vehicle dealer within sixty days after receipt of such property.

(3) Upon a termination of a franchise by a franchised motor vehicle dealer where the franchise consists primarily of the distribution and sale of house coaches, the franchisor's repurchase obligations set forth in this paragraph shall not apply.

(4) In addition to any other requirements of this subdivision, in the event a franchisor terminates a franchise due to termination of a line make, the franchisor shall compensate the dealer for any franchisor required facility construction, alterations or remodeling, or construction, alterations or remodeling required for participation in any incentive programs which were completed by the dealer within three years of the date the franchisor announced the termination of the line make. For the purposes of this section, completion shall be deemed to occur at the later of the franchisor's final approval of the construction, alterations, or remodeling or the issuance of a certificate of occupancy. The compensation required under this section shall be in an amount equal to the dealer's cost for the facility upgrades less any assistance provided to the dealer within three years of the date the franchisor announced the termination of the line make by the manufacturer or distributor, and less the amount for depreciation as set forth in Internal Revenue Code of one thirty-ninth of the total initial cost of such construction, alterations, or remodeling per year starting the year following the dealer's completion of the facility construction, alterations, or remodeling.

(5) In addition to the requirements of subparagraph four of this paragraph, in the event a franchisor terminates a franchise due to a termination of a line make, the franchisor shall compensate the dealer in an amount equal to the amount remaining on the terminated dealer's

management computer system lease or contract, or one year of lease payments, whichever is less if the dealer management computer system will no longer be utilized as a result of the termination and the franchisor required the dealer to utilize the particular dealer management computer system.

(p) To refuse to repurchase for cost, including transportation charges, a new vehicle which has been substantially damaged by the franchisor or its agent; or to sell or transfer to a franchised motor vehicle dealer a new motor vehicle which has been subjected to repairs with a retail value in excess of five percent of the lesser of the manufacturer's or distributor's suggested retail price where such repairs are performed after shipment from the franchisor including damage to the vehicle while in transit without so notifying the franchised motor vehicle dealer to whom such new motor vehicle so repaired is sold or transferred. Such notice shall be in writing, advise of such repairs, and be provided prior to the receipt of any payment for such motor vehicle. If the franchisor shall fail to provide such notice, any franchised motor vehicle dealer suffering a loss by reason of such failure shall be entitled to reimbursement from the franchisor who failed to provide such notice.

(q) To provide directly or to grant to any person the right to perform warranty or recall service on any new motor vehicle line other than a house coach line but deny to said person the right to purchase the motor vehicles of that line for resale to consumers in this state as new motor vehicles provided, however, that this paragraph shall not prohibit a franchisor from:

(1) authorizing warranty service by employees of a fleet operator or governmental entity on owned vehicles; or

(2) authorizing such other persons to perform warranty service as the franchisor deems necessary to protect its interests as they may be affected by section one hundred ninety-eight-a of the general business law.

A "fleet operator" shall be required to own for its own use or for the use of others the minimum number of vehicles of the current or preceding model year manufactured or sold by the same franchisor as determined by the standards of such franchisor applied on a general and consistent

basis to substantially all fleet operators. Notwithstanding the preceding, a franchisor which withdraws from the United States market shall continue to allow its former franchised motor vehicle dealers to continue servicing and supplying parts, including service and parts supplied under the franchisor's warranty to vehicle owners, for a period of at least five years after such withdrawal from the United States market.

(r) To establish or attempt to establish the actual resale price for any new motor vehicle, part or accessory charged by a franchised motor vehicle dealer in the state, provided, however, nothing contained herein shall prohibit publication of recommended resale prices or historical information by a franchisor.

(s) To grant a commission to any person other than a franchised motor vehicle dealer within the state involved in the sale of a new motor vehicle by such franchised motor vehicle dealer without said franchised motor vehicle dealer's written consent. This prohibition shall not apply to sales incentive programs for employees of franchised motor vehicle dealers as long as the payments are made by the franchisor to such employees and not charged to the dealer.

(t) To require or attempt to require by the terms of the franchise that any dispute arising out of or in connection with the interpretation, performance or nonperformance of the parties to the franchise or in any way related to the franchise be determined through the application of any other state's laws.

(u) To use any subsidiary corporation, affiliated corporation, captive finance source or any other controlled corporation, partnership, association or person to accomplish what would otherwise be unlawful conduct under this article on the part of the franchisor.

(v) To use a CSI (customer satisfaction index) or other system measuring a customer's degree of satisfaction with a franchised motor vehicle dealer as a sale or service provider unless any such system is designed and implemented in such a way that it is fair and equitable to both the franchisor and the franchised motor vehicle dealer. In any dispute between a franchisor and a franchised motor vehicle dealer the party claiming the benefit of the system as justification for acts in relation to the franchise shall have the burden of demonstrating the fairness and equity of the system both in design and implementation in

relation to the pending dispute. Upon request of any franchised motor vehicle dealer, a franchisor shall disclose in writing to such dealer a description of how that system is designed and all relevant information pertaining to such dealer used in the application of that system to such dealer.

(w) To withhold from a franchised motor vehicle dealer a new motor vehicle product of the same line make which the franchised motor vehicle dealer is authorized to sell under its franchise. Provided that the failure to deliver any motor vehicle shall not be considered to be a violation of this article if such failure is due to an act of God, work stoppages or delays due to strikes or labor difficulties, freight embargoes, shortages of materials, a lack of manufacturing capacity, or other causes over which the franchisor shall have no control. A franchised motor vehicle dealer shall be entitled to sell and service all the manufacturer's new motor vehicles which the franchised motor vehicle dealer is authorized to sell pursuant to the franchise, provided, however, a franchisor may impose reasonable facility, capital, training, tools and parts inventory requirements as a condition to the franchised motor vehicle dealer being permitted to sell such new motor vehicle products. Conditions imposed by the franchisor shall be reasonably applied to all of its franchised motor vehicle dealers. Franchised motor vehicle dealers who are presently parties to a franchise with the franchisor shall be offered the right to sell and service any new motor vehicle product of the same line make owned or generally distributed by such franchisor's franchised motor vehicle dealer within such franchised motor vehicle dealer's designated area of responsibility designated in the franchise agreement before any person not a party to such a franchise for the sale of motor vehicles within such area of responsibility is offered or granted a franchise to sell such new motor vehicle product from a location within such area of responsibility.

(x) To require a franchised motor vehicle dealer to agree to a term or condition in a franchise, or as a condition to the offer, grant or renewal of the franchise, lease or agreement, which:

(1) unless preempted by federal law, requires the franchised motor vehicle dealer to waive trial by jury in actions involving the franchisor; or

(2) unless preempted by federal law, specifies the jurisdiction, venues or tribunals in which disputes arising with respect to the franchise, lease or agreement shall or shall not be submitted for resolution or otherwise prohibits a franchised motor vehicle dealer from bringing an action in a particular forum otherwise available.

(y) Subject to the provisions of paragraph (w) of this subdivision, to sell or offer to sell or lease or offer to lease a motor vehicle other than to a franchised motor vehicle dealer in this state; provided, however, that this paragraph shall not apply to sales or leases of new motor vehicles made by a franchisor to its employees, immediate family members of employees, retirees or immediate family members of retirees which are hereby authorized notwithstanding the provisions of section four hundred fifteen of this title. Nothing in this paragraph shall prohibit a franchisor from utilizing direct marketing designed to generate leads via mail, phone, or any other medium, provided that leads developed thereby are referred to the franchised motor vehicle dealers in this state and in proximity to the consumer pursuant to a fair and equitable system of allocating such leads or to the franchised motor vehicle dealer as specified by the consumer. The provisions of this paragraph shall not apply to franchisors of house coaches when the franchisor does not have any franchised house coach dealers in this state.

(z) To refuse to allocate, sell, or deliver motor vehicles, to charge back or withhold payments or other things of value for which the franchisee is otherwise eligible, or to take or threaten to take any adverse action against a franchised motor vehicle dealer, in connection with or as a result of any new motor vehicle sold by the franchised motor vehicle dealer and subsequently exported, providing such dealer can demonstrate that he exercised due diligence and that the sale was made in good faith including that the dealer did not know nor reasonably should have known of the purchaser's intention to export the motor vehicle. A franchised motor vehicle dealer which causes a new motor vehicle to be registered in this state or in a foreign state and causes to be collected the appropriate sales and use tax, or that reasonably relied on a franchisor to complete a sale shall be presumed to have exercised good faith and due diligence. Prior to taking an adverse action, including a charge back, as a result of an export, a franchisor

shall provide written notice to the franchised motor vehicle dealer of the adverse action, and, if a charge back, the specific amount of the charge back, and the vehicle or vehicles at issue. A dealer shall not be liable for the delivery of any vehicle sold through a franchisor's fleet program for any such delivery in which the sale or lease was not initiated or negotiated by the dealer and its function was to provide delivery on behalf of the franchisor.

(aa) To: (1) sell directly to a franchised motor vehicle dealer or, to or through a franchised motor vehicle dealer in which the franchisor owns any interest or controls the management, directly or indirectly, motor vehicles, parts, warranties, or services at a price that is lower than the price which the franchisor charges to all other franchised motor vehicle dealers; or

(2) sell directly to a consumer at retail new original equipment manufacturer's parts (OEM) at a price that is lower than the price which the franchisor makes available to franchised motor vehicle dealers; or

(3) otherwise provide a franchised motor vehicle dealer in which the franchisor owns any interest or controls the management, directly or indirectly, goods or services at a price that is lower than the price charged to all other franchised motor vehicle dealers.

(bb) On and after the effective date of this paragraph, to acquire any interest in any additional motor vehicle dealer in this state, with the exception of stock in a publicly held dealer when ownership is passive and for investment purposes only; provided, however, that nothing in this paragraph shall prohibit a franchisor and its affiliates that own an interest in a franchised motor vehicle dealership that operates or is approved to operate, within one hundred twenty days after the effective date of this paragraph, from selling or servicing a new line make of the franchisor or its affiliates that was not distributed in this state as of the effective date of this paragraph. Provided, further, that nothing in this paragraph shall prohibit a franchisor from acquiring any interest in any franchised motor vehicle dealership:

(1) when operating such franchise for a temporary period, not to exceed one year, during the transition from one owner of the motor vehicle dealership to another, provided, however, that such temporary period may be extended once for an additional period not to exceed one year for good cause. Provided that for franchisors of house coaches, the

period of temporary ownership of a franchised house coach dealership may be extended in one year increments for good cause shown, except that the aggregate of such extensions shall not exceed five years; or

(2) when operating such franchise temporarily under a plan with an independent individual who is obligated to make a significant investment in the dealership that is subject to loss and has an ownership interest or expects to acquire full ownership in a reasonable period under reasonable terms and conditions, provided that a reasonable period shall be presumed to not exceed eight years; provided, however, that the exception provided in this subparagraph shall not apply to any franchisor, manufacturer, distributor, distributor branch or factory branch that holds a certificate or registration pursuant to subparagraph (iii) of paragraph f of subdivision seven of section four hundred fifteen of this title.

(cc)(1) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into the relevant market area of an existing franchise motor vehicle dealer of the same line make unless the franchisor provides notice pursuant to the terms of this subdivision. All dealers that have a relevant market area that encompasses the proposed site shall be entitled to written notice, via certified mail return receipt requested, informing them of the proposed addition or relocation. Any new motor vehicle dealer may institute an action as provided in section four hundred sixty-nine of this article to protest the establishment or relocation of the new motor vehicle dealer following receipt of such notice, or following the end of any appeal procedure provided by the franchisor. In any action brought by the dealer, the franchisor shall have the burden of proving that there exists good cause for any such addition or relocation. Institution of an action pursuant to this subdivision shall serve to stay, without bond, the proposed addition or relocation until a final judgment has been rendered in a proceeding or action as provided in section four hundred sixty-nine of this article.

(2) This subdivision shall not apply to:

(i) the relocation or replacement, other than a replacement of a dealer who has moved within such area, of an existing new motor vehicle dealer within that dealer's own existing relevant market area, provided that the relocation not be to a site within the relevant market area of

a licensed new motor vehicle dealer for the same line make of motor vehicle, unless such existing franchise was previously located within such new motor vehicle dealer's relevant market area; or

(ii) the addition of a new motor vehicle dealer or the establishment of a replacement new motor vehicle dealer, other than a replacement of a dealer who has moved within such area, at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years; or

(iii) the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership if the franchise has been operating on a regular basis from the existing site for a minimum of three years immediately preceding the relocation; or

(iv) the relocation of a new motor vehicle dealer of the same line make if that dealer or replacement dealer is moving further away from a motor vehicle dealer of of the same line make.

(3) In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, there shall be individual findings with respect to the following:

(i) the permanency of the investment of both the existing and proposed additional new motor vehicle dealers;

(ii) growth or decline in population, density of population, and new car registrations in the area;

(iii) effect on the consuming public in the area;

(iv) whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;

(v) whether the new motor vehicle dealers of the same line make in that area are providing adequate competition and convenient customer care for the motor vehicles of the same line make including the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;

(vi) whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer in the relevant market area would increase competition in a manner beneficial to the long-term public interest;

(vii) the effect on the dealer that proposed to relocate; and

(viii) any other factor which may be deemed material by the finder of fact to the unique facts and circumstances presented.

(dd) To unreasonably prevent or refuse to approve the relocation of a dealership to another site within that dealership's relevant market area. The dealership must provide prior written notice providing the address of the proposed new location and a site plan of the proposed facility. The franchisor must, within sixty days of receipt of such information, grant or deny the dealer's relocation request. Failure to timely deny the request shall be deemed consent to the relocation.

(ee) To fail to reimburse a dealer in full for the actual cost of providing a loaner vehicle to any customer who is having a vehicle serviced at the dealership if the provision of such a loaner vehicle is required by the franchisor. For the purposes of this paragraph, actual cost shall not exceed the average cost in the dealer's region for the rental of a substantially similar make and model as the vehicle being serviced.

(ff)(1) To modify the franchise of any franchised motor vehicle dealer unless the franchisor notifies the franchised motor vehicle dealer, in writing, of its intention to modify the franchise of such dealer at least ninety days before the effective date thereof, stating the specific grounds for such modification.

(2) For purposes of this paragraph, the term "modify" or "modification" means any change or replacement of any franchise if such change or replacement may substantially and adversely affect the new motor vehicle dealer's rights, obligations, investment or return on investment.

(3) If any franchised motor vehicle dealer who receives a written notice of modification institutes an action within one hundred twenty days of receipt of such notice as provided in section four hundred sixty-nine of this article to have a review of the threatened modification, such action shall serve to stay, without bond, the proposed modification until a final judgment has been rendered in an adjudicatory proceeding or action as provided in section four hundred sixty-nine of this article. A modification is deemed unfair if it is not undertaken in good faith; is not undertaken for good cause; or would adversely and substantially alter the rights, obligations, investment or

return on investment of the franchised motor vehicle dealer under an existing franchise agreement. In any action brought by the dealer, the franchisor shall have the burden of proving that such modification is fair and not prohibited.

(gg) To use an unreasonable, arbitrary or unfair sales or other performance standard in determining a franchised motor vehicle dealer's compliance with a franchise agreement. Before applying any sales, service or other performance standard to a franchised motor vehicle dealer, a franchisor shall communicate the performance standard in writing in a clear and concise manner.

(hh) To require that a franchised motor vehicle dealer contribute monetarily to any program or promotion without first receiving the written consent of the franchised motor vehicle dealer to participate in such program or promotion. For purposes of this paragraph, the written consent specific to the particular program or promotion must be executed, by means of handwritten, typed or electronic signature, within sixty days prior to the start of the particular program or promotion, provided, however, that consent shall not be required to continue participation in a program or promotion to which the dealer has given written consent to renewal, and provided further, that the dealer shall be able to terminate such renewal upon reasonable written notice within thirty days following the start or renewal of the program or promotion.

(ii) To allocate new motor vehicles to a franchised motor vehicle dealer based on a program that differentiates between vehicle sales by a franchised motor vehicle dealer within a territory or geographic area assigned to such dealer and vehicle sales outside of such territory or geographic area.

(jj) To utilize a discriminatory, unreasonable, arbitrary or unfair system of allocation of new motor vehicle inventory. A franchisor shall communicate its system of allocation in writing in a clear and concise manner to all same line-make dealers located in this state.

(kk) To refuse to disclose to any franchised motor vehicle dealer the manner and mode of distribution of vehicles in the franchised motor vehicle dealer's line make within the state, and an explanation of the allocation system, including the methodology used, in a clear and comprehensible form.

2-a. On and after the effective date of this subdivision, if a franchisor notifies a franchised motor vehicle dealer, in writing, of its decision to monitor the continued viability of the dealership, the franchisor shall include in such notice the specific reasons upon which the franchisor's decision is based.

2-b. It shall be unlawful for any franchisor to provide financial information particular to a franchised motor vehicle dealer, including but not limited to, selling prices and sales margins, that has been collected from such franchised motor vehicle dealer to any other franchised motor vehicle dealer including a franchised motor vehicle dealer in which the franchisor owns any interest or controls, directly or indirectly, the management thereof. Nothing contained in this subdivision shall be deemed to prevent any franchisor from collecting and distributing any such financial information in an aggregate manner provided that the information from any motor vehicle dealer has been combined with the information from one or more franchised motor vehicle dealers such that the financial information from a particular dealer is no longer identifiable to such dealer.

3. In any action or proceeding instituted pursuant to the provisions of this section, there shall be available to the franchisor all of the defenses provided for under section thirteen-b of title fifteen, United States code, known as the Robinson-Patman Act.