NEW HAMPSHIRE
TITLE XXXI
TRADE AND COMMERCE

(Effective September 2013)

CHAPTER 357-C
REGULATION OF BUSINESS PRACTICES BETWEEN MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS AND EQUIPMENT DEALERS

Section 357-C:1

357-C:1 Definitions. –

For the purpose of this chapter only:

I. "Motor vehicle" means every self-propelled vehicle manufactured and designed primarily for use and operation on the public highways and required to be registered and titled under the laws of New Hampshire. Motor vehicle shall include equipment if sold by a motor vehicle dealer primarily engaged in the business of retail sales of equipment. Except for RSA 357-C:3, I-b, and where otherwise specifically exempted from the provisions of this chapter, "motor vehicle" shall include off highway recreational vehicles and snowmobiles. "Equipment" means farm and utility tractors, forestry equipment, industrial equipment, construction equipment, farm implements, farm machinery, yard and garden equipment, attachments, accessories, and repair parts.

II. "Manufacturer" means any person who manufactures or assembles new motor vehicles or any partnership, firm, association, joint venture, corporation or trust which is controlled by the manufacturer. "Manufacturer" shall also mean a distributor, distributor branch, factory, factory branch, and franchisor.

III. "Factory branch" means a branch office maintained by a manufacturer for the purpose of selling or offering to sell vehicles to a distributor, wholesaler, or new motor vehicle dealer, or for directing or supervising, in whole or in part, factory or distributor representatives, and shall include any sales promotion organization which is engaged in promoting the sale of a particular make of new motor vehicles in this state to new motor vehicle dealers.

IV. "Distributor branch" means a branch office maintained by a distributor which sells or distributes new or used motor vehicles to motor vehicle dealers.

V. "Factory representative" means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or promoting the sale of its new motor vehicles or for supervising, servicing, instructing or contracting with its new motor vehicle dealers or prospective dealers.

VI. "Distributor representative" means a representative employed by a distributor branch or distributor.

VII. "Distributor" means any person who sells or distributes new or used motor vehicles to motor vehicle dealers or who maintains distributor representatives within this state.

VIII. (a) "Motor vehicle dealer" means any person engaged in the business of selling, offering to sell, soliciting or advertising the sale of new or used motor vehicles or possessing motor vehicles for the purpose of resale either on his or her own account or on behalf of another, either as his or her primary business or incidental thereto. "Motor vehicle dealer" means a person granted the right to service motor vehicles or component parts manufactured or distributed by the manufacturer but does not include any person who has an agreement with a manufacturer or distributer to perform service only on fleet, government, or rental vehicles. However, "motor vehicle dealer" shall not include:

(1) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under judgment, decree or order of any court; or

(2) Public officers while performing their duties as such officers.

(b) "New motor vehicle dealer" means a motor vehicle dealer who holds a valid sales and service agreement, franchise or contract granted by the manufacturer or distributor for the sale, service, or both, of its new motor vehicles, but does not include any person who has an agreement with a manufacturer or distributer to perform service only on fleet, government, or rental vehicles.

(c) The term "motor vehicle dealer" shall not include a single line equipment dealer. "Single line equipment dealer" means a person, partnership, or corporation who is primarily engaged in the business of retail sales of farm and utility tractors, forestry equipment, industrial and construction equipment, farm implements, farm machinery, yard and garden equipment, attachments, accessories, and repair parts, and who:

(1) Has purchased 75 percent or more of the dealer's total new product inventory from a single supplier; and

(2) Has a total annual average sales volume for the previous 3 years in excess of $100,000,000 for the relevant market area for which the dealer is responsible.

IX. "Franchise" means one or more oral or written agreements under or by which:

(a) The franchisee is granted the right to sell new motor vehicles or component parts manufactured or distributed by the franchisor or the right to service motor vehicles or component parts manufactured or distributed by the manufacturer but does not include any person who has an agreement with a manufacturer or distributer to perform service only on fleet, government, or rental vehicles;

(b) The franchisee as an independent business is a component of the franchisor's distribution or service system;

(c) The franchisee is granted the right to be substantially associated with the franchisor's trademark, trade name or commercial symbol;

(d) The franchisee's business is substantially reliant for the conduct of its business on the franchisor for a continued supply or service of motor vehicles, parts, and accessories; or

(e) Any right, duty, or obligation granted or imposed under this chapter is affected.

X. "Franchisor" means a manufacturer or distributor who grants a franchise to a motor vehicle dealer.

XI. "Franchisee" means a motor vehicle dealer to whom a franchise is granted.

XII. "Sale" means the delivery, issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, or mortgage in any form of motor vehicle or interest therein or of any related franchise; and any option, subscription or other contract, or solicitation in contemplation of a sale, offer or attempt to sell, whether spoken or written.

XIII. "Fraud" includes, in addition to its common law connotation, the misrepresentation, in

any manner, of a material fact; a promise or representation not made honestly and in good faith, and an intentional failure to disclose a material fact.

XIV. "Person" means a natural person, corporation, partnership, trust or other entity, and, in case of an entity, it shall include any other entity in which it has a majority interest or effectively controls as well as the individual officers, directors and other persons in active control of the activities of each such entity.

XV. "New motor vehicle" means a motor vehicle which is in the possession of the manufacturer or distributor, or has been sold only to the holders of a valid sales and service agreement, franchise or contract granted by the manufacturer or distributor for the sale of that make of new motor vehicle and which is in fact new and on which the original title, to the extent a title is required by the state of New Hampshire, has not been issued from the franchised dealer.

XVI. "Good faith" means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade as is defined and interpreted in RSA 382-A:1-201(b)(20).

XVII. "Established place of business" means a permanent, enclosed commercial building located within this state easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning, and other land-use regulatory ordinances.

XVIII. "Designated family member" means the spouse, child, grandchild, parent, brother, sister, or lineal descendent, including all adopted or step descendents, of the owner of a new motor vehicle dealership who has been designated in writing to the manufacturer, and, in the case of the owner's death, is entitled to inherit the ownership interest in the new motor vehicle dealership under the terms of the owner's will or under the rights of inheritance by intestate succession, or who, in the case of an incapacitated owner of a new motor vehicle dealership, has been appointed by a court as the legal representative of the new motor vehicle dealer's property. The manufacturer, distributor, factory branch or factory representative or importer may request, and the designated family member shall provide, upon request, personal and financial data that is reasonably necessary to determine whether the succession should be honored.

XIX. "Dealer organization" means a state or local trade association, the membership of which is comprised predominantly of motor vehicle dealers.

XX. "Coerce" means the failure to act in a fair and equitable manner in performing or complying with any terms or provisions of a franchise or agreement; provided, however, that recommendation, persuasion, urging or argument shall not be synonymous with "coerce" or lack of "good faith."

XXI. "Relevant market area" means any area within the town or city where the motor vehicle dealer maintains his place of business or the area, if any, set forth in a franchise or agreement, whichever is larger. Relevant market areas shall be determined in accordance with the principles of equity.

XXII. "Direct import vehicle" has the same meaning as that of RSA 259:19-a.

XXIII. "Assemble" means engaging in the fitting or adding of parts and/or accessories to new motor vehicles or the substitution of parts contributing to changes in the appearance, performance, or use of vehicles, other than that which is done by new motor vehicle dealers.

XXIV. "OHRV" means off highway recreational vehicle.

XXV. "Off highway recreational vehicle" means any mechanically propelled vehicle used for pleasure or recreational purposes running on rubber tires, tracks, or cushioned air and dependent on the ground or surface for travel, or other unimproved terrain whether covered by ice or snow

or not, where the operator sits in or on the vehicle. All legally registered motorized vehicles when used for off highway recreational purposes shall fall within the meaning of this definition; provided that, when said OHRV is being used for transportation purposes only, it shall be deemed that said OHRV is not being used for recreational purposes. For purposes of this chapter OHRVs shall also include: "all terrain vehicle" as defined in RSA 215-A:1, I-b, and "trail bike" as defined in RSA 215-A:1, XIV. OHRVs shall not include snowmobiles as defined in paragraph XXVI and RSA 215-C:1.

XXVI. "Snowmobile" means any vehicle propelled by mechanical power that is designed to travel over ice or snow supported in part by skis, tracks, or cleats. Only vehicles that are no more than 54 inches in width and no more than 1200 pounds in weight shall be considered snowmobiles under this chapter. "Snowmobile" shall not include OHRVs as defined in paragraph XXV or RSA 215-A.

XXVII. "Line make" means motor vehicles that are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the franchisor or manufacturer of the motor vehicle.

XXVIII. "Component part" means an engine, power train, rear axle, or other part of a motor vehicle that is not warranted by the final manufacturer.

XXIX. "Component manufacturer" means a person who manufactures or assembles motor vehicle component parts that are directly warranted by the component manufacturer to the consumer.

XXX. "Chargeback" means a manufacturer induced return of warranty, incentive, or reimbursement payments to a manufacturer by a dealer. The term includes a manufacturer drawing or an announced intention to draw funds from an account of a dealer.

Source. 1981, 477:2. 1986, 117:6. 1990, 84:1. 2001, 209:1. 2002, 215:4-6. 2005, 210:54, 55. 2006, 169:15. 2007, 372:3, eff. July 18, 2007. 2009, 20:1-3, eff. May 6, 2009. 2013, 130:1-5, eff. Sept. 23, 2013.

Section 357-C:2

357-C:2 Applicability. – Any person who engages directly or indirectly in purposeful contacts within this state in connection with the offering or advertising for sale of, or has business dealings with respect to, a motor vehicle within the state shall be subject to the provisions of this chapter and the jurisdiction of the courts of this state.

Source. 1981, 477:2, eff. Aug. 25, 1981.

Section 357-C:3

357-C:3 Prohibited Conduct. – It shall be deemed an unfair method of competition and unfair and deceptive practice for any:

I. Manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative or motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of such parties or to the public;

I-a. Person not a new motor vehicle dealer to represent that he is a new motor vehicle dealer, to advertise a vehicle for sale as a new motor vehicle, or to sell a vehicle as a new motor vehicle;

I-b. Distributor or motor vehicle dealer, in offering for sale a direct import vehicle other than an OHRV or snowmobile, not to disclose to the prospective buyer in writing the following:

(a) That the motor vehicle is a direct import vehicle;

(b) Whether modifications were performed on the vehicle to comply with federal or state law;

(c) The names and addresses of the persons who performed such modifications and the dates the modifications were made;

(d) A list and description of all such modifications;

(e) Whether and to what extent the manufacturer's original warranty applies to the vehicle; and,

(f) If such manufacturer's original warranty applies and whether and to what extent New Hampshire's New Motor Vehicle Arbitration law, RSA 357-D, applies to the vehicle.

II. Manufacturer; distributor; distributor branch or division; factory branch or division; or officer, agent or other representative of any such entity, to coerce or attempt to coerce, any motor vehicle dealer to:

(a) Order or accept delivery of any motor vehicle or vehicles, appliances, equipment, parts or accessories therefor, or any other commodity not required by law, which such motor vehicle dealer has not voluntarily ordered, or order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by their manufacturer; except that this subparagraph shall not modify or supersede any terms or provisions of a franchise requiring new motor vehicle dealers to market a representative line of those motor vehicles which the manufacturer or distributor is publicly advertising;

(b) Order for any person any parts, accessories, equipment, machinery, tools, appliances, or any commodity whatsoever;

(c) Refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products;

(d) Change the location of the new motor vehicle dealership or, during the course of the agreement, make any substantial alterations to the dealership premises when to do so would be unreasonable;

(e) Pay or assume, directly or indirectly, any part of the cost of any advertising initiated by the manufacturer or distributor, unless voluntarily agreed to by such dealer, except such signs, brochures and promotional literature as are reasonably required by the manufacturers at each dealer's place of business; or

(f) Pay or assume, directly or indirectly, any part of the cost of any refund, rebate, discount, or other financial adjustment made by or lawfully imposed upon the manufacturer or distributor to, or in favor of, any customer of a motor vehicle dealer or other consumer, unless voluntarily agreed to by such dealer.

III. Manufacturer; distributor; distributor branch or division; factory branch or division; or any agent thereof to:

(a) Refuse to deliver in reasonable quantities, and within a reasonable time after receipt of dealer's order, to any motor vehicle dealer having a franchise or contractual arrangement for the retail sale of new motor vehicles sold or distributed by such manufacturer, distributor, distributor branch or division, or factory branch or division, any motor vehicles covered by such franchise or contract and specifically advertised by such manufacturer, distributor, distributor branch or division, or factory branch or division to be available for immediate delivery; provided, however,

that the failure to deliver any motor vehicle shall not be considered a violation of this subparagraph if such failure is due to an act of God, work stoppage or delay due to strike or labor difficulty, shortage of materials, the seasonal nature of the production and ordering of the new motor vehicles, freight embargo, or other cause over which the manufacturer, distributor, or any agent thereof, shall have no control;

(b) Coerce, or attempt to coerce, any motor vehicle dealer to enter into any agreement with such manufacturer, distributor, distributor branch or division, factory branch or division, or any agent thereof, or do any other act prejudicial to the dealer by threatening to cancel any franchise or any contractual agreement existing between such manufacturer, distributor, distributor branch or division, or factory branch or division, and the dealer provided, however, that notice in good faith to any motor vehicle dealer of that dealer's violation of any terms or provisions of such franchise or contractual agreement shall not constitute a violation of this chapter;

(c) Terminate, cancel, or fail to renew the franchise or selling agreement of any such dealer without good cause;

(d) Resort to or use any false or misleading advertisement in connection with his business as manufacturer, distributor, distributor branch or division, factory branch or division, or agent thereof;

(e) Offer to sell or to sell any new motor vehicle at a lower actual price than the actual price offered to any other motor vehicle dealer for the same model vehicle similarly equipped or utilize any device including, but not limited to, sales promotion plans or programs which result in a lesser actual price. However, the provisions of this subparagraph shall not apply to sales to a motor vehicle dealer for resale to any unit of government; to sales made directly to a unit of government; nor to sales to a motor vehicle dealer of any motor vehicle ultimately sold, donated or used by such dealer in a driver education program. The provisions of this subparagraph shall not apply so long as a manufacturer, distributor, or any agent thereof, offers to sell or sells new motor vehicles to all motor vehicle dealers at an equal price;

(f) Offer, sell, or lease any new motor vehicle to any person, except a distributor, at a lower actual price than the actual price offered and charged a motor vehicle dealer for the same model vehicle similarly equipped or utilize any device which results in such lesser actual price;

(g) Offer or sell parts or accessories to any new motor vehicle dealer for use in his own business for the purpose of replacing or repairing the same or comparable part or accessory at a lower actual price than the actual price charged to any other new motor vehicle dealer for similar parts or accessories for use in his own business; provided, however, that, where motor vehicle dealers operate as distributors of parts and accessories to retail outlets, nothing in this subparagraph shall be construed to prevent a manufacturer, distributor, or any agent thereof, from selling to a motor vehicle dealer who operates as a distributor of parts and accessories such parts and accessories as may be ordered by such motor vehicle dealer for resale to retail outlets at a lower price than the actual price charged a motor vehicle dealer who does not operate or serve as a distributor of parts and accessories;

(h) Prevent or attempt to prevent any motor vehicle dealer from changing the capital structure of his dealership or the means by which he finances the operation of his dealership, provided the dealer at all times meets any reasonable capital standards agreed to between the dealership and the manufacturer or distributor and that such change by the dealer does not result in a change in the executive management control of the dealership;

(i) Prevent or attempt to prevent any motor vehicle dealer or any officer, partner or stockholder of any motor vehicle dealer from transferring any part of the interest of any of them

to any other person; provided, however, that no dealer, officer, partner or stockholder shall have the right to sell, transfer or assign the franchise or power of management or control without the consent of the manufacturer or distributor unless such consent is unreasonably withheld. Failure to respond within 60 days of receipt of a written request for consent to a sale, transfer or assignment shall be deemed consent to the request;

(j) Obtain any benefit from any other person with whom the motor vehicle dealer does business on account of or in relation to the transactions between the dealer and such other person, unless such benefit is promptly accounted for and transmitted to the motor vehicle dealer;

(k) Compete with a motor vehicle dealer operating under an agreement or franchise from such manufacturer or distributor in the relevant market area; provided, however:

(1) If any manufacturer, distributor, distributor branch or division, or factory branch or division, either directly or indirectly, or through any subsidiary, affiliated entity, or person, owns, operates, or controls, in full or in part, a motor vehicle dealership in this state for the sale or service of motor vehicles in this state, the relevant market area shall be the area within the entire state of New Hampshire and, except for circumstances in which subparagraph (3) may apply, the New Hampshire motor vehicle industry board shall find good cause under RSA 357-C:9 before any such ownership, operation, or control shall be permitted. In addition to those factors listed in RSA 357-C:9, II, the board in such circumstances shall also consider in its determination of good cause whether the proposed dealership will create an unfair method of competition to other franchisees of the same manufacturer, distributor, distributor branch or division, factory branch or division, subsidiary, or affiliated entity;

(2) That a manufacturer or distributor shall not be deemed to be competing when operating a dealership either temporarily, for a reasonable period in any case not to exceed 2 years; provided that if a manufacturer or distributor shows good cause, the board may extend this time limit and extensions may be granted by the board for periods of up to 12 months; or unless the manufacturer or dealer through a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of such dealership on reasonable terms and conditions;

(3) A manufacturer that has no more than 5 franchised new motor vehicle dealers doing business in this state and that directly or indirectly owns one or more of them shall not be deemed to be competing with any unaffiliated new motor vehicle dealer trading in the manufacturer's line make at a distance of 18 miles or greater provided that:

(A) All the new motor vehicle dealerships selling such manufacturer's motor vehicles trade exclusively in the manufacturer's line make;

(B) As of March 1, 2000, the manufacturer shall have directly or indirectly owned one or more new motor vehicle dealers in this state for a continuous period of at least one year; and

(C) Neither the manufacturer nor any entity in which the manufacturer has a majority ownership interest shall acquire, operate, or control any dealership that the manufacturer did not directly or indirectly own as of March 1, 2000; and

(4) A manufacturer or distributor that sells and services motor vehicles in New Hampshire and is licensed as a dealer in New Hampshire shall not be deemed to be competing with any dealer if no dealer or other franchisee sells and services the same line make in New Hampshire.

(l) Grant a competitive franchise in the relevant market area previously granted to another franchise other than in accordance with the provisions of this chapter;

(m) Require a motor vehicle dealer to assent to a release assignment, novation, waiver or

estoppel which would relieve any person from liability imposed by this chapter;

(n) Impose unreasonable restrictions on the motor vehicle dealer or franchisee relative to transfer, sale, right to renew, termination, discipline, noncompetition covenants, site-contract, right of first refusal to purchase, option to purchase, compliance with subjective standards, or assertion of legal or equitable rights;

(o) Change the relevant market area set forth in the franchise agreement without good cause. For purposes of the subparagraph, good cause shall include, but not be limited to, changes in the dealer's registration pattern, demographics, customer convenience, and geographic barriers. At least 60 days prior to the effective date of the revised relevant market area, the manufacturer or distributor shall provide the dealer whose relevant market area is subject to the proposed change, a reasonable and commercially acceptable copy of all information, data, evaluations, and methodology that the manufacturer or distributor considered, reviewed, or relied on or based its decision on, to propose the change to the dealer's relevant market area;

(p) Require a motor vehicle franchisee to agree to a term or condition in a franchise, or in any lease related to the operation of the franchise or agreement ancillary or collateral to a franchise, as a condition to the offer, grant, or renewal of the franchise, lease, or agreement, which:

(1) Requires the motor vehicle franchisee to waive trial by jury in actions involving the motor vehicle franchisor;

(2) Specifies the jurisdictions, 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 motor vehicle franchisee from bringing an action in a particular forum otherwise available under the law of this state;

(3) Requires that disputes between the motor vehicle franchisor and motor vehicle franchisee be submitted to arbitration or to any other binding alternate dispute resolution procedure; provided, however, that any franchise, lease, or agreement may authorize the submission of a dispute to arbitration or to binding alternate dispute resolution if the motor vehicle franchisor and motor vehicle franchisee voluntarily agree to submit the dispute to arbitration or binding alternate dispute resolution at the time the dispute arises;

(4) Provides that in any administrative or judicial proceeding arising from any dispute with respect to the aforesaid agreements that the franchisor shall be entitled to recover its costs, reasonable attorney's fees and other expenses of litigation from the franchisee; or

(5) Grants the manufacturer an option to purchase the franchise, or real estate, or business assets of the franchisee;

(q) Fail or refuse to sell or offer to sell to all motor vehicle franchisees of a line make, all models manufactured for that line make, or requiring a dealer to pay any extra fee, execute a separate franchise agreement, purchase unreasonable advertising displays or other materials, or relocate, expand, improve, remodel, renovate, recondition, or alter the dealer's existing facilities, or provide exclusive facilities as a prerequisite to receiving a model or series of vehicles. However, a manufacturer may require reasonable improvements to the existing facility that are necessary to service special or unique features of a specific model or line. The failure to deliver any such motor vehicle shall not be considered a violation of this subparagraph if the failure is due to a lack of manufacturing capacity, a strike or labor difficulty, a shortage of materials, a freight embargo, or other cause over which the franchisor has no control;

(r) Provide any term or condition in any lease or other agreement ancillary or collateral to a franchise which term or condition directly or indirectly violates this title;

(s) In the event of a proposed sale or transfer of a new motor vehicle dealership involving the transfer or sale of all or substantially all of the ownership interest in, or all or substantially all of the assets of the dealership, where the franchise agreement for the dealership contains a right of first refusal in favor of the manufacturer or distributor, then notwithstanding the terms of the franchise agreement, the manufacturer or distributor shall be permitted to exercise a right of first refusal to acquire the dealership's assets only if all of the following requirements are met:

(1) The manufacturer or distributor notifies the dealer in writing of its intent to exercise its right of first refusal within 45 days of receiving notice from the franchisee of the proposed sale or transfer.

(2) The exercise of the right of first refusal will result in the dealer and dealer's owners receiving the same or greater consideration as they have contracted to receive in connection with the proposed change of all or substantially all ownership or transfer of all or substantially all dealership assets. In that regard, the following shall apply:

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

(B) The manufacturer or distributor shall assume all of the duties, obligations, and liabilities contained in the agreements that were to be assumed by the proposed new owner and with respect to which the manufacturer or distributor exercised the right of first refusal, including the duty to honor all time deadlines in the underlying agreements, provided that the manufacturer or distributor has knowledge of such obligations at the time of the exercise of the right of first refusal. Failure by an assignee of the manufacturer or distributor to discharge such obligations shall be deemed a failure by the manufacturer or distributor under this subparagraph.

(3) The proposed change of all or substantially all ownership or transfer of all or substantially all dealership assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one or more dealer owners to any of the following:

(A) A designated family member or members including any of the following members of one or more dealer owners:

(i) The spouse.

(ii) A child.

(iii) A grandchild.

(iv) The spouse of a child or a grandchild.

(v) A sibling.

(vi) A parent.

(vii) Stepchildren.

(viii) Any adopted descendants.

(ix) Any lineal descendants.

(B) A manager:

(i) Employed by the dealer in the dealership during the previous 2 years; and

(ii) Who is otherwise qualified as a dealer operator.

(C) A partnership or corporation controlled by any of the family members described in subparagraph (A).

(D) A trust arrangement established or to be established:

(i) For the purpose of allowing the new vehicle dealer to continue to qualify as such under the manufacturer's or distributor's standards; or

(ii) To provide for the succession of the franchise agreement to designated family members or qualified management in the event of the death or incapacity of the dealer or its principal owner or owners.

(4) The manufacturer or distributor agrees in writing to pay all reasonable expenses, including reasonable attorney fees which do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, incurred by the proposed new owner and transferee prior to the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed change of all or substantially all ownership or transfer of all or substantially all dealership assets. Notwithstanding the foregoing, no payment of such expenses and attorney fees shall be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within 30 days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. Such an accounting may be requested by a manufacturer or distributor before exercising its right of first refusal.

(5) The manufacturer or distributor shall pay any fees and expenses of the motor vehicle dealer arising on and after the date the manufacturer or distributor gives notice of the exercise of its right of first refusal, and incurred by the motor vehicle dealer as a result of alterations to documents, or additional appraisals, valuations, or financial analyses caused or required of the dealer by the manufacturer or distributor to consummate the contract for the sale of the dealership to the manufacturer's or distributor's proposed transferee, that would not have been incurred but for the manufacturer's or distributor's exercise of its right of first refusal. These expenses and fees shall be paid by the manufacturer or distributor to the dealer and to the dealer's proposed purchaser or transferee on or before the closing date of the sale of the dealership to the manufacturer or distributor if the party entitled to reimbursement has submitted or caused to be submitted to the manufacturer or distributor, an accounting of these expenses and fees within 30 days after receipt of the manufacturer's or distributor's written request for the accounting;

(t) Require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any new motor vehicle as a precondition to purchasing, ordering, or receiving any other new motor vehicle or vehicles. Nothing in this subparagraph shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line of new motor vehicles that are covered by the franchise agreement.

(u)(1) Allocate vehicles, to evaluate the performance of a motor vehicle franchise, or to offer to a dealer any discount, incentive, bonus, program, allowance or credit (collectively "incentives"), using sales effective measurements that the manufacturer knows or reasonably should know includes exported vehicles, after being provided with notice and the opportunity to conduct an investigation as provided in subparagraph (u)(3). "Sales effective measurement" means a system that measures how effective a franchisee is at selling vehicles by comparing vehicle sales by that franchisee in the territory or geographic region assigned to the franchisee to vehicles sold in the same territory by other franchisees, or other similar methods of measurement. For the purposes of this section, "exported vehicles" are new vehicles that: (i) are titled in New Hampshire but not registered in New Hampshire or any other state; (ii) are titled and registered in New Hampshire but not issued a valid New Hampshire state inspection sticker; or (iii) are exported out of the country within 6 months of purchase.

(2) If a manufacturer uses sales effective measurements to allocate vehicles, evaluate a franchisee, or determine incentives, the manufacturer, upon the written request of one of its

franchisees, shall, within 30 days, provide the vehicle identification numbers that the manufacturer possessed and used in the measurements during the time period requested by the dealer.

(3) If a manufacturer uses sales effective measurements to allocate vehicles, evaluate a franchisee, or determine incentives, a dealer may request that the manufacturer or distributor investigate a claim that exported vehicles are included in the measurements. To initiate the investigation, the dealer shall provide reasonable documentation that 8 or more exported vehicles were used in the measurements. Acceptable documentation shall include, but not be limited to, data from the division of motor vehicles and vehicle history reports from third party vendors. Within 30 days of the dealer's request, the manufacturer shall investigate the claim and adjust those measurements proportionately to exclude any exported vehicles and adjust the allocation, evaluation, and incentives. As part of the investigation, the manufacturer shall provide the dealer with any and all information, data, evaluations, methodology or other items, that the manufacturer or distributor considered, reviewed, or relied on, for the measurement. The manufacturer shall have the burden to prove that it has acted in accordance with the requirements of this subparagraph.

(v) Require adherence to a performance standard or standards which are not applied uniformly to other similarly situated dealers. In addition to any other requirements of law, the following shall apply:

(1) A performance standard, sales objective, or program for measuring dealer performance that may have a material effect on a dealer, including the dealer's right to payment under any incentive or reimbursement program, and the application of the standard, sales objective or program by a manufacturer, distributor or factory branch, shall be fair, reasonable, equitable and based on accurate information.

(2) Prior to beginning any incentive or reimbursement program, the manufacturer shall provide in writing to each dealer of the same line-make that chooses to participate in the program the dealer's performance requirement or sales goal or objective, which shall include a detailed explanation of the methodology, criteria, and calculations used. The manufacturer shall provide each dealer with the performance requirement or sales goal or objective of all dealers participating in the program whose relevant market area includes territory within this state.

(3) A manufacturer shall allocate an adequate supply of vehicles, appropriate to the market, to its dealers by series, product line, and model to assist the dealer in achieving any performance standards established by the manufacturer and distributor.

(4) A dealer that claims that the application of a performance standard, sales objective, or program for measuring dealership performance does not meet the standards listed in subparagraph (1) may request a hearing before the motor vehicle industry board pursuant to RSA 357-C:12.

(5) The manufacturer or distributor has the burden of proving by a preponderance of the evidence that the performance standard, sales objective, or program for measuring dealership performance complies with this subparagraph.

(w)(1) Require a dealer to purchase goods or services from a vendor selected, identified, or designated by a manufacturer, factory branch, distributor, distributor branch, or one of its affiliates by agreement, program, incentive provision, or otherwise without making available to the dealer the option to obtain the goods or services of substantially similar quality and overall design from a vendor chosen by the dealer and approved by the manufacturer, factory branch, distributor, or distributor branch; provided that such approval shall not be unreasonably withheld,

and further provided that the dealer's option to select a vendor shall not be available if the manufacturer or distributor provides substantial reimbursement for the goods or services offered. Substantial reimbursement is equal to or greater than 65 percent of the cost, which shall not be greater than the cost of reasonably available similar goods and services in close proximity to the dealer's market.

(2) Fail to provide to a dealer, if the goods and services to be supplied to the dealer by a vendor selected, identified, or designated by the manufacturer, factory branch, distributor, or distributor branch are signs or other franchisor image or design elements or trade dress to be leased to the dealer, the right to purchase the signs or other franchisor image or design elements or trade dress of substantially similar quality from a vendor selected by the dealer; provided that the signs, images, design elements, or trade dress are approved by the manufacturer, factory branch, distributor, or distributor branch and that such approval shall not be unreasonably withheld. This section shall not be construed to allow a dealer to impair or eliminate the intellectual property rights of the manufacturer, factory branch, distributor, or distributor branch, nor to permit a dealer to erect or maintain signs that do not conform to the intellectual property usage guidelines of the manufacturer, factory branch, distributor, or distributor branch.

(x) Make any express or implied statement or representation directly or indirectly that the dealer is under any obligation whatsoever to offer to sell or sell any extended service contract or extended maintenance plan, gap policy, gap waiver, or other aftermarket product or service offered, sold, backed by, or sponsored by the manufacturer or distributor or to sell, assign, or transfer any of the dealer's retail sales contracts or leases in this state on motor vehicles manufactured or sold by the manufacturer or distributor to a finance company or class of finance companies, leasing company or class of leasing companies, or other specified person, because of any relationship or affiliation between the manufacturer or distributor and the finance company or companies, leasing company or leasing companies, or the specified person or persons. Provided, however, that nothing in this subparagraph prohibits a manufacturer from requiring that a dealer disclose to a customer when the customer is about to purchase a product covered by this subparagraph that is not offered, sold, backed by, or sponsored by the manufacturer or distributor.

(y) Directly or indirectly condition the awarding of a franchise to a prospective franchisee, the addition of a line-make or franchise to an existing franchisee, the renewal of a franchise of an existing franchisee, the approval of the relocation of an existing franchisee's facility, or the approval of the sale or transfer of the ownership of a franchise on the willingness of a franchisee, proposed franchisee, or owner of an interest in the dealership facility to enter into a site control agreement or exclusive use agreement. For purposes of this subparagraph, the terms "site control agreement" and "exclusive use agreement" include any agreement that has the effect of either requiring that the franchisee establish or maintain exclusive dealership facilities or restricting the ability of the franchisee, or the ability of the franchisee's lessor in the event the dealership facility is being leased, to transfer, sell, lease, or change the use of the dealership premises, whether by sublease, lease, collateral pledge of lease, option to purchase, option to lease, or other similar agreement, regardless of the parties to such agreement. Any provision contained in any agreement that is inconsistent with the provisions of this subparagraph shall be voidable at the election of the affected franchisee, prospective franchisee, or owner of an interest in the dealership facility, provided this subparagraph shall not apply to a voluntary agreement where separate and valuable consideration has been offered and accepted, provided that the renewal of a franchise agreement or the manufacturer's waiver of a contractual or statutory right shall not by

itself constitute separate and valuable consideration. Except as provided in this subparagraph, this chapter shall not apply to prospective franchisees.

(z) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, require any motor vehicle dealer to floor plan any of the dealer's inventory or finance the acquisition, construction, or renovation of any of the dealer's property or facilities by or through any financial source or sources designated by the manufacturer, factory branch, distributor, or distributor branch, including any financial source or sources that is or are directly or indirectly owned, operated, or controlled by the manufacturer, factory branch, distributor, or distributor branch.

IV. It shall be deemed a violation for a motor vehicle dealer to require a purchaser of a new motor vehicle, as a condition of sale and delivery, to also purchase special features, appliances, equipment, parts or accessories not desired or requested by the purchaser; provided, however, that this paragraph shall not apply to special features, appliances, equipment, parts or accessories which are already installed on the car when received by the dealer and; provided further, that the motor vehicle dealer, prior to the consummation of the purchase, reveals to the purchaser the substance of this paragraph.

V. (a) Notwithstanding the terms of a franchise agreement or sales and service agreement or any other agreement, to require, coerce, or attempt to coerce any new motor vehicle dealer by program, policy, standard, or otherwise to:

(1) Change location of the dealership;

(2) Construct, renovate, or make any substantial changes, alterations, or remodeling to a motor vehicle dealer's sales or service facilities;

(3) Add to or replace a motor vehicle dealer's sales or service facilities; or

(4) Add to or replace or relocate purchased or leased signage or prohibit a dealer from substituting a sign owned by a dealer pursuant to RSA 357-C:3, III(w).

(b) The prohibitions in subparagraph (a) shall not apply if the manufacturer's or distributor's requirements are reasonable and justifiable in light of the current and reasonably foreseeable economic conditions, financial expectations, availability of additional vehicle allocation, and motor vehicle dealer's market for the sale and service of vehicles, or the alteration is reasonably required to effectively display and service a vehicle based on the technology of the vehicle. The manufacturer or distributor shall have the burden of proving that changes, alterations, remodeling, or replacement to a motor vehicle dealer's sales or service facilities or signage are reasonable and justifiable under this subparagraph.

(c) Any cost to obtain a variance or other approval from any governmental body in order to proceed under subparagraph (a) shall be paid by the dealer in the first instance. When subsequent efforts are required to obtain the variance or other approval, including any appeals, the manufacturer or distributor that is seeking the action listed in subparagraphs (a)(1) through (a)(4) shall pay, provided that such subsequent efforts were not required because of clerical error or negligent action or inaction on the part of the dealer.

(d) Except as necessary to comply with health or safety laws or to comply with technology requirements necessary to sell or service a vehicle, it is unreasonable and not justifiable for a manufacturer or distributor to require, coerce, or attempt to coerce any new motor vehicle dealer by program, policy, facility guide, standard or otherwise to change the location of the dealership or construct, replace, renovate or make any substantial changes, alterations, or remodeling to a motor vehicle dealer's sales or service facilities before the 15th anniversary of the date of issuance of the certificate of occupancy or the manufacturer's approval, whichever is later, from:

(1) The date construction of the dealership at that location was completed if the construction was in substantial compliance with standards or plans provided by a manufacturer, distributor, or representative or through a subsidiary or agent of the manufacturer, distributor, or representative; or

(2) The date a prior change, alteration, or remodel of the dealership at that location was completed if the construction was in substantial compliance with standards or plans provided by a manufacturer, distributor, or representative or through a subsidiary or agent of the manufacturer, distributor, or representative.

(e) Notwithstanding the 15-year limitation on manufacturer-mandated changes in subparagraph (d), the limitation shall not be effective if the manufacturer or distributor offers substantial reimbursement for the requested changes, alterations, or remodeling of a dealer's sales or service facilities. Substantial reimbursement is equal to or greater than 65 percent of the cost, which shall not be greater than the cost of reasonably available similar goods and services in close proximity to the dealer's market.

(f) This paragraph shall not apply to a program that is in effect with one or more motor vehicle dealers in this state on the effective date of this subparagraph, nor to any renewal or modification of such a program.

Source. 1981, 477:2. 1986, 117:7. 1990, 84:2. 1994, 33:3. 1996, 263:1. 2000, 261:1. 2001, 209:2. 2002, 215:7, 8. 2005, 210:56, eff. July 1, 2006. 2009, 20:4, eff. May 6, 2009. 2013, 130:6-10, eff. Sept. 23, 2013.

Section 357-C:3-a

357-C:3-a Access to Documentation. –

I. Once annually, a dealer may request to obtain a copy of (i) reports created in the regular course of business about the dealer, (ii) written correspondence with the dealer, and (iii) written reports prepared by a representative of the manufacturer or distributor documenting or memorializing any contact with a dealer or any employee or agent of the dealer, collectively known as "the documentation." The documentation required to be produced shall be limited to documentation created in the 12 months preceding the dealer's request. The manufacturer or distributor shall provide the documentation to the dealer within 30 days of the dealer's written request. The manufacturer shall certify that the documentation it produces is complete as of the date of the request. The manufacturer or distributor may charge the dealer a reasonable per page fee for reproduction, provided that such fee shall not exceed the usual and customary fee charged by copy centers in the immediate vicinity of the location of the documentation. No other fees or charges shall be permitted.

II. Any documents or portions of documents that are required to be produced pursuant to this section, which are not produced by the manufacturer or distributor in response to a dealer's request and that the manufacturer or distributor did not make a written, good faith objection to producing shall be excluded and not admissible as evidence or used in any manner at any proceeding at the motor vehicle industry board or any other state agency or any court proceeding. This paragraph shall not apply to any documents that document, evidence, or demonstrate insolvency, or alleged criminal, unlawful, or fraudulent activity by the dealer. At any proceeding before the motor vehicle industry board, any state agency, or any court, the presiding hearing officer, judge, board, or agency, may admit documents otherwise inadmissible under this

paragraph if it is found that the documents were withheld in good faith or by accident or mistake.

III. A complete copy of any written report of any nature prepared by a representative of the manufacturer or distributor after any contact with a dealer or any employee or agent of the dealer shall be provided to the dealer within 60 days of the report's creation.

IV. Nothing in the section shall require a manufacturer to disclose privileged, confidential, proprietary, or private third party information or information about another dealer or dealers and this includes but is not limited to names, addresses, financial data, and any other information relating to other dealers that may otherwise be referenced in the supporting documentation, except for specific information which is used by the manufacturer to compare the requesting dealer's performance with other dealers.

Source. 2013, 130:11, eff. Sept. 23, 2013.

Section 357-C:4

357-C:4 Delivery and Preparation Obligations. – Every manufacturer shall specify to the dealer, the delivery and preparation obligations of its motor vehicle dealers prior to delivery of new motor vehicles to retail buyers. A copy of the delivery and preparation obligations of its motor vehicle dealers and a schedule of the compensation to be paid by it to its motor vehicle dealers for the work and services they shall be required to perform in connection with such delivery and preparation obligations shall be filed with the New Hampshire motor vehicle industry board by every motor vehicle manufacturer. The compensation as set forth on such schedule shall be reasonable in the same manner as provided in RSA 357-C:5, II(b). No dealer shall charge any purchaser for work or services paid for by the manufacturer.

Source. 1981, 477:2. 1996, 263:2, eff. July 10, 1996.

Section 357-C:5

357-C:5 Warranty Obligations, Transportation Damage and Indemnification. –

I. Every manufacturer, distributor, or branch or division thereof shall fulfill the terms of any express or implied warranty it makes concerning the sale of a new motor vehicle to the public or ultimate purchaser of the line make which is the subject of a contract or franchise agreement. If it is determined by the court in an action at law that the manufacturer has violated its express or implied warranty, the court shall add to any award or relief granted an additional award for reasonable attorney's fees and other necessary expenses for maintaining the litigation.

II. If any franchisor shall require or permit franchisees to perform services or provide parts in satisfaction of a warranty issued by the franchisor:

(a) The franchisor shall specify in writing to each of its new motor vehicle dealers in this state, the dealers' obligations for warranty service on its products, shall compensate the new motor vehicle dealer for warranty service required of the dealer by the manufacturer, and shall provide the dealer the schedule of compensation to be paid such dealer for parts, work and service in connection with warranty services, and the time allowance for the performance of such work and service. Warranty service on trucks and equipment, except for those sold by a single line equipment dealer, shall include the cost, including labor, to transport a motor vehicle under warranty in order to perform the warranty work and to return the motor vehicle to the customer,

or, if transporting the trucks and equipment to the dealership is not mechanically or financially feasible, to travel to and return from the locations of the motor vehicle if the warranty repairs are performed at the location of the motor vehicle; provided that reimbursement for travel time shall not exceed 4 hours.

(b)(1) In no event shall a schedule of compensation for parts, work, and service in connection with warranty services fail to include reasonable compensation for diagnostic work, as well as parts, repair service and labor under the warranty or maintenance plan, extended warranty, certified preowned warranty or a service contract, issued by the manufacturer or distributor or its common entity. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In no event shall any manufacturer, component manufacturer, or distributor pay its dealers an amount of money for warranty work that is less than that charged by the dealer to the retail customers of the dealer for non-warranty work of like kind. In accordance with RSA 382-A:2-329, the manufacturer shall reimburse the franchisee for any parts so provided at the retail rate customarily charged by that franchisee for the same parts when not provided in satisfaction of a warranty and computed under this subparagraph. No claim which has been approved and paid by the manufacturer or distributor may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or that the dealer failed to reasonably substantiate that the claim was in accordance with the written requirements of the manufacturer or distributor in effect at the time the claim arose. A manufacturer or distributor shall not deny a claim solely based on a dealer's incidental failure to comply with a specific claim processing requirement, or a clerical error, or other administrative technicality.

(A) The obligations imposed on motor vehicle franchisors by this section shall apply to any parent, subsidiary, affiliate, or agent of the motor vehicle franchisor if a warranty or service or repair plan is issued by that person instead of or in addition to one issued by the motor vehicle franchisor.

(B)(i) In determining the rate and price customarily charged by the motor vehicle dealer to the public for parts, the compensation may be an agreed percentage markup over the dealer's cost under a writing separate and distinct from the franchise agreement signed after the dealer's request, but if an agreement is not reached within 30 days after a dealer's written request to be compensated under this section, compensation for parts shall be calculated by utilizing the method described in this paragraph.

(ii) If the dealer and the manufacturer are unable to agree to a percentage markup as provided by subparagraph (i), the retail rate customarily charged by the dealer for parts that the manufacturer is obligated to pay pursuant to RSA 382-A:2-329, shall be established by the dealer submitting to the manufacturer or distributor 100 sequential nonwarranty or customer-paid service repair orders or 90 consecutive days of nonwarranty, customer-paid service repair orders, whichever is less, each of which includes parts that would normally be used in warranty repairs and covered by the manufacturer's warranty, covering repairs made not more than 180 days before the submission and declaring the average percentage markup. The retail rate so declared must be reasonable as compared to other same line-make dealers of similar size in the immediate geographic vicinity of the dealer or, if none exist, immediately outside the dealer's geographic relevant market area within this state. The declared retail rate shall go into effect 30 days following the date on which the dealer submitted to the manufacturer or distributor the required number of nonwarranty or customer-paid service repair orders (hereafter referred to as the

"submission date") subject to audit of the submitted nonwarranty or customer-paid service repair orders by the manufacturer or distributor and a rebuttal of the declared retail rate. If the manufacturer or distributor wishes to rebut the declared retail rate it must so inform the dealer not later than 30 days after the submission date and propose an adjustment of the average percentage markup based on the rebuttal not later than 60 days after the submission date. If the dealer does not agree with the proposed average percentage markup, the dealer may file a protest at the motor vehicle industry board not later than 90 days after the submission date. In the event a protest is filed, the manufacturer has the burden of proof to establish that the dealer's submission is unreasonable as compared to other same line-make dealers of similar size in the immediate geographic vicinity of the dealer or, if none exist, immediately outside the dealer's geographic relevant market area within this state. In the event a dealer prevails in a protest filed under this provision, the dealer's increased parts and/or labor reimbursement shall be provided retroactive to the date the submission would have been effective pursuant to the terms of this section but for the manufacturer's denial.

(iii) In calculating the retail rate customarily charged by the dealer for parts, the following work shall not be included in the calculation: routine maintenance not covered under any retail customer warranty, such as fluids, filters and belts not provided in the course of repairs; items that do not have an individual part number such as some nuts, bolts, fasteners and similar items; tires; vehicle reconditioning; parts covered by subparagraph (v); repairs for manufacturer special events and manufacturer discounted service campaigns; parts sold at wholesale or parts used in repairs of government agencies' repairs for which volume discounts have been negotiated by the manufacturer; promotional discounts on behalf of the manufacturer, internal billings, regardless of whether the billing is on an in-stock vehicle; and goodwill or policy adjustments.

(iv) A manufacturer or distributor shall not require a dealer to establish the retail rate customarily charged by the dealer for parts and labor by an unduly burdensome or time-consuming method or by requiring information that is unduly burdensome or time consuming to provide including, but not limited to, part-by-part or transaction-by-transaction calculations. A dealer shall not declare an average percentage markup or average labor rate more than once in a calendar year. A manufacturer or distributor may perform annual audits to verify that a dealer's effective rates have not decreased and if they have may reduce the warranty reimbursement rate prospectively. Such audits shall not be performed more than once per calendar year at any dealer. The audit performed by the manufacturer shall be in accordance with the method to calculate the retail rate customarily charged by the dealer for parts as set out in subparagraph (ii) above and subject to the limitations in subparagraph (iii). If the dealer does not agree with the proposed average percentage markup, the dealer may file a protest at the motor vehicle industry board not later than 90 days after the manufacturer states the intended new retail rate as the result of the manufacturer's audit. In the event a protest is filed, the manufacturer has the burden of proof to establish that the proposed retail rate was calculated accurately and in accordance with this subparagraph. The proposed retail rate shall not be effective until the motor vehicle industry board issues a final order approving the proposed rate. If as the result of the audit performed in accordance with subparagraph (ii) the calculation shows that the dealer's average percentage markup is greater than the average percentage markup currently being used for the dealer's retail rate reimbursement, the dealer's average percentage markup shall be increased to the extent of the result of the audit. Any rate that is adjusted as a result of an audit performed in accordance with this subparagraph shall not be adjusted again until a period of 6 months from the effective

date of the change has lapsed.

(v) If a motor vehicle franchisor or component manufacturer supplies a part or parts for use in a repair rendered under a warranty other than by sale of that part or parts to the motor vehicle franchisee, the motor vehicle franchisee shall be entitled to compensation equivalent to the motor vehicle franchisee's average percentage markup on the part or parts, as if the part or parts had been sold to the motor vehicle franchisee by the motor vehicle franchisor.

(1) The requirements of this subparagraph shall not apply to entire engine assemblies, entire transmission assemblies, in-floor heating systems, and rear-drive axles ("assemblies"). In the case of assemblies, the motor vehicle franchisor shall reimburse the motor vehicle franchisee in the amount of 30 percent of what the motor vehicle franchisee would have paid the motor vehicle franchisor for the assembly if the assembly had not been supplied by the franchisor other than by the sale of that assembly to the motor vehicle franchisee.

(2) The requirements of this subparagraph shall not apply to household appliances, furnishings, and generators of a motor home ("household items"). In the case of household items valued under $600, the motor vehicle franchisor shall reimburse the motor vehicle franchisee in the amount of 30 percent of what the motor vehicle franchisee would have paid the motor vehicle franchisor for the household item if the household item had not been supplied by the franchisor other than by the sale of that assembly to the motor vehicle franchisee. For household items in excess of $600, the markup would be capped as if the part were $600. The motor vehicle franchisor shall also reimburse the franchisee for any freight costs incurred to return the removed parts.

(vi) A manufacturer or distributor may not otherwise recover its costs for reimbursing a franchisee for parts and labor pursuant to this section.

(2) In no event shall a manufacturer or component manufacturer fail to pay a dealer reasonable compensation for parts or components, including assemblies, used in warranty or recall repairs.

(3) The wholesale price on which a dealer's markup reimbursement is based for any parts used in a recall, service campaign, or other similar program, shall not be less than the highest wholesale price listed in the manufacturer's or distributor's wholesale price catalogue within 6 months prior to the start of the recall, service campaign, or other similar program. If the manufacturer or distributor does not have a wholesale price catalogue, or if the part is not listed in a wholesale price catalogue, the wholesale price on which a dealer's markup reimbursement is based in a recall, service campaign, or other similar program shall be the average price charged to dealers of similar line makes in the state for the part during 6 months prior to the start of the recall, service campaign, or other similar program. In no event shall a dealer receive less than the dealer's actual cost for that part, plus the markup as calculated pursuant to this subparagraph.

(c) No new motor vehicle manufacturer shall fail to perform any warranty obligations, including tires, whether or not such tires placed on the new motor vehicle by the manufacturer are excluded under the motor vehicle manufacturer's warranty; fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of such defects; or fail to compensate any of the new motor vehicle dealers in this state for repairs effected by such recall.

(d)(1) All claims made by new motor vehicle dealers pursuant to this section for labor and parts shall be paid within 30 days following their approval. All such claims shall be either approved and paid or disapproved within 30 days after their receipt, and any claim not specifically disapproved in writing within such period shall be deemed approved. Notice of

rejection of any claim shall be accompanied by a specific statement of the grounds on which the rejection is based.

(2) A manufacturer, distributor, branch, or division shall retain the right to audit warranty claims for a period of 9 months after the date on which the claim is paid and charge back any amounts paid on claims that are false or unsubstantiated.

(3) A manufacturer, distributor, branch, or division shall retain the right to audit all incentive and reimbursement programs for a period of 9 months after the date on which the claim is paid or 9 months from the end of a program that does not exceed one year, whichever is later, and charge back any amounts paid on claims that are false or unsubstantiated.

(4) Any new motor vehicle dealer who is audited by a manufacturer, distributor, branch, or division shall have the right to be present or represented by counsel or other designated representative.

(5) Any chargeback resulting from any audit shall not be made until a final order is issued by the New Hampshire motor vehicle industry board if a protest to the proposed chargeback is filed within 30 days of the notification of the final amount claimed by the manufacturer, distributor, branch, or division to be due after exhausting any procedure established by the manufacturer, distributor, branch, or division to contest the chargeback, other than arbitration. If the chargeback is affirmed by a final order of the board, the dealer shall be liable for interest on the amount set forth in the order at a rate of the prime rate effective on the date of the order plus one percent per annum from the date of the filing of the protest. In the absence of fraud, the board may order, based on the equities and circumstances of the parties, that the chargeback plus applicable interest be paid in installments not exceeding 12 months. If the board finds that a warranty chargeback is the result of a fraudulent warranty claim, no installment payments shall be allowed by the board.

(6) A manufacturer, distributor, branch, or division shall retain the right to charge back a fraudulent warranty claim, subject to any limitation period established in the franchise agreement but in no event longer than the limitation period provided in RSA 508:4, I. The applicable limitation period shall commence on the date a fraudulent warranty claim is paid.

(7) If the franchise agreement between a manufacturer, distributor, branch, or division is terminated for any reason, any audit pursuant to this section shall be completed no later than 30 days after the effective date of the termination.

(8) Notwithstanding the terms of any franchise or agreement, a manufacturer, distributor, branch, or division shall not take or threaten to take any adverse action against a motor vehicle dealer, including charge backs, reducing vehicle allocations, or terminating or threatening to terminate a franchise or agreement because the dealer sold or leased a motor vehicle to a customer who exported the vehicle to a foreign country, unless the motor vehicle dealer knew or reasonably should have known that the customer intended to export the vehicle. There shall be a presumption that the motor vehicle dealer did not know or could not have reasonably known if the vehicle is titled or registered in any state in this country.

(e) The franchisor shall not in any way restrict the nature or extent of services to be rendered or parts to be provided so that such restriction prevents the franchisee from satisfying a warranty in a workmanlike manner with all required or necessary parts.

III. (a) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, a new motor vehicle dealer shall be solely liable for damages to new motor vehicles after acceptance from the carrier and before delivery to the ultimate purchaser.

(b) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, a

manufacturer shall be liable for all damages to motor vehicles before delivery to a carrier or transporter.

(c) A new motor vehicle dealer shall be liable for damages to new motor vehicles after delivery to the carrier only if the dealer selects the method of transportation, mode of transportation, and the carrier; in all other instances, the manufacturer shall be liable for carrier-related new motor vehicle damage.

(d) On any new motor vehicle, any uncorrected damage or any corrected damage exceeding 6 percent of the manufacturer's suggested retail price, as defined in 15 U.S.C.A. sections 1231-33, as measured by retail repair costs, shall be disclosed in writing by the manufacturer or distributor to the dealer and shall be disclosed in writing by the dealer to the ultimate purchaser prior to delivery. Damage to glass, tires, and bumpers shall be excluded from the calculation required in this subparagraph when replaced by identical manufacturer's original equipment.

(e) Repaired damage to a customer-ordered new motor vehicle less than the amount requiring disclosure in subparagraph (d) shall not constitute grounds for revocation of the customer order. The customer's right of revocation shall cease upon his acceptance of delivery of the vehicle, provided disclosure is made prior to delivery.

(f) If damage to a vehicle exceeds the amount requiring disclosure in subparagraph (d) at either the time the new motor vehicle is accepted by the new motor vehicle dealer, or whenever the risk of loss is shifted to the dealer, whichever occurs first, then the dealer may reject the vehicle within a reasonable time.

(g) If a new motor vehicle dealer determines the method of transportation, as defined in subparagraph (c), then the risk of loss during transit shall pass to the dealer upon delivery of the vehicle to the carrier. In every other instance, the risk of loss shall remain with the manufacturer until such time as the new motor vehicle dealer accepts the vehicle from the carrier.

IV. (a) A franchisor shall indemnify its franchisees from any and all reasonable claims, losses, damages, and costs, including attorney's fees resulting from or related to complaints, claims or suits against the franchisee by third parties, including but not limited to those based upon strict liability, negligence, misrepresentation, warranty and revocation of acceptance or rescission, where an action alleges fault due to: (1) the manufacture, assembly, or design of the vehicle, parts, or accessories, or the selection or combination of parts or components; (2) service systems, procedures or methods required, recommended or suggested to the franchisee by the franchisor; or (3) damage to the vehicle in transit to the franchisee where the carrier is designated by the manufacturer.

(b) The franchisor shall not be liable to the franchisee by virtue of this section for any claims, losses, costs or damages arising as a result of negligence or willful malfeasance by the franchisee in its performance of delivery, preparation, or warranty obligations required by the franchisor, or other services performed; provided, however, that the franchisor shall be liable for damages arising from or in connection with any services rendered by a franchisee in accordance with any service, system, procedure or method suggested or required by the franchisor.

(c) In any action where there are both allegations for which the franchisor is required to indemnify the franchisee and claims of negligence in the performance of services by the franchisee, the percentage of fault of each shall be determined and the franchisor's duty to indemnify the franchisee against all damages and expenses, including attorney's fees, shall be limited to that percentage of fault found to be of the type set forth in subparagraph (a).

Source. 1981, 477:2. 1987, 159:1. 1990, 84:3. 1996, 263:3. 2000, 261:2, eff. Jan. 1, 2001. 2009, 20:5-7, eff. May 6, 2009. 2013, 130:12, 13, eff. Sept. 23, 2013.

Section 357-C:6

357-C:6 Agreements Governed. –

I. All written or oral agreements of any type between a manufacturer or distributor and a motor vehicle dealer shall be subject to the provisions of this chapter, and provisions of such agreements which are inconsistent with this chapter shall be void as against public policy and unenforceable in the courts or the motor vehicle industry board of this state.

II. Before any new selling agreement or amendment to an agreement involving a motor vehicle dealer and such party becomes effective, the manufacturer, distributor, distributor branch or division, factory branch or division, or agent thereof shall, 90 days prior to the effective date thereof, forward a copy of such agreement or amendment to the New Hampshire motor vehicle industry board and to the dealer.

III. Every new selling agreement or amendment made to such agreement between a motor vehicle dealer and a manufacturer or distributor shall include, and if omitted, shall be presumed to include, the following language: "If any provision herein contravenes the valid laws or regulations of the state of New Hampshire, such provision shall be deemed to be modified to conform to such laws or regulations; or if any provision herein, including arbitration provisions, denies or purports to deny access to the procedures, forums, or remedies provided for by such laws or regulations, such provisions shall be void and unenforceable; and all other terms and provisions of this agreement shall remain in full force and effect."

Source. 1981, 477:2. 1990, 84:4. 1996, 263:4, eff. Jan. 1, 1997.

Section 357-C:6-a

357-C:6-a Prohibited Contractual Requirements Imposed by Manufacturer, Distributor, or Captive Finance Source. –

I. In this section, "captive finance source" means any financial source that provides automotive-related loans or purchases retail installment contracts or lease contracts for motor vehicles in New Hampshire and is, directly or indirectly, owned, operated, or controlled by such manufacturer, factory branch, distributor, or distributor branch.

II. It shall be unlawful for any manufacturer, factory branch, captive finance source, distributor, or distributor branch, or any field representative, officer, agent, or any representative of them, notwithstanding the terms, provisions, or conditions of any agreement or franchise, to require any of its franchised dealers located in this state to agree to any terms, conditions, or requirements in subparagraphs (a)-(h) in order for any such dealer to sell to any captive finance source any retail installment contract, loan, or lease of any motor vehicles purchased or leased by any of the dealer's customers, or to be able to participate in, or otherwise, directly or indirectly, obtain the benefits of any consumer transaction incentive program payable to the consumer or the dealer and offered by or through any captive finance source:

(a) Require a dealer to grant such captive finance source a power of attorney to do anything on behalf of the dealer other than sign the dealer's name on any check, draft, or other instrument received in payment or proceeds under any contract for the sale or lease of a motor vehicle that is

made payable to the dealer but which is properly payable to the captive finance source, is for the purpose of correcting an error in a customer's finance application or title processing document, or is for the purpose of processing regular titling of the vehicle.

(b) Require a dealer to warrant or guarantee the accuracy and completeness of any personal, financial, or credit information provided by the customer on the credit application and/or in the course of applying for credit other than to require that the dealer make reasonable inquiry regarding the accuracy and completeness of such information and represent that such information is true and correct to the best of the dealer's knowledge.

(c) Require a dealer to repurchase, pay off, or guaranty any contract for the sale or lease of a motor vehicle or to require a dealer to indemnify, defend, or hold harmless the captive finance source for settlements, judgments, damages, litigation expenses, or other costs or expenses incurred by such captive finance source unless the obligation to repurchase, pay off, guaranty, indemnify, or hold harmless resulted directly from (i) the subject dealer's material breach of the terms of a written agreement with the captive finance source or the terms for the purchase of an individual contract for sale or lease that the captive finance source communicates to the dealer before each such purchase, except to the extent the breached terms are otherwise prohibited under subparagraphs (a)-(h), or (ii) the subject dealer's violation of applicable law. However, for purposes of this section, the dealer may contractually obligate itself to warrant the accuracy of the information provided in the finance contract, but such warranty may only be enforced if the captive finance source gives the dealer a reasonable opportunity to cure or correct any errors in the finance contract where cure or correction is possible. For purposes of this section, any allegation by a third party that would constitute a breach of the terms of a written agreement between the dealer and a captive finance source shall be considered a material breach.

(d) Notwithstanding the terms of any contract or agreement, treat a dealer's breach of an agreement between the dealer and a captive finance source with respect to the captive finance source's purchase of individual contracts for the sale or lease of a motor vehicle as a breach of such agreement with respect to purchase of other such contracts, nor shall such a breach in and of itself, constitute a breach of any other agreement between the dealer and the captive finance source, or between the dealer and any affiliate of such captive finance source.

(e) Require a dealer to waive any defenses that may be available to it under its agreements with the captive finance source or under any applicable laws.

(f) Require a dealer to settle or contribute any of its own funds or financial resources toward the settlement of any multiparty or class action litigation without obtaining the dealer's voluntary and written consent subsequent to the filing of such litigation.

(g) Require a dealer to contribute to any reserve or contingency account established or maintained by the captive finance source, for the financing of the sale or lease of any motor vehicles purchased or leased by any of the dealer's customers, in any amount or on any basis other than the reasonable expected amount of future finance reserve chargebacks to the dealer's account. This section shall not apply to or limit:

(1) Reasonable amounts reserved and maintained related to the sale or financing of any products ancillary to the sale, lease, or financing of the motor vehicle itself;

(2) A delay or reduction in the payment of dealer's portion of the finance income pursuant to an agreement between the dealer and a captive finance source under which the dealer agrees to such delay or reduction in exchange for the limitation, reduction, or elimination of the dealer's responsibility for finance reserve chargebacks; or

(3) A chargeback to a dealer, or offset of any amounts otherwise payable to a dealer by the

captive finance source, for any indebtedness properly owing from a dealer to the captive finance source as part of a specific program covered by this section, the terms of which have been agreed to by the dealer in advance, except to the extent such chargeback would otherwise be prohibited by this section.

(h) Require a dealer to repossess or otherwise gain possession of a motor vehicle at the request of or on behalf of the captive finance source. This section shall not apply to any requirements contained in any agreement between the dealer and the captive finance source wherein the dealer agrees to receive and process vehicles that are voluntarily returned by the customer or returned to the lessor at the end of the lease term.

III. Any clause or provision in any franchise or agreement between a dealer and a manufacturer, factory branch, distributor, or distributor branch, or between a dealer and any captive finance source, that is in violation of or that is inconsistent with any of the provisions of this section shall be deemed null and void and without force and effect to the extent it violates this section.

IV. Any captive finance source who engages directly or indirectly in purposeful contacts within this state in connection with the offering or advertising the availability of financing for the sale or lease of motor vehicles within this state, or who has business dealings within this state, shall be subject to the provisions of this section and shall be subject to the jurisdiction of the courts of this state.

V. The applicability of this section shall not be affected by a choice of law clause in any agreement, waiver, novation, or any other written instrument.

VI. It shall be unlawful for a captive finance source to use any subsidiary corporation, affiliated corporation, or any other controlled corporation, partnership, association, or person to accomplish what would otherwise be illegal conduct under this section on the part of the captive finance source.

Source. 2009, 20:8, eff. May 6, 2009.

Section 357-C:7

357-C:7 Limitations on Cancellations, Terminations and Nonrenewals. –

I. Notwithstanding the terms, provisions, or conditions of any agreement or franchise, and notwithstanding the terms or provision to any waiver, no manufacturer, distributor, or branch or division thereof shall cancel, terminate, fail to renew, or refuse to continue any franchise relationship with a new motor vehicle dealer unless:

(a) The manufacturer, distributor, or branch or division thereof has satisfied the notice requirement of paragraph V;

(b) The manufacturer, distributor, or branch or division thereof has acted in good faith;

(c) The manufacturer, distributor, or branch or division thereof has good cause for the cancellation, termination, nonrenewal, or noncontinuance; and

(d)(1) The New Hampshire motor vehicle industry board finds after a hearing and after ruling on any motion to reconsider that is timely filed in accordance with RSA 357-C:12, VII, that there is good cause for cancellation, termination, failure to renew, or refusal to continue any franchise relationship. The new motor vehicle dealer may file a protest with the board within 45 days after receiving the 90-day notice. A copy of the protest shall be served by the new motor vehicle dealer on the manufacturer, distributor, or branch or division thereof. When a protest is

filed under this section, the franchise agreement shall remain in full force and effect and the franchisee shall retain all rights and remedies pursuant to the terms and conditions of such franchise agreement, including, but not limited to, the right to sell or transfer such franchisee's ownership interest prior to a final determination by the board and any appeal; or

(2) The manufacturer, distributor, or branch or division thereof has received the written consent of the new motor vehicle dealer; or

(3) The appropriate period for filing a protest has expired.

II. Notwithstanding the terms, provisions, or conditions of any agreement or franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation, nonrenewal, or noncontinuance when:

(a) There is a failure by the new motor vehicle dealer to comply with a provision of the franchise, which provision is both reasonable and of material significance to the franchise relationship; provided that compliance on the part of the new motor vehicle dealer is reasonably possible; and that the manufacturer, distributor, or branch or division thereof first acquired actual or constructive knowledge of such failure not more than 180 days prior to the date on which notification is given pursuant to paragraph V.

(b) If the failure by the new motor vehicle dealer, in subparagraph (a), relates to his or her performance in sales or service, then good cause, as used in subparagraph I(c), shall be defined as the failure of the new motor vehicle dealer to effectively carry out the performance provisions of the franchise if:

(1) The new motor vehicle dealer was apprised by the manufacturer, distributor, or branch or division thereof in writing of such failure, the notification stated that notice was provided of failure of performance pursuant to this law, and the new motor vehicle dealer was afforded a reasonable opportunity to exert good faith efforts to correct his or her failures;

(2)(A) Except with regard to OHRV and snowmobile dealers, such failure thereafter continued within the period which began not more than 180 days before the date notification of termination, cancellation, or nonrenewal was given pursuant to paragraph V; and

(B) With regard to OHRV and snowmobile dealers, such failure thereafter continued within the period which began not more than 365 days before the date notification of termination, cancellation, or nonrenewal was given pursuant to paragraph V; and

(3) The new motor vehicle dealer has not substantially complied with reasonable performance criteria established by the manufacturer, distributor, or branch or division thereof and communicated to the dealer. Among those factors determining performance criteria shall be the relevancy of the sales of the manufacturer, distributor, or branch or division thereof within the state and the particular market area.

(c) For the purposes of this paragraph, good cause for terminating, canceling, or failing to renew a franchise shall be limited to failure by the franchisee to substantially comply with those requirements imposed upon the franchisee by the franchise, as set forth in subparagraphs II(a) and (b).

III. Notwithstanding the terms, provisions, or conditions of any agreement or franchise or the terms or provisions of any waiver, the following shall be construed as examples of what do not constitute good cause for the termination, cancellation, nonrenewal, or noncontinuance of a franchise:

(a) The change of ownership of the new motor vehicle dealer's dealership, excluding any change in ownership which would have the effect of the sale of the franchise without the reasonable consent of the manufacturer, distributor, or branch or division thereof;

(b) The fact that the new motor vehicle dealer refused to purchase or accept delivery of any new motor vehicle parts, accessories, or any other commodity or services not ordered by the new motor vehicle dealer;

(c) The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of, or holds a license for the sale of another make or line of new motor vehicle, or that the new motor vehicle dealer has established another make or line of new motor vehicle in the same dealership facilities as those of the manufacturer, distributor, or branch or division thereof; provided that the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and that the new motor vehicle dealer remains in substantial compliance with any reasonable facilities' requirements of the manufacturer, distributor, or branch or division thereof;

(d) The fact that the new motor vehicle dealer sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new motor vehicle dealer's spouse, son, or daughter. The manufacturer, distributor, or branch or division thereof shall give effect to such change in ownership unless, if licensing is required by the state, the transfer of the new motor vehicle dealer's license is denied or the new owner is unable to license as the case may be; and

(e) The fact that the new motor vehicle dealer's dealership does not substantially meet the reasonable capitalization requirements of the manufacturer, distributor, branch, or division.

IV. The manufacturer, distributor, or branch or division thereof shall bear the burden of proof for showing that it has acted in good faith, that all notice requirements have been satisfied, and that there was good cause for the franchise termination, cancellation, nonrenewal or noncontinuance.

V. (a) Notwithstanding the terms, provisions, or conditions of any agreement or franchise or the terms or provisions of any waiver, prior to the termination, cancellation, or nonrenewal of any franchise, the manufacturer, distributor, or branch or division thereof shall furnish notification of such action to the new motor vehicle dealer and the board in the manner described in subparagraph (b) not less than 90 days prior to the effective date of such termination, cancellation, or nonrenewal, except that the notice required of a controlled financing company of a manufacturer, distributor, or branch or division thereof shall be that period set forth in its contract with the dealer.

(b) Notification under this paragraph shall be in writing; shall be by certified mail, or personally delivered to the new motor vehicle dealer; and shall contain:

(1) A statement of intention to terminate the franchise, cancel the franchise, or not to renew the franchise; and

(2) A statement of the reasons for the termination, cancellation, or nonrenewal; and

(3) The date on which such termination, cancellation, or nonrenewal takes effect.

(c) Not less than 180 days prior to the effective date of such termination, cancellation, or nonrenewal which occurs as a result of:

(1) Any change in ownership, operation, or control of all or any part of the business of the manufacturer, whether by sale or transfer of assets, corporate stock or other equity interest, assignment, merger, consolidation, combination, joint venture, redemption, operation of law or otherwise;

(2) The termination, suspension, or cessation of a part or all of the business operations of the manufacturer; or

(3) Discontinuance of the sale of the product line make or a change in distribution system by the manufacturer whether through a change in distributors or the manufacturer's decision to

cease conducting business through a distributor altogether.

VI. Within 90 days of the termination, cancellation, or nonrenewal of a motor vehicle franchise as provided for in this section, or the termination, cancellation, or nonrenewal of a motor vehicle franchise by the motor vehicle franchisee, the motor vehicle franchisor shall pay to the motor vehicle dealer:

(a) The dealer cost plus any charges by the manufacturer, distributor, or branch or division thereof for distribution, delivery, and taxes paid by the dealer, less all allowances paid to the dealer by the manufacturer, distributor, or representative, for new, unsold, undamaged and complete motor vehicles in the dealer's inventory that have original invoices bearing original dates within 24 months prior to the effective date of termination with less than 750 miles on the odometer, and insurance costs, and floor plan costs from the effective date of the termination to the date that the vehicles are removed from dealership or the date the floor plan finance company is paid, whichever occurs last. Vehicles with a gross vehicle weight rating over 14,000 shall be exempt from the 750 mile limitation. Motorcycles shall be subject to a 350 mile limitation. All vehicles shall have been acquired from the manufacturer or another same line make vehicle dealer in the ordinary course of business. Equipment shall be subject to a 36-month limitation. Payment for farm and utility tractors, forestry equipment, industrial, construction equipment, farm implements, farm machinery, yard and garden equipment, attachments, accessories and repair parts shall include all items attached to the original equipment by the dealer or the manufacturer other than items that are not related to the performance of the function the equipment is designed to provide.

(b) The dealer cost of each new, unused, undamaged, and unsold part or accessory if such part or accessory is in the current parts catalog, was purchased from the manufacturer or distributor or from a subsidiary or affiliated company or authorized vendor, and is still in the original, resalable merchandising package and in unbroken lots, except that in the case of sheet metal, a comparable substitute for the original package may be used. Any part or accessory that is available to be purchased from the manufacturer on the date the notice of termination issued shall be considered to be included in the current parts catalog.

(c) The fair market value of each undamaged sign owned by the dealer which bears a trademark, trade name, or commercial symbol used or claimed by the manufacturer, distributor, or branch or division thereof if such sign was purchased from or at the request of the manufacturer, distributor, or branch or division thereof.

(d) At the dealer's option, the fair market value of all special tools and automotive service equipment owned by the dealer which were recommended in writing and designated as special tools and equipment by the manufacturer, distributor, or branch or division thereof and purchased from or at the request of the manufacturer or distributor, if the tools and equipment are in usable and good condition, normal wear and tear excepted.

(e) The cost of transporting, handling, packing, and loading of motor vehicles, parts, signs, tools, and special equipment subject to repurchase by the manufacturer, distributor, or branch or division thereof.

(f) The amount remaining to be paid on any equipment or service contracts required by or leased from the manufacturer or a subsidiary or company affiliated with the manufacturer.

(g) If the dealer leases the dealership facilities, then the manufacturer, distributor, or branch or division thereof shall be liable for 2 year's payment of the gross rent or the remainder of the term of the lease, whichever is less. If the dealership facilities are not leased, then the manufacturer, distributor, or branch or division thereof shall be liable for the equivalent of 2

years payment of gross rent. This subparagraph shall only apply when the termination, cancellation, or nonrenewed line was pursuant to RSA 357-C:7, V(c)(3) or was with good cause, other than good cause related to a conviction and imprisonment for a felony involving moral turpitude that is substantially related to the qualifications, function, or duties of a franchisee. Gross rent is the monthly rent plus the monthly cost of insurance and taxes. Such reasonable rent shall be paid only to the extent that the dealership premises are recognized in the franchise and only if they are: (i) used solely for performance in accordance with the franchise, and (ii) not substantially in excess of those facilities recommended by the manufacturer or distributor. If the facility is used for the operations of more than one franchise, the gross rent compensation shall be adjusted based on the planning volume and facility requirements of the manufacturers, distributors, or branch or division thereof.

This paragraph shall not apply to a termination, cancellation, or nonrenewal due to a sale of the assets or stock of the motor vehicle dealership.

VII. (a)(1) In addition to the other payments set forth in this section, if a termination, cancellation, or nonrenewal is premised upon any of the occurrences set forth in subparagraph V(c), then the manufacturer shall be liable to the dealer for an amount at least equivalent to the fair market value of the motor vehicle franchise on:

(A) The date immediately preceding the date the franchisor announces the action which results in termination, cancellation, or nonrenewal; or

(B) The day 12 months prior to the date on which the notice of termination, cancellation, or nonrenewal is issued, whichever amount is higher.

(2) Payment is due within 90 days of the effective date of the termination, cancellation, or nonrenewal.

(b) The manufacturer shall authorize the franchisee, or upon the franchisee's termination another authorized franchise dealership of the manufacturer in the area, to continue servicing and supplying parts, including service and parts pursuant to a warranty issued by the franchisor, for any goods or services marketed by the franchisee pursuant to the motor vehicle franchise for a period of not less than 5 years from the effective date of the termination, cancellation, or nonrenewal and shall continue to reimburse the franchisee for warranty parts and service in an amount and on terms no less favorable than those in effect prior to the termination, cancellation, or nonrenewal and in accordance with paragraph V.

(c) At the dealers option, the manufacturer may avoid paying fair market value of the motor vehicle franchise to the dealer under this subparagraph if the franchisor, or another motor vehicle franchisor pursuant to an agreement with the franchisor, offers the franchisee a replacement motor vehicle franchise with terms substantially similar to that offered to other same line make dealers.

VIII. Within 90 days of a termination or nonrenewal, with good cause and in good faith, the manufacturer or distributor of any franchise, or any branch or division thereof, and notwithstanding any terms therein to the contrary, the manufacturer, distributor, or branch or division thereof shall pay to the new motor vehicle dealer the amount remaining to be paid on any leases of computer hardware or software that is used to manage and report data to the manufacturer or distributor for financial reporting requirements and the amount remaining to be paid on any manufacturer or distributor required equipment leases or service contracts, including but not limited to computer hardware and software leases.

IX. The payments required by paragraphs VI, VII, and VIII, and any other money owed the franchisee, shall be made within 90 days of the effective date of the termination. The

manufacturer shall pay the franchisee an additional 5 percent per month of the amount due for any payment not made within 90 days of the effective date of the termination.

Source. 1981, 477:2. 1990, 84:5, 6. 1996, 263:5, 6. 2001, 209:3. 2002, 215:9. 2005, 210:57, eff. July 1, 2006. 2009, 20:9-13, eff. May 6, 2009. 2013, 130:14-16, eff. Sept. 23, 2013.

Section 357-C:8

357-C:8 Survivorship. –

I. Any designated family member of a deceased or incapacitated new motor vehicle dealer may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement provided the designated family member gives the manufacturer, distributor, factory branch or factory representative or importer of new motor vehicles written notice of his intention to succeed to the dealership within 120 days of the dealer's death or incapacity, and unless there exists good cause for refusal to honor such succession on the part of the manufacturer, factory branch, factory representative, distributor or importer. The manufacturer, distributor, factory branch or factory representative or importer may request, and the designated family member shall provide, upon request, personal and financial data that is reasonably necessary to determine whether the succession should be honored.

II. If a manufacturer, distributor, factory branch, or factory representative or importer believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a family member of a deceased or incapacitated new motor vehicle dealer under the existing franchise agreement, the manufacturer, distributor, factory branch, or factory representative or importer may, within 30 days of receipt of notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, serve notice upon the designated family member of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 90 days from the date such notice is served. The required notice shall state the specific grounds for refusal to honor the succession. If notice of refusal and discontinuance is not timely served upon the family member, the franchise agreement shall continue in effect subject to termination only as otherwise permitted by this chapter.

III. This chapter shall not preclude a new motor vehicle dealer from designating any person as his successor by written instrument filed with the manufacturer, distributor, factory branch, factory representative or importer.

Source. 1981, 477:2, eff. Aug. 25, 1981.

Section 357-C:9

357-C:9 Limitations on Establishing or Relocating Dealerships. –

I. In the event that a manufacturer, distributor, or branch or division thereof seeks to enter into a franchise establishing an additional new motor vehicle dealership or relocating an existing new motor vehicle dealership within a relevant market area where the same line make is then represented, the manufacturer, distributor, or branch or division thereof shall first give written notice to the New Hampshire motor vehicle industry board and each new motor vehicle dealer of such line make in the relevant market area of the intention to establish an additional dealership or

to relocate an existing dealership within that market area. Within 45 days of receiving such notice or within 45 days after the end of any appeal procedure provided by the manufacturer, distributor, or branch or division thereof, any such new motor vehicle dealership may file a protest with the New Hampshire motor vehicle industry board to the establishing or relocating of the new motor vehicle dealership. A copy shall be served on the manufacturer, distributor, or branch or division thereof within the 45-day period. When such protest is filed, the manufacturer, distributor, or branch or division thereof may not establish or relocate the proposed new motor vehicle dealership until the board has held a hearing, nor thereafter if the board determines that there is good cause for not permitting such new motor vehicle dealership. For purposes of this paragraph, the reopening in a relevant market area of a new motor vehicle dealership that has not been in operation for one year or more shall be deemed the establishment of an additional new motor vehicle dealership.

II. In determining whether good cause has been established for not entering into or relocating an additional franchise for the same line make, the board shall consider the existing circumstances, including, but not limited to:

(a) The permanency of the investment;

(b) Any effect on the retail new motor vehicle business and the consuming public in the relevant market area;

(c) Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealership to be established;

(d) Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the line make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;

(e) Whether the establishment of an additional new motor vehicle dealership would increase competition, and therefore be in the public interest; and

(f) Growth or decline in population and new motor vehicle registration in the relevant market area.

III. At any hearing conducted by the New Hampshire motor vehicle industry board under this section, the manufacturer, distributor, or branch or division thereof seeking to establish an additional new motor vehicle dealership or relocate an existing new motor vehicle dealership shall have the burden of proof in establishing that good cause exists and that it acted in good faith.

IV. In the event that a manufacturer, distributor, or branch or division is seeking to establish a new dealership rather than relocating an existing dealership, in addition to the definition of market area in RSA 357-C:1, XXI, in no case shall a franchisee's relevant market area be less than the area within a radius of 15 miles from any boundary of the dealership.

Source. 1981, 477:2. 1996, 263:7. 2001, 209:4, 5, eff. Jan. 1, 2002. 2009, 20:14-16, eff. May 6, 2009. 2013, 130:17, eff. Sept. 23, 2013.

Section 357-C:10

357-C:10 Franchisee's Right to Associate. – Any franchisee shall have the right of free association with other franchisees for any lawful purpose.

Source. 1981, 477:2, eff. Aug. 25, 1981.

Section 357-C:11

357-C:11 Discounts and Other Inducements. – In connection with a sale of any motor vehicle to the state or to any political subdivision thereof, no manufacturer or distributor shall offer any discounts, refunds or other similar inducement to any dealer without making the same offer to all other dealers of the same line make within the relevant market area.

Source. 1981, 477:2, eff. Aug. 25, 1981.

Section 357-C:11-a

357-C:11-a Sale of New Motor Vehicles Manufactured to California Emission Standards. – No person shall refuse or refrain from selling, delivering or distributing any new motor vehicle manufactured to the emissions standards required by the California air resources board.

Source. 1994, 33:2, eff. April 22, 1994.

Section 357-C:12

357-C:12 Enforcement; New Hampshire Motor Vehicle Industry Board; Fund Established. –

I. (a) There is established a New Hampshire motor vehicle industry board for the purpose of enforcing the provisions of this chapter. The board shall consist of the commissioner of the department of safety or designee who shall serve as the board's chairperson and 6 members appointed by the governor and council. Four members of the board shall constitute a quorum. No member of the board shall:

(1) Have an ownership interest in or be employed by a manufacturer, factory branch, distributor, or distributor branch.

(2) Have an ownership interest in or be a motor vehicle dealer or an employee of a motor vehicle dealer.

(3) Be employed by an association of motor vehicle dealers, manufacturers, or distributors.

(b) The board shall be administratively attached to the department of safety.

(c) The board shall adopt rules, pursuant to RSA 541-A, to implement the provisions of this chapter.

(d) Appointments shall be for terms of 4 years. Vacancies shall be filled by appointment by the governor and council for the unexpired term. The members shall be at-large members, and insofar as practical, should reflect fair and equitable statewide representation.

(e) Appointed members of the board may be paid a $50 per diem for each day actually engaged in the performance of their duties and may be reimbursed their actual and necessary expenses incurred in carrying out their duties as may be authorized by the governor and council.

II. Except for civil actions filed in superior court pursuant to paragraph IX of this section, the board shall have the following exclusive powers:

(a) Any person may file a written protest with the board complaining of conduct governed by and violative of this chapter. The board shall hold a public hearing in accordance with the rules adopted by the board pursuant to RSA 541-A.

(b) The board shall issue written decisions and may issue orders to any person in violation of this chapter.

III. The parties to protests filed pursuant to RSA 357-C:7, RSA 357-C:8, and RSA 357-C:9 shall be permitted to conduct and use the same discovery procedures as are provided in civil actions in the superior court.

IV. The board shall be empowered to determine the location of hearings, appoint persons to serve at the deposition of out-of-state witnesses, administer oaths, and authorize stenographic or recorded transcripts of proceedings before it. Prior to the hearing on any protest, but no later than 45 days after the filing of the protest, the board shall require the parties to the proceeding to attend a prehearing conference where the chairperson or designee shall have the parties address the possibility of settlement. If the matter is not resolved through the conference, the matter shall be placed on the board's calendar for hearings. Conference discussions shall remain confidential and shall not be disclosed or used as an admission in any subsequent hearing.

V. Compliance with the discovery procedures authorized by paragraph III may be enforced by application to the board. Obedience to subpoenas issued to compel witnesses or documents may be enforced by application to the superior court in the county where the hearing is to take place.

VI. Any party to any proceeding under this chapter who recklessly or knowingly fails, neglects, or refuses to comply with an order issued by the board shall be fined a civil penalty not to exceed $10,000. Each day of noncompliance shall be considered a separate violation of such order.

VII. Within 20 days after any order or decision of the board, any party to the proceeding may apply for a rehearing with respect to any matter determined in the proceeding, or covered or included in the order or decision. The application for rehearing shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the board shall be taken unless the appellant makes an application for rehearing as provided in this paragraph, and when such application for rehearing has been made, no ground not set forth in the application shall be urged, relied on, or given any consideration by a court unless the court for good cause shown allows the appellant to specify additional grounds. Any party to the proceeding may appeal the final order, including all interlocutory orders or decisions, to the superior court within 30 days after the date the board rules on the application for reconsideration of the final order or decision. All findings of the board upon all questions of fact properly before the court shall be prima facie lawful and reasonable. The order or decision appealed from shall not be set aside or vacated except for errors of law. No additional evidence shall be heard or taken by the superior court on appeals from the board.

VIII. (a) The New Hampshire motor vehicle industry board fund is established as a special fund in the state treasury. The fund shall be revolving, continually appropriated and nonlapsing. Except as otherwise provided in this chapter, all fees and civil penalties collected as provided in this chapter shall be paid into the state treasury immediately upon collection and credited to the motor vehicle industry board fund.

(b) To fund the New Hampshire motor vehicle industry board fund and to pay the start-up expenses of administration and enforcement of this chapter, the board shall impose an initial start-up fee upon each new motor vehicle dealer of $100 for each vehicle make represented by

that dealer, and an initial start-up fee of $1,000 for each manufacturer which sells or distributes new motor vehicles within the state. However, in no case shall the initial start-up fee imposed upon any new motor vehicle dealer exceed $500 per year. Upon the filing of a protest under this chapter, the protesting party shall pay into the fund a fee of $1,500.

(c) The commissioner of safety may draw upon the fund, established in subparagraph (a), to pay the expenses of administration and enforcement of this chapter.

(d) The board shall establish all fees, in addition to the initial start-up fees, required under this chapter in accordance with RSA 357-C:12, I(c).

(e) The commissioner of safety shall have the authority to impose an additional operational fee upon any motor vehicle dealer or manufacturer which sells or distributes new motor vehicles within the state in addition to the initial start-up fee imposed pursuant to this section, if the commissioner determines that the imposition of such fee is necessary to fund the ongoing operations of the board. However, in no case shall the additional operational fee imposed exceed $500 per year for any motor vehicle dealer and $1000 per year for any manufacturer.

IX. Notwithstanding the terms, provisions, or conditions of any agreement or franchise or the terms or provisions of any waiver, any person whose business or property is injured by a violation of this chapter, or any person so injured because such person refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of this chapter, may bring a civil action in the superior court to recover the actual damages sustained by such person together with the costs of the suit, including a reasonable attorney's fee.

X. In cases where the board finds that a violation of this chapter has occurred or there has been a failure to show good cause under RSA 357-C:7 or RSA 357-C:9, the superior court, upon petition, shall determine reasonable attorney's fees and costs and award them to the prevailing party.

Source. 1981, 477:2. 1985, 300:21, 22, 30. 1996, 263:8. 2000, 261:3. 2001, 209:6-9. 2007, 372:2. 2008, 358:11, eff. Sept. 9, 2008. 2009, 20:17, eff. May 6, 2009.

Section 357-C:12-a

357-C:12-a Franchisor and Franchisee Registration. – Each franchisor and franchisee shall register annually with the New Hampshire motor vehicle industry board pursuant to rules adopted by the board in accordance with RSA 541-A.

Section 357-C:13

357-C:13 Statute of Limitations. – Actions arising out of any provision of this chapter shall be commenced within 4 years of the date the cause of action accrues; provided, however, that if a person conceals the cause of action from the knowledge of the person entitled to bring it, the period prior to the discovery of his cause of action by the person so entitled shall be excluded in determining the time limited for commencement of the action. If a cause of action accrues during the pendency of any civil, criminal, or administrative proceeding against a person brought by the United States, or any of its agencies, under the antitrust laws, the Federal Trade Commission Act, any other federal act, or the laws of the state related to antitrust laws or to franchising, such

actions may be commenced within one year after the final disposition of such civil, criminal, or administrative proceeding.

Source. 1981, 477:2, eff. Aug. 25, 1981.

Section 357-C:14

357-C:14 Construction. – In construing the provisions of this chapter, the courts may be guided by the interpretations of the Federal Trade Commission Act, as amended.

Source. 1981, 477:2, eff. Aug. 25, 1981.

Section 357-C:15

357-C:15 Penalty. – Any violation of this chapter shall constitute a misdemeanor.

Source. 1981, 477:2, eff. Aug. 25, 1981.

Section 357-C:16

357-C:16 Severability. – If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.

Source. 1986, 117:8, eff. July 19, 1986.