

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011  
4  
5 By: Senator D. Wyatt

# A Bill

SENATE BILL 765

## For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS MOTOR VEHICLE COMMISSION  
9 ACT; AND FOR OTHER PURPOSES.

### Subtitle

12 TO AMEND THE ARKANSAS MOTOR VEHICLE  
13 COMMISSION ACT.

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16  
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18  
19 SECTION 1. Arkansas Code § 23-112-103(6), regarding the definition of  
20 "coerce" under the Arkansas Motor Vehicle Commission Act, is amended to read  
21 as follows:

22 (6) "Coerce" means:

23 (A) the failure ~~Failing~~ to act in good faith in performing  
24 or complying with:

25 (i) any ~~Any~~ terms or provisions of the franchise or  
26 sales and service agreement;

27 (ii) The terms of this chapter; or

28 (iii) The rules promulgated by the Arkansas Motor  
29 Vehicle Commission; or

30 (B) Threatening to withhold benefits available to other  
31 same line make dealers in the state;

32  
33 SECTION 2. Arkansas Code § 23-112-103(14)(A), regarding the definition  
34 of "franchise" under the Arkansas Motor Vehicle Commission Act, is amended to  
35 read as follows:

36 (A) The franchisee is granted the right to sell, ~~and~~



1 service, or sell and service new motor vehicles manufactured or distributed  
2 by the franchiser;

3  
4 SECTION 3. Arkansas Code § 23-112-103(25)(B)(ii), regarding the  
5 definition of "relevant market area" under the Arkansas Motor Vehicle  
6 Commission Act, is amended to read as follows:

7 (ii) However, when a manufacturer is seeking to  
8 establish an additional new motor vehicle dealer ~~and there is one (1) or more~~  
9 ~~existing new motor vehicle dealers of the same line make within a ten-mile~~  
10 ~~radius of the proposed dealer site~~, the relevant market area shall in all  
11 instances be the area within a radius of ten (10) miles around an existing  
12 dealer.

13  
14 SECTION 4. Arkansas Code § 23-112-105 is amended to read as follows:  
15 23-112-105. Civil damages.

16 (a) ~~Any~~ A licensee suffering pecuniary loss because of any willful  
17 failure by any other licensee to comply with ~~any provision~~ of this chapter,  
18 other than a new automobile or truck dealer's failure to comply with § 23-  
19 112-301(d)(1)-(3) or with any rule or regulation promulgated by the Arkansas  
20 Motor Vehicle Commission under authority vested in it by this chapter, may  
21 recover reasonable damages and attorney's fees therefor in any court of  
22 competent jurisdiction.

23 (b)(1) Except as provided under subdivision (b)(2) of this section, if  
24 a motor vehicle dealer prevails in an action against a manufacturer,  
25 distributor, second-stage manufacturer, importer, converter, manufacturer  
26 branch or division, or distributor branch or division under any provision of  
27 this chapter, the motor vehicle dealer shall also have a cause of action  
28 against the manufacturer, distributor, second-stage manufacturer, importer,  
29 converter, manufacturer branch or division, or distributor branch or division  
30 for damages and reasonable expenses of litigation, including without  
31 limitation depositions, transcripts, expert witnesses, and attorney's fees.

32 (2) Subdivision (b)(1) of this section does not apply to motor  
33 vehicle dealers, manufacturers, or distributors of motor homes.

34  
35 SECTION 5. Arkansas Code § 23-112-107(k), regarding motor vehicle data  
36 event recorders and data ownership, is amended to read as follows:

1       ~~(k)(1)(1)~~ The Arkansas Motor Vehicle Commission shall administer this  
2 section and may promulgate rules for the administration of this section.

3  
4       SECTION 6. Arkansas Code § 23-112-107, regarding motor vehicle data  
5 event recorders and data ownership, is amended to add an additional  
6 subdivision to read as follows:

7       (k)(1) A new motor vehicle dealer, manufacturer, and distributor shall  
8 be immune and held harmless against liability for the privacy of information  
9 contained in motor vehicle databases, including without limitation recording  
10 devices, global-positioning systems, navigation devices, or any in-vehicle  
11 data not controlled by the dealer.

12       (2) This subsection does not affect the notice requirements  
13 under subsection (b) of this section.

14  
15       SECTION 7. Arkansas Code § 23-112-310(d)(1), regarding labor rate per  
16 hour or parts price for warranty work, is amended to add an additional  
17 subdivision to read as follows:

18       (D) A manufacturer, distributor, distributor branch or  
19 division, or factory branch or division of new motorcycles, motorized cycles,  
20 and all-terrain vehicles shall not pay to any new motor vehicle dealers of  
21 motorcycles, motorized cycles, and all-terrain vehicles a labor rate per hour  
22 or parts price for warranty work that is less than that charged by the new  
23 motor vehicle dealer to its retail customers, provided that the rate is  
24 reasonable compared to other same line make motor vehicle dealers in the new  
25 motor vehicle dealer's relevant market area or the new motor vehicle dealer's  
26 competitive market area.

27  
28       SECTION 8. Arkansas Code § 23-112-311(c) and (d), regarding the  
29 addition or relocation of a new motor vehicle dealer, are amended to read as  
30 follows:

31       (c)(1) In determining whether good cause has been established for not  
32 entering into a franchise establishing or relocating an additional new motor  
33 vehicle dealer for the same line make, the commission shall take into  
34 consideration the existing circumstances, including without limitation:

35       ~~(1)(A)~~ Permanency of the investment of both the existing  
36 and proposed new motor vehicle dealers;

1                   ~~(2)~~(B) Growth or decline in population and new motor  
2 vehicle registrations in the relevant market area;

3                   ~~(3)~~(C) Effect on the consuming public in the relevant  
4 market area;

5                   ~~(4)~~(D) Whether it is injurious or beneficial to the public  
6 welfare for an additional new motor vehicle dealer to be established;

7                   ~~(5)~~(E) Whether the new motor vehicle dealers of the same  
8 line make in that relevant market area are providing adequate competition and  
9 convenient customer care for the motor vehicles of the line make in the  
10 market area, which shall include the adequacy of motor vehicle sales and  
11 service facilities, equipment, supply of motor vehicle parts, and qualified  
12 service personnel; and

13                   ~~(6)~~(F) Whether the establishment of an additional new  
14 motor vehicle dealer would increase competition and, therefore, be in the  
15 public interest.

16                   (2) In determining whether good cause has been established for  
17 not entering into a franchise establishing or relocating an additional new  
18 motor vehicle dealer for the same line make, the burden of proof is on the  
19 manufacturer or distributor to show it has good cause for granting the new  
20 franchise.

21                   (d)~~(1)~~ The commission ~~must~~ shall conduct the hearing and render its  
22 final determination within ~~one hundred twenty (120)~~ one hundred eighty (180)  
23 days after a protest is filed.

24                   (2) Unless waived by the parties, failure to do so shall be  
25 deemed the equivalent of a determination that good cause does not exist for  
26 refusing to permit the proposed additional or relocated new motor vehicle  
27 dealer, unless the delay is caused by acts of the manufacturer or distributor  
28 or the relocating or additional dealer.

29  
30                   SECTION 9. Arkansas Code § 23-112-313(a), regarding warranty  
31 agreements, is amended to read as follows:

32                   (a)~~(1)~~ Every manufacturer, distributor, wholesaler, distributor branch  
33 or division, factory branch or division, or wholesale branch or division  
34 shall properly fulfill any warranty or recall agreement and adequately and  
35 fairly compensate each of its motor vehicle dealers for labor and parts.

36                   (2)(A) Except as provided in subdivisions (b)(2)(B) and (C) of

1 this section, a manufacturer, distributor, wholesaler, distributor branch or  
2 division, factory branch or division, or wholesale branch or division shall  
3 not otherwise recover its costs from motor vehicle dealers within this state  
4 by:

- 5 (i) Increasing the wholesale price of a vehicle; or
- 6 (ii) Imposing a surcharge on a motor vehicle dealer  
7 solely intended to recover the cost of reimbursing the motor vehicle dealer  
8 for parts and labor under this chapter

9 (B) A manufacturer or distributor shall not be prohibited  
10 from increasing prices for vehicles or parts in the normal course of  
11 business.

12 (C) Subdivisions (a)(2)(A) and (B) of this section do not  
13 apply to motor vehicle dealers, manufacturers, or distributors of motor  
14 homes.

15  
16 SECTION 10. Arkansas Code § 23-112-313(e)(3)(A), regarding warranty  
17 agreements, is amended to read as follows:

18 (3)(A) A claim shall not be disapproved because a clerical error  
19 was made that does not render the amount of the claim incorrect, including  
20 without limitation clerical errors that occur as a result of a manufacturer  
21 or distributor's prior approval process.

22  
23 SECTION 11. Arkansas Code § 23-112-403(a)(2), regarding manufacturers,  
24 distributors, second-stage manufacturers, importers, or converters, is  
25 amended to add additional subdivisions to read as follows:

26 (Q)(i)(a) Unless the manufacturer's, distributor's,  
27 second-stage manufacturer's, importer's, converter's, manufacturer's branch  
28 or division, distributor's branch or division requirements are reasonable and  
29 justifiable in light of the current and reasonably foreseeable projections of  
30 economic conditions, financial expectations, and the motor vehicle dealer's  
31 market and notwithstanding the terms of a franchise agreement or sales and  
32 service agreement, to require, coerce, or attempt to coerce any new motor  
33 vehicle dealer by program, policy, standard, or otherwise to:

- 34 (1) Change location of the dealership;
- 35 (2) Make any substantial changes,  
36 alterations, or remodeling to a motor vehicle dealer's sales or service

1 facilities; or

2 (3) Replace a motor vehicle dealer's  
3 sales or service facilities,

4 (b) A manufacturer, distributor, second-stage  
5 manufacturer, importer, converter, manufacturer branch or division, or  
6 distributor branch or division shall have the burden of proving that changes,  
7 alterations, remodeling, or replacement to a motor vehicle dealer's sales or  
8 service facilities are reasonable and justifiable under this subchapter.

9 (ii)(a) However, a manufacturer, distributor,  
10 second-stage manufacturer, importer, converter, manufacturer branch or  
11 division, or distributor branch or division may provide to a motor vehicle  
12 dealer a commitment to allocate additional vehicles or a loan or grant of  
13 money as an inducement for the motor vehicle dealer to relocate, expand,  
14 improve, remodel, alter, or renovate its facilities if the manufacturer,  
15 distributor, second-stage manufacturer, importer, converter, manufacturer  
16 branch or division, or distributor branch or division delivers an assurance  
17 to the motor vehicle dealer that it will offer to supply to the dealer a  
18 sufficient quantity of new motor vehicles, consistent with its allocation  
19 obligations at law and to its other same line-make motor vehicle dealers,  
20 that will economically justify such relocation, expansion, improvement,  
21 remodeling, renovation, or alteration, in light of reasonably current and  
22 reasonably projected market and economic conditions.

23 (b) If the provisions of the increase in motor  
24 vehicle allocation, the loan or grant, and the assurance is made:

25 (1) The basis shall be contained in a  
26 written agreement;

27 (2) The motor vehicle dealer shall  
28 voluntarily enter into the agreement; and

29 (3) The same or substantially similar  
30 terms shall be offered to other same line-make motor vehicle dealers in this  
31 state with whom the licensee offers to enter into such an agreement.

32 (iii) Subdivisions (a)(2)(Q)(i) – (ii) of this  
33 section do not apply to motor vehicle dealers, manufacturers, or distributors  
34 of motor homes.

35 (R)(i) To fail to allow a new motor vehicle dealer to  
36 purchase goods and services related to facility changes, alterations, or

1 remodels of like kind and quality from vendors the dealer chooses.

2 (ii) Subdivision (a)(2)(R)(i) of this section does  
 3 not apply to motor vehicle dealers, manufacturers, or distributors of motor  
 4 homes.

5 (S)(i) To require as a prerequisite to receiving a model  
 6 or a series of vehicles a dealer to:

7 (a) Pay an extra fee or remodel, renovate, or  
 8 recondition the dealer's existing facilities;

9 (b) Purchase unreasonable advertising  
 10 displays, training, tools, or other materials;

11 (c) Establish exclusive facilities; or

12 (d) Establish dedicated personnel.

13 (ii) Subdivision (a)(2)(S)(i) does not apply to  
 14 motor vehicle dealers, manufacturers, or distributors of motor homes.

15 (T)(i)(a) To use any written instrument, agreement, or  
 16 waiver, to attempt to nullify or modify any provision of this chapter or  
 17 prevent a new motor vehicle dealer from bringing an action in a  
 18 particular forum otherwise available under law.

19 (b) An instrument contrary to this  
 20 subdivision (a)(2)(T)(i) is void.

21 (ii)(a) Except as provided in subdivision  
 22 (a)(2)(Q)(ii)(b) of this section, a manufacturer, distributor, or factory  
 23 branch shall not directly or indirectly condition any of the following on  
 24 the willingness of a motor vehicle dealer, proposed new motor vehicle  
 25 dealer, or owner of an interest in the dealership facility to enter into  
 26 a site control agreement or exclusive use agreement:

27 (1) Awarding a franchise to a  
 28 prospective new motor vehicle dealer;

29 (2) Adding a line make or franchise to  
 30 an existing motor vehicle dealer;

31 (3) Renewing a franchise of an  
 32 existing motor vehicle dealer;

33 (4) Approving the relocation of an  
 34 existing motor vehicle dealer's facility; or

35 (5) Approving the sale or transfer of  
 36 the ownership of a franchise.





1 approved facility improvements completed within the last ten (10) years in  
 2 order to qualify for a new vehicle sales incentive program.

3 (vi) Subdivisions (a)(2)(U)(i) – (v) of this section  
 4 do not apply to motor vehicle dealers, manufacturers, or distributors of  
 5 motor homes.

6  
 7 SECTION 12. Arkansas Code § 23-112-403(a)(2)(A)(i), regarding  
 8 manufacturers, distributors, second-stage manufacturers, importers, or  
 9 converters, is amended to read as follows:

10 (A)(i) To refuse to deliver, ~~in reasonable quantities and~~  
 11 ~~within a reasonable time after receipt of a dealer's order~~ motor vehicles to  
 12 a motor vehicle dealer in quantities proportional to the motor vehicle  
 13 dealer's retail delivery requirements established by the franchisor and after  
 14 receipt of a motor vehicle dealer's order to any ~~duly~~ licensed motor vehicle  
 15 dealer having a franchise or contractual arrangement for the retail sale of  
 16 new motor vehicles sold or distributed by the manufacturer, distributor,  
 17 distributor branch or division, or factory branch or division, any motor  
 18 vehicles ~~which~~ that are covered by the franchise or contract specifically  
 19 publicly advertised by the manufacturer, distributor, distributor branch or  
 20 division, or factory branch or division to be available for immediate  
 21 delivery.

22  
 23 SECTION 13. Arkansas Code § 23-112-403(a)(2)(B)(i), regarding  
 24 manufacturers, distributors, second-stage manufacturers, importers, or  
 25 converters, is amended to read as follows:

26 (B)(i) To engage in any of the following:

27 (a) To coerce or attempt to coerce any motor  
 28 vehicle dealer to enter into any agreement with the manufacturer,  
 29 distributor, distributor branch or division, factory branch or division, or  
 30 officer, agent, or other representative thereof, ~~or to;~~

31 (b) To do any other act prejudicial to the  
 32 motor vehicle dealer by threatening to cancel any franchise or any  
 33 contractual agreement existing between the manufacturer, distributor,  
 34 distributor branch or division, or factory branch or division and the motor  
 35 vehicle dealer;

36 (c) To fail to act in good faith under the

1 terms of the franchise or sales and service agreement, the terms of this  
2 chapter, or the rules promulgated by the Arkansas Motor Vehicle Commission;  
3 or

4 (d) To withhold benefits available to other  
5 same line make motor vehicle dealers.

6  
7 SECTION 14. Arkansas Code § 23-112-403(a)(2)(C)(i), regarding  
8 manufacturers, distributors, second-stage manufacturers, importers, or  
9 converters, is amended to read as follows:

10 (C)(i)(a) To terminate or cancel the franchise or selling  
11 agreement of any dealer without due cause.

12 (b) The nonrenewal of a franchise or selling  
13 agreement without due cause shall constitute an unfair termination or  
14 cancellation, regardless of the terms or provisions of the franchise or  
15 selling agreement.

16 (c) As used in this subchapter, tests for  
17 determining what constitutes due cause for a manufacturer or distributor to  
18 terminate a franchise or sales and service agreement include whether the  
19 motor vehicle dealer:

20 (1) Has transferred a majority ownership  
21 interest in the dealership without the manufacturer's or distributor's  
22 consent;

23 (2) Has made a material misrepresentation,  
24 committed a fraudulent act, or both in applying for or in acting under the  
25 franchise agreement;

26 (3) Has filed a voluntary petition in  
27 bankruptcy or has had an involuntary petition in bankruptcy filed against him  
28 or her that has not been discharged within sixty (60) days after the filing,  
29 is in default under a security agreement in effect with the manufacturer or  
30 distributor or is in receivership;

31 (4) Has engaged in unfair business or trade  
32 practices;

33 (5) Has failed to fulfill the warranty  
34 obligations of the manufacturer or distributor required to be performed by  
35 the motor vehicle dealer;

36 (6) Has inadequate motor vehicle sales and

1 service facilities, equipment, vehicle parts, and qualified service personnel  
2 to reasonably provide for the needs of the consumers for the motor vehicles  
3 handled by the franchisee and is rendering inadequate service to the public;

4 (7) Has failed to comply with an applicable  
5 federal, state, or local licensing law;

6 (8) Has been convicted of a crime, the effect  
7 of which would be detrimental to the manufacturer, distributor, or  
8 dealership;

9 (9) Has failed to operate in the normal course  
10 of business for ten (10) consecutive business days or has terminated his or  
11 her business;

12 (10) Has relocated his or her place of  
13 business without the manufacturer's or distributor's consent; or

14 (11) Has failed to comply with the terms of  
15 the franchise, the reasonableness and fairness of the franchise terms, and  
16 the extent and materiality of the franchisee's failure to comply.

17 (d) A manufacturer, distributor, second-stage  
18 manufacturer, importer, converter, manufacturer branch or division, or  
19 distributor branch or division shall have the burden of proving whether  
20 there is due cause to terminate a franchise or sales and service  
21 agreement.

22  
23 SECTION 15. Arkansas Code § 23-112-403(a)(2)(C)(iv), regarding  
24 manufacturers, distributors, second-stage manufacturers, importers, or  
25 converters, is amended to read as follows:

26 (iv)(a) Any A motor vehicle dealer who receives  
27 written notice that its franchise or selling agreement is being terminated or  
28 cancelled or who receives written notice that its franchise or selling  
29 agreement will not be renewed may file with the commission within the sixty-  
30 day notice period a verified complaint for the commission's determination as  
31 to whether the termination or cancellation or nonrenewal is unfair ~~within the~~  
32 ~~purview of~~ under this chapter.

33 (b) That franchise or selling agreement shall  
34 continue in effect until final determination of the issues raised in the  
35 complaint as allowed under the Arkansas Administrative Procedure Act, § 25-  
36 15-201 et seq., notwithstanding anything to the contrary contained in this

1 chapter or in the franchise or selling agreement.

2 (c) A manufacturer, distributor, second-stage  
3 manufacturer, importer, converter, manufacturer branch or division, or  
4 distributor branch or division shall have the burden of proving whether there  
5 is due cause to terminate a franchise or sales and service agreement.

6  
7 SECTION 16. Arkansas Code § 23-112-403(a)(2)(K), regarding  
8 manufacturers, distributors, second-stage manufacturers, importers, or  
9 converters, is amended to read as follows:

10 (K) Notwithstanding the terms of any franchise agreement,  
11 to fail to pay to a dealer or any lienholder in accordance with their  
12 respective interests after the termination of franchise:

13 (i) The dealer cost plus any charges by the  
14 manufacturer, distributor, or a representative for distribution, delivery,  
15 and taxes, less all allowances paid to the dealer by the manufacturer,  
16 distributor, or representative for new, unsold, undamaged, and complete motor  
17 vehicles of current model year and one (1) year prior model year in the  
18 dealer's inventory;

19 (ii) The dealer cost of each new, unused, undamaged,  
20 and unsold part or accessory if the part or accessory:

21 (a) Was purchased from the manufacturer by the  
22 dealer and is in the original package;

23 (b) Is identical to a part or accessory in the  
24 current parts catalogue except for the number assigned to the part or  
25 accessory; or

26 (c) Was purchased in the ordinary course of  
27 business by the dealer from another authorized dealer so long as the  
28 authorized dealer purchased the part or accessory directly from the  
29 manufacturer or distributor or from an outgoing authorized dealer as part of  
30 the dealer's initial inventory;

31 (iii) The fair market value of each undamaged sign  
32 owned by the dealer which bears a trademark or trade name used or claimed by  
33 the manufacturer, distributor, or representative, if the sign was purchased  
34 from or purchased at the request of the manufacturer, distributor, or  
35 representative;

36 (iv) The fair market value of all special tools and

1 automotive service equipment owned by the dealer that were recommended in  
2 writing and designated as special tools and equipment and purchased from or  
3 purchased at the request of the manufacturer, distributor, or representative,  
4 if the tools and equipment are in usable and good condition except for  
5 reasonable wear and tear;

6 (v) The cost of transporting, handling, packing, and  
7 loading of motor vehicles, parts, signs, tools, and equipment subject to  
8 repurchase;

9 (vi) The balance of all claims for warranty and  
10 recall service and all other money owed by the manufacturer to the dealer;

11 (vii)(a) Except as provided under subdivisions  
12 (a)(2)(K)(vii)(b) and (c) of this section, the fair market value of the  
13 franchise that is at least equivalent to the fair market value of the  
14 franchise one (1) year before the manufacturer announces the action that  
15 results in the termination or discontinuance of a line-make.

16 (b) If the termination, cancellation,  
17 discontinuance, or nonrenewal is due to a manufacturer's change in  
18 distributors, the manufacturer may avoid paying fair market value to the  
19 new motor vehicle dealer if the new distributor or the manufacturer offers  
20 the new motor vehicle dealer a franchise agreement with terms  
21 substantially similar to terms offered to other same line-make new motor  
22 vehicle dealers.

23 (c) Subdivisions (a)(2)(K)(vii)(a) – (b) of  
24 this section do not apply to motor vehicle dealers, manufacturers, or  
25 distributors of motor homes.

26 ~~(vii)(a)~~(viii)(a) Compensation for the actual  
27 pecuniary loss caused by the franchise termination, cancellation, or  
28 nonrenewal unless for due cause.

29 (b) In determining the actual pecuniary loss,  
30 the value of any continued service or parts business available to the dealer  
31 for the line make covered by the franchise shall be considered. If the dealer  
32 and the manufacturer, importer, or distributor cannot agree on the amount of  
33 compensation to be paid under this subchapter, either party may file an  
34 action in a court of competent jurisdiction;

35 ~~(viii)~~(ix) Any sums due as provided by subdivision  
36 (a)(2)(K)(i) of this section within sixty (60) days after termination of a

1 franchise and any sums due as provided by subdivisions (a)(2)(K)(ii)-(vii) of  
 2 this section within ninety (90) days after termination of a franchise. As a  
 3 condition of payment, the dealer shall comply with reasonable requirements  
 4 with respect to the return of inventory as are set out in the terms of the  
 5 franchise agreement. A manufacturer, distributor, or representative who fails  
 6 to pay those sums within the prescribed time or at such time as the dealer  
 7 and lienholder, if any, proffer good title before the prescribed time for  
 8 payment, is liable to the dealer for:

9 (a) The greatest of dealer cost, fair market  
 10 value, or current price of the inventory;

11 (b) Interest on the amount due calculated at  
 12 the rate applicable to a judgment of a court; and

13 (c) Reasonable attorney's fees and costs; or

14 ~~(ix)~~(x) Obligations under this subdivision (a)(2)(K)  
 15 do not apply if the termination is a result of the conviction of the  
 16 franchisee in a court of competent jurisdiction of an offense that is  
 17 punishable by a term of imprisonment in excess of one (1) year and the  
 18 offense is substantially related to the business conducted pursuant to the  
 19 franchise;

20  
 21 SECTION 17. Arkansas Code § 23-112-403(a), regarding manufacturers,  
 22 distributors, second-stage manufacturers, importers, or converters, is  
 23 amended to add additional subdivisions to read as follows:

24 (5)(A) To unreasonably reduce a motor vehicle dealer's area  
 25 of sales effectiveness, trade area, or similar designation without giving  
 26 a notice of at least thirty (30) days of the proposed reduction.

27 (B) The change shall not take effect if the dealer  
 28 commences an administrative action to determine whether there is good  
 29 cause for the change within the ninety-day notice period.

30 (C) The burden of proof in an action under this  
 31 subdivision (a)(5) shall be on the manufacturer, distributor, second-stage  
 32 manufacturer, importer, converter, manufacturer branch or division, or  
 33 distributor branch or division to prove that good cause exists to change the  
 34 motor vehicle dealer's area of sales effectiveness, trade area, or similar  
 35 designation; or

36 (6)(A) To use any financial services company or leasing

1 company owned in whole or in part or controlled by the manufacturer or  
2 distributor to accomplish what would otherwise be illegal conduct on the  
3 part of the manufacturer or distributor under this chapter.

4 (B) This subchapter does not limit the right of the  
5 financial services or leasing company to otherwise engage in regular  
6 financial services or leasing business practices.

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