

TITLE 56.
MOTOR VEHICLES

CHAPTER 15
Regulation of Manufacturers, Distributors, and Dealers

ARTICLE 1
General Provisions

SECTION 56-15-10. Definitions.

As used in this chapter the following words shall, unless the text otherwise requires, have the following meanings:

Text of (a) effective until November 19, 2018.

(a) "Motor vehicle" means any motor driven vehicle required to be registered pursuant to Section 56-3-110. This definition does not include motorcycles, or new recreational vehicles as defined in Section 56-14-10.

Text of (a) effective November 19, 2018.

(a) "Motor vehicle", means any motor driven vehicle required to be registered pursuant to Section 56-3-110. This definition does not include motorcycles, new recreational vehicles as defined in Section 56-14-10, or mopeds.

(b) "Manufacturer," any person engaged in the business of manufacturing or assembling new and unused motor vehicles.

(c) "Factory branch," a branch office maintained by a manufacturer which manufactures or assembles motor vehicles for sale to distributors or motor vehicle dealers or which is maintained for directing and supervising the representatives of the manufacturer.

(d) "Distributor branch", a branch office maintained by a distributor who or which sells or distributes new motor vehicles to motor vehicle dealers.

(e) "Factory representative," a representative employed by a manufacturer or employed by a factory branch for the purpose of making or promoting the sale or motor vehicles or for supervising, servicing, instructing or contracting with motor vehicle dealers or prospective motor vehicle dealers.

(f) "Distributor representative", a representative employed by a distributor branch or distributor.

(g) "Distributor", any person who sells or distributes new motor vehicles to motor vehicle dealers or who maintains distributor representatives within the State.

(h) "Dealer" or "motor vehicle dealer", any person who sells or attempts to effect the sale of any motor vehicle. These terms do not include:

(1) distributors or wholesalers.

(2) receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under the judgment or order of any court.

(3) public officers while performing their official duties.

(4) persons disposing of motor vehicles acquired for their own use and so used in good faith and not for the purpose of avoiding the provisions of law. Any person who effects or attempts to effect the sale of more than five motor vehicles in any one calendar year is considered a dealer or wholesaler, as appropriate, for purposes of this chapter.

(5) finance companies or other financial institutions who sell repossessed motor vehicles and insurance companies who sell motor vehicles they own as an incident to payments made under policies of insurance.

(i) “Franchise,” an oral or written arrangement for a definite or indefinite period in which a manufacturer, distributor or wholesaler grants to a motor vehicle dealer a license to use a trade name, service mark, or related characteristic, and in which there is a community of interest in the marketing of motor vehicles or services related thereto at wholesale, retail, leasing or otherwise.

(j) “Franchiser,” a manufacturer, distributor or wholesaler who grants a franchise to a motor vehicle dealer.

(k) “Franchisee,” a motor vehicle dealer to whom a franchise is offered or granted.

(l) “Sale,” shall include the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of any motor vehicle or interest therein or of any franchise related thereto; and any option, subscription or other contract, or solicitation, looking to a sale, or offer or attempt to sell in any form, whether spoken or written. A gift or delivery of any motor vehicle or franchise with respect thereto with, or as, a bonus on account of the sale of anything shall be deemed a sale of such motor vehicle or franchise.

(m) “Fraud,” shall include, in addition to its normal legal connotation, the following: a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made honestly and in good faith; and an intentional failure to disclose a material fact.

(n) “Person,” 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.

(o) “New motor vehicle,” a motor vehicle which has not been previously sold to any person except a distributor or wholesaler or motor vehicle dealer for resale.

(p) “Wholesaler” or “motor vehicle wholesaler”, any person who sells or attempts to effect the sale of any used motor vehicle exclusively to motor vehicle dealers or to other wholesalers.

(q) Reserved.

(r) “Due cause” means a material breach by a dealer of a lawful provision of a franchise or selling agreement that is not cured within a reasonable period of time after being given prior written notice of the specific material breach.

(s) “Material breach” means a contract violation that is substantial and significant.

HISTORY: 1962 Code Section 46-150.151; 1972 (57) 2419; 1983 Act No. 118 Sections 4-8; 1984 Act No. 511, Section 2; 1988 Act No. 603, Section 1; 1993 Act No. 181, Section 1483; 1996 Act No. 459, Section 246A; 2013 Act No. 44, Section 1, eff June 7, 2013; 2017 Act No. 51 (S.321), Sections 2, 3, eff November 19, 2017; 2017 Act No. 89 (H.3247), Section 29, eff November 19, 2018.

Code Commissioner’s Note

At the direction of the Code Commissioner, the amendments in (a) made by 2017 Act No. 51, Section 2, effective November 19, 2017, and 2017 Act No. 89, Section 29, effective November 19, 2018, were read together.

Editor’s Note

2017 Act No. 51, Section 7, provides:

“This act takes effect six months after approval by the Governor and applies to manufacturer/dealer agreements entered into on or after July 1, 2018.”

Effect of Amendment

2017 Act No. 51, Section 2, in (a), substituted “pursuant to” for “under”, and added “, or new recreational vehicles as defined in Section 56-14-10”.

2017 Act No. 51, Section 3, reserved (q), which had related to the definition of “motor home”.

2017 Act No. 89, Section 29, in (a), inserted “or mopeds”.

SECTION 56-15-20. Persons subject to chapter and jurisdiction of courts; service of process.

Any person who engages directly or indirectly in purposeful contacts within this State in connection with the offering or advertising for sale or has business dealings with respect to a motor vehicle within this State shall be subject to the provisions of this chapter and shall be subject to the jurisdiction of the courts of this State upon service of process in accordance with the provisions of Chapter 9 of Title 15.

HISTORY: 1962 Code Section 46-150.152; 1972 (57) 2419.

SECTION 56-15-30. Unfair methods of competition and unfair or deceptive acts or practices declared unlawful.

(a) Unfair methods of competition and unfair or deceptive acts or practices as defined in Section 56-15-40 are hereby declared to be unlawful.

(b) In construing paragraph (a) the courts may be guided by the definitions in the Federal Trade Commission Act (15 U.S.C. 45).

HISTORY: 1962 Code Section 46-150.153; 1972 (57) 2419.

SECTION 56-15-40. Specific acts deemed unfair methods of competition and unfair or deceptive acts or practices; Office of Administrator; appointment of personnel; enforcement; financial services company.

(1) It shall be deemed a violation of paragraph (a) of Section 56-15-30 for any manufacturer, factory branch, factory representative, distributor, or wholesaler, 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 the parties or to the public.

(2) It shall be deemed a violation of subsection (a) of Section 56-15-30 for a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division, or an officer, agent or other representative, to require, coerce, or attempt to coerce, any motor vehicle dealer:

(a) to order or accept delivery of any motor vehicle or vehicles, appliances, equipment, parts or accessories, or any other commodity or commodities which such motor vehicle dealer has not voluntarily ordered;

(b) to order or accept delivery of any motor vehicle with special features, appliances, accessories, or equipment not included in the list price of said motor vehicles as publicly advertised by the manufacturer thereof;

(c) to order for any person any parts, accessories, equipment, machinery, tools, appliances, or any commodity whatsoever;

(d) to offer to sell or to sell any extended service contract, extended maintenance plan, financial product, or insurance product offered, sold, or sponsored by the manufacturer, distributor, or wholesaler. Nothing in this item shall prohibit a manufacturer or distributor or financial arm from providing functionally available incentive programs to a motor vehicle dealer who voluntarily offers to sell or sells any extended service contract, extended maintenance plan, financial product, or insurance product offered, sold, or sponsored by the manufacturer or distributor or financial arm;

(e) to sell, assign, or transfer any retail installment sales contract or lease obtained by the motor vehicle dealer in connection with the sale or lease of a new motor vehicle manufactured by the manufacturer to a specified finance company, class of finance companies, leasing company, class of leasing companies, or to any other specified person.

(3) It shall be deemed a violation of paragraph (a) of Section 56-15-30 for a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division, or officer, agent or other representative thereof:

(a) To 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 branch or division, factory branch or division or wholesale branch or division, any such motor vehicles as are covered by such franchise or contract specifically publicly advertised by such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to be available for immediate delivery; provided, however, the failure to deliver any motor vehicle shall not be considered a violation of this chapter if such failure be due to an act of God, work stoppage or delay due to a strike or labor difficulty, shortage of materials, freight embargo or other cause over which the manufacturer, distributor, or wholesaler, or any agent thereof, shall have no control.

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

(c) To terminate or cancel the franchise or selling agreement of any such dealer without due cause. The nonrenewal of a franchise or selling agreement, without due cause, shall constitute an unfair termination or cancellation, regardless of the terms or provisions of such franchise or selling agreement. Such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, or officer, agent or other representatives thereof shall notify a motor vehicle dealer in writing of the termination or cancellation of the franchise or selling agreement of such dealer at least sixty days before the effective date thereof, stating the specific grounds for such termination or cancellation; and such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, or officer, agent or other representative thereof shall notify a motor vehicle dealer in writing at least sixty days before the contractual term of his franchise or selling agreement expires that the same will not be renewed, stating the specific grounds for such

nonrenewal in those cases where there is no intention to renew, and in no event shall the contractual term of any such franchise or selling agreement expire, without the written consent of the motor vehicle dealer involved, prior to the expiration of at least sixty days following such written notice. During the sixty-day period, either party may in appropriate circumstances petition a court to modify such sixty-day stay or to extend it pending a final determination of such proceedings on the merits. The court shall have authority to grant preliminary and final injunctive relief.

(d) To resort to or use any false or misleading advertisement in connection with his business as such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, or officer, agent or other representative thereof.

(e) To offer to sell or to sell any new motor vehicle to any motor vehicle dealer at a lower actual price therefor than the actual price offered to any other motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device including, but not limited to, sales promotion plans or programs which result in such lesser actual price; provided, however, the provisions of this paragraph shall not apply to sales to a motor vehicle dealer for resale to any unit of the United States Government, the State or any of its political subdivisions; and provided, further, the provisions of this paragraph shall not apply to sales to a motor vehicle dealer of any motor vehicle ultimately sold, donated or used by such dealer in a driver education program; and provided, further, that the provisions of this paragraph shall not apply so long as a manufacturer, distributor, or wholesaler, or any agent thereof, offers to sell or sells new motor vehicles to all motor vehicle dealers at an equal price. This provision shall not apply to sales by manufacturer, distributor, or wholesaler to the United States Government or any agency thereof.

(f) To wilfully discriminate, either directly or indirectly, in price between different purchasers of a commodity of like grade or quality where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly or to injure or destroy the business of a competitor.

(g) To offer to sell or to sell parts or accessories to any new motor vehicle dealer for use in his own business for the purpose of repairing or replacing the same on a comparable part or accessory, at a lower actual price therefor 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, in those cases where motor vehicle dealers operate and serve as wholesalers of parts and accessories to retail outlets or other dealers, whether or not such dealer is regularly designated as a wholesaler, nothing herein contained shall be construed to prevent a manufacturer, distributor, or wholesaler, or any agent thereof, from selling to such motor vehicle dealer who operates and services as a wholesaler 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 actual price than the actual price charged a motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories.

(h) To prevent or attempt to prevent by contract or otherwise, any motor vehicle dealer from changing the capital structure of his dealership or the means by or through 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, distributor or wholesaler, and provided such change by the dealer does not result in a change in the executive management of the dealership.

(i) To prevent or attempt to prevent by contract or otherwise, any motor vehicle dealer or any officer, partner or stockholder of any motor vehicle dealer from selling or transferring any

part of the interest of any of them to any other person or persons or party or parties; 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 thereunder without the consent of the manufacturer, distributor or wholesaler except that such consent shall not be unreasonably withheld.

(j) To obtain money, goods, services, anything of value, or any other 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) To 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.

(4) It shall be deemed a violation of paragraph (a) of Section 56-15-30 for a motor vehicle dealer:

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

(b) To represent and sell as a new motor vehicle any motor vehicle which has been used and operated for demonstration purposes or which is otherwise a used motor vehicle.

(c) To resort to or use any false or misleading advertisement in connection with his business as such motor vehicle dealer.

(5) There is hereby created the Office of Administrator, within the Attorney General's office, and he shall appoint such personnel within his office for the purpose of regulating this chapter. The Administrator shall have the power to investigate, issue cease and desist orders and injunctive relief on any valid abuse connected with the sale, rental or leasing of a new or used motor vehicle; provided, however, this power shall only apply after reasonable attempts by the consumer have been made with the seller, dealer, manufacturer or lessor of the motor vehicle to alleviate the complaint.

(6)(a) For purposes of this subsection, a "financial services company" means any finance source that provides automotive-related loans, or purchases retail installment contracts or lease contracts for motor vehicles and is, directly or indirectly, owned, operated, or controlled, in whole or in part, by a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division.

(b) A manufacturer or distributor may not use any financial services company or leasing company owned or controlled by the manufacturer or distributor to accomplish what would otherwise be illegal conduct on the part of the manufacturer or distributor pursuant to subitems (2)(d) or (e).

HISTORY: 1962 Code Section 46-150.154; 1972 (57) 2419; 2013 Act No. 44, Sections 2.A, 2.B, eff June 7, 2013.

SECTION 56-15-45. Ownership, operation or control of competing dealerships by manufacturer or franchisor; unfair competition against franchisee; preferential treatment defined; sales or

leases to federal government or employees; sales of leased vehicles; manufacturer's e-commerce websites.

(A) It is unlawful for a manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor to own, operate, or control or to participate in the ownership, operation, or control of a new motor vehicle dealer in this State, to establish in this State an additional dealer or dealership in which that person or entity has an interest, or to own, operate, or control, directly or indirectly, an interest in a dealer or dealership in this State, excluding a passive interest in a publicly traded corporation held for investment purposes. This subsection does not prohibit the ownership, operation, or control of a new motor vehicle dealer by a manufacturer or franchisor:

(1) for a temporary period, not to exceed one year, during the transition from one owner or operator to another, except that on a showing by a manufacturer or franchisor of good cause, a court of competent jurisdiction may extend this time limit for periods up to an additional twelve months;

(2) during a period in which the new motor vehicle dealer is being sold pursuant to a bona fide contract, shareholder agreement, or purchase option to the operator of the dealership; or

(3) at the same location at which the manufacturer or franchisor has been engaged in the retail sale of new motor vehicles as the owner, operator, or controller of the dealership for a continuous two-year period of time immediately before January 1, 2000, where there is no prospective new motor vehicle dealer available to own or operate the dealership in a manner consistent with the public interest.

(B)(1) It is unlawful for a manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor to compete unfairly with a new motor vehicle dealer of the same line make operating pursuant to a franchise in the State of South Carolina. Except as otherwise provided in this subsection, the mere ownership, operation, or control of a new motor vehicle dealer by a manufacturer or franchisor pursuant to the conditions set forth in subsection (A) of this section is not a violation of this subsection.

(2) For purposes of this subsection, a manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor is conclusively presumed to be competing unfairly if it gives preferential treatment to a dealer or dealership in which an interest is directly or indirectly owned, operated, or controlled by the manufacturer or franchisor or any partner, affiliate, wholly or partially owned subsidiary, officer, or representative of the manufacturer or franchisor, expressly including, but not limited to, preferential treatment regarding the direct or indirect cost of vehicles or parts, the availability or allocation of vehicles or parts, the availability or allocation of special or program vehicles, the provision of service and service support, the availability of or participation in special programs, the administration of warranty policy, the availability or allocation of factory rebates, or the availability and use of after warranty adjustments, advertising, floor planning, or financing or financing programs.

(C) It is unlawful for a manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor to own a facility that engages primarily in the repair of motor vehicles, except motor homes, if the repairs are performed pursuant to the terms of a franchise or other agreement or the repairs are performed as part of a manufacturer's or franchisor's warranty. Nothing in this subsection prohibits a manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer,

or representative of a manufacturer or franchisor from owning a facility to perform warranty or other repairs on motor vehicles owned and operated by the manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor.

(D) Except as may be provided otherwise in subsections (A) and (B) of this section, a manufacturer or franchisor may not sell, directly or indirectly, a motor vehicle to a consumer in this State, except through a new motor vehicle dealer holding a franchise for the line make that includes the motor vehicle. This subsection does not apply to manufacturer or franchisor sales of new motor vehicles to the federal government, nor to manufacturer or franchisor leases of new motor vehicles to employees of the manufacturer or franchisor. Nothing in this subsection prohibits a manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor operating as a motor vehicle lessor from selling a motor vehicle to the lessee at the conclusion of a lease agreement between the two parties. Nothing in this subsection prevents a manufacturer or franchisor from establishing an e-commerce website for the purpose of referring prospective customers to motor vehicle dealers holding a franchise for the same line make of the manufacturer or franchisor.

HISTORY: 2000 Act No. 287, Section 2.

SECTION 56-15-46. Notice of intent to establish or relocate competing dealership; injunction.

(A) A franchisor that intends to establish a new dealership or to relocate a current dealership for a particular line-make motor vehicle within a ten-mile radius of an existing dealership of the same line-make motor vehicle shall give written notice of that intent by certified mail to the existing dealership. The notice must include the:

- (1) specific location of the additional or relocated dealership;
- (2) date of commencement of operation of the additional or relocated dealership at the new location;
- (3) identities of all existing dealerships located in the market area of the new or relocated dealership; and
- (4) names and addresses of the dealer and principals in the new or relocated dealership.

(B) If a franchisor intends to establish a new dealership or to relocate a current dealership within a ten-mile radius of an existing dealership, then that existing dealership may petition the court, within sixty days of the receipt of the notice, to enjoin or prohibit the establishment of the new or relocated dealership within a ten-mile radius of the existing dealership. The court shall enjoin or prohibit the establishment of the new or relocated dealership within a ten-mile radius of the protesting dealership unless the franchisor shows by a preponderance of the evidence that the existing dealership is not providing adequate representation of the line-make motor vehicle and that the new or relocated dealership is necessary to provide the public with reliable and convenient sales and service within that area. The burden of proof in establishing adequate representation is on the franchisor. In determining if the existing dealership is providing adequate representation and if the new or relocated dealership is necessary, the court may consider, but is not limited to considering:

- (1) the impact the establishment of the new or relocated dealership will have on consumers, the public interest, and the protesting dealership, except that financial impact may be considered only with respect to the protesting dealership;

(2) the size and permanency of investment reasonably made and the reasonable obligations incurred by the protesting dealership to perform its obligation pursuant to the dealership's franchise agreement;

(3) the reasonably expected market penetration of the line-make motor vehicle, after consideration of all factors which may affect the penetration including, but not limited to, demographic factors such as age, income, education, size class preference, product popularity, retail lease transactions, and other factors affecting sales to consumers;

(4) actions by the franchisor in denying its existing dealership of the same line make the opportunity for reasonable growth, market expansion, or relocation, including the availability of line-make motor vehicles in keeping with reasonable expectations of the franchisor in providing an adequate number of dealerships;

(5) attempts by the franchisor to coerce the protesting dealership into consenting to an additional or relocated dealership of the same line make within a ten-mile radius of the protesting dealership;

(6) distance, travel time, traffic patterns, and accessibility between the protesting dealership of the same line make and the location of the proposed new or relocated dealership;

(7) the likelihood of benefits to consumers from the establishment or relocation of the dealership, which benefits may not be obtained by other geographic or demographic changes or other expected changes within a ten-mile radius of the protesting dealership;

(8) if the protesting dealership is in substantial compliance with its franchise agreement;

(9) if there is adequate interbrand and intrabrand competition with respect to the line-make motor vehicles, including the adequacy of sales and service facilities;

(10) if the establishment or relocation of the proposed dealership appears to be warranted and justified based on economic and market conditions pertinent to dealerships competing within a ten-mile radius of the protesting dealership, including anticipated changes; and

(11) the volume of registrations and service business transacted by the protesting dealership.

(C) This section does not apply to the:

(1) addition of a new dealership at a location that is within a three-mile radius of a former dealership of the same line make and that has been closed for less than two years;

(2) relocation of an existing dealership to a new location that is further away from the protesting dealer's location than the relocated dealer's previous location; or

(3) relocation of an existing dealership to a new location that is within a three-mile radius of the dealership's current location, when it has been at the current location at least ten years.

HISTORY: 2000 Act No. 287, Section 2.

SECTION 56-15-47. Designation of successor to the dealership in the event of death or incapacity of motor vehicle dealer; requirements; burden of proof.

A manufacturer may not prevent a motor vehicle dealer from designating a successor to the dealership in the event of death or incapacity of the motor vehicle dealer. The designation may be made by the motor vehicle dealer by will or other written instrument or, in the event of his death or incapacity, by the qualified executor or personal representative of the motor vehicle dealer by will or other written instrument. No individual may succeed to a franchise until the franchisor has been given written notice as to the identity, financial ability, and qualifications of the successor in question. The manufacturer or distributor is not required to accept a succession which does not meet the manufacturer's or distributor's written, reasonable, and uniformly

applied minimal standard qualifications. The burden of proof shall be on the manufacturer or distributor to show that the succession does not meet the manufacturer's or distributor's written, reasonable, and uniformly applied minimal standard qualifications.

HISTORY: 2013 Act No. 44, Section 3, eff June 7, 2013.

SECTION 56-15-50. Manufacturers shall specify delivery and preparation obligations of dealers; filing of copy of obligations and schedule of compensation.

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 or statement of the compensation to be paid or credited 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 Department of Motor Vehicles by every motor vehicle manufacturer and shall constitute any such dealer's only responsibility for product liability as between such dealer and such manufacturer. The compensation as set forth on such schedule or statement shall be reasonable and paid or credited as set out in Section 56-15-60.

HISTORY: 1962 Code Section 46-150.155; 1972 (57) 2419; 1993 Act No. 181, Section 1484.

SECTION 56-15-60. Fulfillment of warranty agreements; dealers' claims for compensation.

(A)(1) Every manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division must fulfill properly a warranty agreement and compensate adequately and fairly each of its motor vehicle dealers for labor and parts. All warranty claims, service claims, or incentive claims made by motor vehicle dealers pursuant to this section and Section 56-15-50 for labor and parts must be paid within thirty days following their approval. All claims must be either approved or disapproved within thirty days after their receipt. Any claim not specifically disapproved in writing within thirty days of receipt shall be construed as approved and payment must follow within thirty days. The motor vehicle dealer who submits a disapproved claim must be notified in writing of its disapproval within that period, and the notice must state the specific grounds upon which the disapproval is based.

(2) A claim disapproval must be based on a material defect. A manufacturer shall not disapprove claims:

(a) for which the motor vehicle dealer has received preauthorization from the manufacturer or its representative; or

(b) based on the motor vehicle dealer's incidental failure to comply with a specific claim processing requirement that results in a clerical or administrative error.

(3) In the event of neglect, oversight, or mistake by the motor vehicle dealer, the dealer may submit an amended claim for labor and parts up to sixty days from the date on which the manufacturer provided written notice to the motor vehicle dealer of the material defect or deviation. The motor vehicle dealer must substantiate the claim in accordance with the manufacturer's reasonable written procedures.

(4) Any special handling of claims required by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, but not uniformly required of all dealers of that make, may be enforced only after thirty days' notice in writing of good and sufficient reason.

(B) An audit for sales incentives, service incentives, rebates, or other forms of incentive compensation may include only the twelve-month period immediately following the date of the termination of the incentive compensation program. This limitation is not effective in the case of fraudulent claims.

(C) If an audit or other authorized means of review by the manufacturer or franchisor discloses a material defect in the claim, the manufacturer or franchisor may demand reimbursement for funds previously paid to a dealer for warranty service provided the audit is completed within twelve months of filing a claim.

HISTORY: 1962 Code Section 46-150.156; 1972 (57) 2419; 2000 Act No. 287, Section 3; 2013 Act No. 44, Section 4, eff June 7, 2013.

SECTION 56-15-65. Requiring change of location or alteration of dealership.

It is unlawful for any manufacturer, distributor, factory representative, or distributor representative to require, coerce, or attempt to coerce any motor vehicle dealer to change the location of the motor vehicle dealership or to make any substantial alterations to the dealer's premises or facilities unless:

(1) the manufacturer demonstrates that such change or alteration is reasonable in light of the current market and economic conditions; and

(2) the motor vehicle dealer has been provided written assurance from the manufacturer or distributor of a sufficient supply of motor vehicles to justify such change or alteration.

HISTORY: 2009 Act No. 52, Section 1, eff upon approval (became law without the Governor's signature on June 3, 2009).

SECTION 56-15-70. Certain unreasonable restrictions on dealers or franchisees unlawful.

It shall be unlawful directly or indirectly to impose unreasonable restrictions on the motor vehicle dealer or franchisee relative to transfer, sale, right to renew, termination, discipline, noncompetition covenants, site-control (whether by sublease, collateral pledge of lease, or otherwise), right of first refusal to purchase, option to purchase, compliance with subjective standards and assertion of legal or equitable rights.

HISTORY: 1962 Code Section 46-150.157; 1972 (57) 2419.

SECTION 56-15-75. Requiring dealer to refrain from acquiring another line of new motor vehicles.

It is unlawful for any manufacturer, distributor, factory branch, distributor branch, factory representative, or distributor representative to require, coerce, or attempt to coerce any motor vehicle dealer to refrain from participation in the management of, investment in, or acquisition of any other make or line of new motor vehicles or related products if:

(1) the requirements are unreasonable considering current economic conditions and are not otherwise justified by reasonable business considerations;

(2) the motor vehicle dealer has maintained a reasonable line of credit for each make or line of a new motor vehicle; and

(3) the motor vehicle dealer remains in compliance with reasonable capital standards and reasonable facilities requirements specified by the manufacturer.

Reasonable facilities requirements shall not include any requirement that a motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space, unless the manufacturer or distributor establishes by a preponderance of the evidence that such requirements are justified by current economic conditions or reasonable business considerations.

HISTORY: 2009 Act No. 52, Section 2, eff upon approval (became law without the Governor's signature on June 3, 2009).

SECTION 56-15-80. Agreements to which chapter applies.

The provisions of this chapter shall apply to all written or oral agreements between a manufacturer, wholesaler or distributor with a motor vehicle dealer including, but not limited to, the franchise offering, the franchise agreement, sales of goods, services or advertising, leases or mortgages of real or personal property, promises to pay, security interests, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts, and all other such agreements in which the manufacturer, wholesaler or distributor has any direct or indirect interest.

HISTORY: 1962 Code Section 46-150.158; 1972 (57) 2419.

SECTION 56-15-85. Electronic sale of vehicles.

This chapter does not prohibit a dealership located in this State from contracting with an on-line electronic service to provide motor vehicles to consumers in this State.

HISTORY: 2000 Act No. 287, Section 4.

SECTION 56-15-90. Failure to renew, termination or restriction of transfer of franchise; determining reasonable compensation for value of dealership franchise.

(A) Anything to the contrary notwithstanding, it shall be unlawful for the manufacturer, wholesaler, distributor, or franchisor, without due cause, to fail to renew on terms then equally available to all its motor vehicle dealers of the same line-make, to terminate a franchise or to unreasonably restrict the transfer of a franchise unless the franchisee shall receive fair and reasonable compensation for the value of the business and compensation for its dealership facilities or location as provided in subsection (C).

(B) In determining the fair and reasonable compensation for a business, pursuant to subsection (A) or (D), the value of the business shall include, but not be limited to:

(1) the dealer cost for all new untitled, undamaged, and unaltered motor vehicles in the dealer's inventory purchased from the manufacturer or from another same line-make dealer in the ordinary course of business within eighteen months of termination;

(2) the dealer cost for all new, unused, and undamaged parts listed in the current price catalog and still in the original, resalable merchandising package and in unbroken lots, purchased from the manufacturer or distributor;

(3) the fair market value of signage bearing a trademark or trade name of the manufacturer or line-make purchased from and required by the manufacturer or distributor;

(4) the fair market value of special tools and automotive service equipment owned by the dealer that were designated as special tools or equipment required by and purchased from the

manufacturer or distributor, if the tools and equipment are in useable and good condition, normal wear and tear excepted; and

(5) the reasonable cost of return shipping and handling charges incurred as a result of returning such items.

Provided the new motor vehicle dealer has clear title to the inventory and other items and is in a position to convey that title to the manufacturer, the payments required under this section shall be paid by the manufacturer, wholesaler, distributor, or franchisor within ninety days of the effective date of the termination, nonrenewal, or cancellation of a franchise. If the inventory or other items are subject to a security interest, the manufacturer, wholesaler, distributor, or franchisor may make payment jointly to the dealer and the holder of the security interest.

(C) Within ninety days of the termination, cancellation, or nonrenewal of a franchise by a manufacturer, wholesaler, distributor, or franchisor, due to a dealer's poor sales and service performance, or due to the discontinuation of a line-make, the party shall pay the franchisee an amount equal to:

(1) the franchisee's reasonable cost to rent or lease its dealership facility or location for one year or the unexpired term of the lease or rental period, whichever is less; or

(2) the reasonable rental value of the facilities or location for one year if the franchisee owns the facility or location.

If more than one franchise is being terminated, canceled, or not renewed, the reimbursement shall be prorated equally among the different manufacturers, wholesalers, distributors, and franchisors. If the facility is used for the operations of more than one franchise and only one is being terminated, the reasonable rent shall be paid based upon the prorated portion of new vehicle sales for the previous year attributable to the line-make being terminated, canceled, or nonrenewed for the prior one-year period.

(D) In the event a franchisee terminates the franchise agreement with the manufacturer, wholesaler, distributor, or franchisor, it is unlawful for the manufacturer, wholesaler, distributor, or franchisor to not abide by the provisions included in subsection (B) in determining fair and reasonable compensation to the dealer. However, the requirements of subsection (B) do not apply to a termination, cancellation, or nonrenewal due to the sale of the assets or stock of a motor vehicle franchisee.

(E) In the case of a franchise for motor homes as defined in Section 56-15-10(q), subsections (B), (C), and (D) do not apply.

HISTORY: 1962 Code Section 46-150.159; 1972 (57) 2419; 2009 Act No. 52, Section 3, eff upon approval (became law without the Governor's signature on June 3, 2009).

SECTION 56-15-95. Termination or cancellation of franchise or selling agreement; determination of due cause.

(A) A manufacturer may not terminate or cancel a franchise or selling agreement of a motor vehicle dealer without due cause.

(B) The nonrenewal of a franchise or selling agreement, without due cause, shall constitute an unfair termination or cancellation regardless of the terms of the franchise or selling agreement.

(C) In determining whether due cause exists, the court shall take into consideration:

(1) the motor vehicle dealer's sales in relation to the business available to the motor vehicle dealer;

(2) the motor vehicle dealer's investments and obligations;

- (3) whether the motor vehicle dealer was provided adequate inventory;
- (4) injury to the public welfare;
- (5) the adequacy of the motor vehicle dealer's sales and service facilities, equipment, and parts;
- (6) the qualifications of the management, sales, and service personnel to provide the consumer with reasonably good service and care of new motor vehicles;
- (7) the motor vehicle dealer's failure to comply with the requirements of the franchise agreement;
- (8) the opportunity to cure the alleged breach; and
- (9) the harm caused to the manufacturer or distributor.

HISTORY: 2013 Act No. 44, Section 5, eff June 7, 2013.

SECTION 56-15-96. Measurement of dealership performance; burden of proof.

(A) A performance standard, sales effectiveness standard, sales objective, or program for measuring dealership performance that may have a material effect on a motor vehicle dealer including, but not limited to, his right to payment under any incentive or reimbursement program, shall be fair, reasonable, equitable, based on accurate information, and uniformly applied to other similarly situated motor vehicle dealers.

(B) If a motor vehicle dealer protests a new performance standard, sales effectiveness standard, sales objective, or program for measuring dealership performance, the burden of proof shall be on the manufacturer to show the action is reasonable and justifiable in light of the market conditions.

HISTORY:2013 Act No. 44, Section 6, eff June 7, 2013.

SECTION 56-15-98. Alteration of area of responsibility; notice; appeal and injunction; time for performance.

(A) A manufacturer or distributor, officer, agent, or any representative of a manufacturer or distributor may not unreasonably alter a new motor vehicle dealer's area of responsibility.

(B) To alter a new motor vehicle dealer's area of responsibility, a manufacturer or distributor, officer, agent, or any representative of a manufacturer or distributor must provide advance notice to the motor vehicle dealer including an explanation of the basis for the alteration at least sixty days before the effective date of the alteration.

(C)(1) At any time prior to the effective date of an alteration of a new motor vehicle dealer's area of responsibility, and after the completion of any internal appeal process pursuant to the manufacturer's or distributor's policy manual, the motor vehicle dealer may petition the court to enjoin or prohibit the alteration.

(2) The court shall enjoin or prohibit the alteration of a motor vehicle dealer's area of responsibility unless the franchisor shows, by a preponderance of the evidence, that the alteration is reasonable and justifiable in light of market conditions.

(3) If a motor vehicle dealer petitions the court, no alteration to a motor vehicle dealer's area of responsibility shall become effective until a final determination by the court.

(D) If a new motor vehicle dealer's area of responsibility is altered, the manufacturer shall allow twenty-four months for the motor vehicle dealer to become sales effective prior to taking

any action claiming a breach or nonperformance of the motor vehicle dealer's sales performance responsibilities.

HISTORY:2013 Act No. 44, Section 7, eff June 7, 2013.

SECTION 56-15-100. Discounts, refunds, and other inducements to dealers.

In connection with a sale of a motor vehicle or vehicles to the State or to any political subdivision thereof, no manufacturer, distributor or wholesaler shall offer any discounts, refunds or any other similar type of inducement to any dealer without making the same offer or offers to all other of its dealers within the relevant market area, and if such inducements are made, the manufacturer, distributor or wholesaler shall give simultaneous notice thereof to all of its dealers within the relevant market area who have requested such notice.

HISTORY: 1962 Code Section 46-150.160; 1972 (57) 2419.

SECTION 56-15-110. Suits for damages.

(1) In addition to temporary or permanent injunctive relief as provided in Section 56-15-40(3) (c), any person who shall be injured in his business or property by reason of anything forbidden in this chapter may sue therefor in the court of common pleas and shall recover double the actual damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

(2) When such action is one of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for the benefit of the whole, including actions for injunctive relief.

(3) In an action for money damages, if the jury finds that the defendant acted maliciously, the jury may award punitive damages not to exceed three times the actual damages.

(4) A final judgment, order or decree rendered against a person in any civil, criminal or administrative proceeding under the United States antitrust laws, under the Federal Trade Commission Act, or under this chapter shall constitute prima facie evidence against such person subject to the conditions of the United States Antitrust Law (15 U.S.C. 16).

HISTORY: 1962 Code Section 46-150.161; 1972 (57) 2419.

SECTION 56-15-120. Limitation of actions.

Actions rising out of any provision of this chapter shall be commenced within four years next after the cause of action accrues; provided, however, that if a person liable hereunder 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 the 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, or 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.

HISTORY: 1962 Code Section 46-150.163; 1972 (57) 2419.

SECTION 56-15-130. Contracts in violation of chapter void.

Any contract or part thereof or practice thereunder in violation of any provision of this chapter shall be deemed against public policy and shall be void and unenforceable.

HISTORY: 1962 Code Section 46-150.162; 1972 (57) 2419.

SECTION 56-15-140. Venue.

In an action brought pursuant to this article, venue is in the State of South Carolina. A provision of a franchise or other agreement with contrary provisions is void and unenforceable.

HISTORY: 2000 Act No. 287, Section 5.

ARTICLE 3

Dealer or Wholesaler Licenses

SECTION 56-15-310. License required; term of license; fee; scope of license; penalty for violation.

(A) Before engaging in business as a dealer or wholesaler in this State, a person first must make application to the Department of Motor Vehicles for a license. Each license issued expires twelve months from the month of issue (licensing period) and must be displayed prominently at the established place of business. The fee for the license is fifty dollars. The license applies to only one place of business of the applicant and is not transferable to another person or place of business except that a licensed dealer may exhibit and sell motor homes, as defined by Section 56-15-10, at fairs, recreational or sports shows, vacation shows, and other similar events or shows upon obtaining a temporary dealer's license in the manner required by this section. No other exhibitions may be allowed, except as may be permitted by this section. Before exhibiting and selling motor homes at temporary locations as permitted above, the dealer shall first make application to the department for a license. To be eligible for a temporary license, a dealer shall hold a valid dealer's license issued pursuant to this chapter. Every temporary dealer's license issued is valid for a period not to exceed ten consecutive days and must be prominently displayed at the temporary place of business. No dealer may purchase more than six temporary licenses in any one licensing period. The fee for each temporary license issued is twenty dollars. A temporary license applies to only one dealer operating in a temporary location and is not transferable to any other dealer or location.

Any person failing to secure a temporary license as required by this section is guilty of a misdemeanor and, upon conviction, must be punished in the same manner as he would be punished for failure to secure his regular dealer's license.

The provisions of this section may not be construed as allowing the sale of any type of motor vehicles other than motor homes at authorized temporary locations.

(B) A person who fails to secure either a temporary or a permanent license as required in this chapter is guilty of a misdemeanor and, upon conviction, must be fined:

(1) not less than fifty dollars or more than two hundred dollars or imprisoned for not more than thirty days for the first offense;

(2) not less than two hundred dollars or more than one thousand dollars or imprisoned for not more than six months, or both, for the second offense; and

(3) not less than one thousand dollars or more than ten thousand dollars or imprisoned for not more than two years, or both, for the third or any subsequent offense.

For purposes of this section, the sale of each motor vehicle constitutes a separate offense.

HISTORY: 1983 Act No. 118 Section 12; 1988 Act No. 603, Section 2; 1996 Act No. 459, Section 225.

SECTION 56-15-315. Off-site displays of automobiles or trucks.

(A) Notwithstanding another provision of law, off-site displays of automobiles or trucks are prohibited except as provided in this section. A licensed South Carolina automobile dealer or dealer of trucks may display not more than ten automobiles or trucks per licensed dealership off-site only at nonselling temporary events lasting no more than ten days hosted by a South Carolina based: charitable organization as defined in the South Carolina Solicitation of Charitable Funds Act for fundraising purposes; school fundraising event; church fundraising event; town fair, town festival; or any other similar festival or event.

(B) Used automobile or truck dealers may display used automobiles or trucks off-site as provided in this section in the county in which their dealership is located.

(C) Displays may be conducted only by South Carolina licensed dealers. Any automobile or truck displayed must be owned by the dealer. Any person or automobile or truck dealer who violates these provisions is subject to a five hundred dollar fine.

(D) Off-site displays are for display purposes only. Sales or attempts to sell as defined in Section 56-15-10(L), or both, are not permitted off-site. An automobile or truck dealer who sells or attempts to affect the off-site sale of any automobile or truck is in violation of this section and is subject to a two thousand dollar fine. An agent of an automobile or truck dealer who sells or attempts to affect the off-site sale of an automobile or truck is subject to a five hundred dollar fine.

(E) A motor vehicle manufacturer cannot require a franchised automobile or truck dealer to display automobiles or trucks off-site.

(F) Nothing in this section shall prohibit an automobile or truck dealer from participating in one nonselling statewide motor vehicle show in South Carolina per year, or a manufacturer, individual automobile owner or truck owner from displaying their vehicles.

(G) Nothing in this section shall be construed to prevent a licensed dealer from providing vehicles for demonstration or test driving purposes specified in Section 56-3-2320.

(H) The department of Motor Vehicles shall enforce the provisions contained in this section.

HISTORY: 2012 Act No. 181, Section 1, eff May 25, 2012.

SECTION 56-15-320. Application for license; bond; duties upon change of circumstances and termination of business.

(A) Before a license as a “wholesaler” or “dealer” is issued to an applicant, he shall file an application with the Department of Motor Vehicles and furnish the information the department may require including, but not limited to, information adequately identifying by name and address individuals who own or control ten percent or more of the interest in the business. The policy of this section is full disclosure.

(B) Each applicant for licensure as a dealer or wholesaler shall furnish a surety bond in the penal amount of thirty thousand dollars on a form prescribed by the director of the department.

The bond must be given to the department and executed by the applicant, as principal, and by a corporate surety company authorized to do business in this State, as surety. The bond must be conditioned upon the applicant or licensee complying with the statutes applicable to the license and as indemnification for loss or damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler or within the scope of employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter. An owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealer's or wholesaler's surety upon the bond and may recover damages as provided in this chapter. However, regardless of the number of years a bond remains in effect, the aggregate liability of the surety for claims is limited to thirty thousand dollars on each bond and to the amount of the actual loss incurred. The surety may terminate its liability under the bond by giving the department thirty days' written notice of its intent to cancel the bond. The cancellation does not affect liability incurred or accrued before the cancellation.

(C) If, during a license year, there is a change in the information a dealer or wholesaler gave the department in obtaining or retaining a license under this section, the licensee shall report the change to the department within thirty days after the change occurs on the form the department requires.

(D) If a licensee ceases being a dealer or wholesaler, within ten days of that time, he shall notify the department of this fact and return to the department a license issued pursuant to this chapter and all current dealer license plates issued to the dealer or wholesaler.

HISTORY: 1983 Act No. 118 Section 12; 1993 Act No. 181, Section 1485; 1994 Act No. 497, Part II, Section 121L; 2006 Act No. 298, Section 1, eff May 31, 2006.

SECTION 56-15-330. Facilities required for issuance of dealer's license.

No dealer may be issued or allowed to maintain a motor vehicle dealer's license unless:

(1) The dealer maintains a bona fide established place of business for conducting the business of selling or exchanging motor vehicles which must be the principal business conducted from the fixed location. The sale of motorcycle or motor driven cycles need not be the principal business conducted from the fixed location. A bona fide established place of business for any motor vehicle dealer includes a permanent, enclosed building or structure, not excluding a permanently installed mobile home containing at least ninety-six square feet of floor space, actually occupied by the applicant and easily accessible by the public, at which a permanent business of bartering, trading, or selling of motor vehicles or displaying vehicles for bartering, trading, or selling is carried on, wherein the public may contact the owner or operator at all reasonable times and in which must be kept and maintained the books, records, and files required by this chapter. A bona fide established place of business does not mean a residence, tent, temporary stand, or other temporary quarters.

(2) The dealer's place of business must display a permanent sign with letters at least six inches in height, clearly readable from the nearest major avenue of traffic. The sign must clearly identify the licensed business.

(3) The dealer's place of business must have a reasonable area or lot to properly display motor vehicles.

HISTORY: 1983 Act No. 118 Section 12.

SECTION 56-15-340. Records.

(A) Every dealer or wholesaler shall keep complete records of each transaction under which a motor vehicle is transferred for a period of not less than four years from the date of the transaction. The records must show the true name and correct address of the person or persons from whom the motor vehicle was acquired and the date of the transaction; a correct description of the vehicle, when transferred; the true name and correct address of the person to whom the motor vehicle was transferred; and the date of the transaction. The description of the motor vehicle must include the vehicle identification number, make, model, type of body, and the odometer readings at the time the motor vehicle was transferred to and from the dealer or wholesaler. These records must be open at all reasonable times for inspection and copying by the Department of Motor Vehicles or any of its duly authorized agents.

(B) The records kept by the dealer or wholesaler must be maintained in a reasonably organized and orderly fashion with all entries being legible to the ordinary person upon inspection. Any records which are illegible or incapable of accurate interpretation by either the recordkeeper or the department's inspector or agent are not in compliance with this section.

(C) If any dealer or wholesaler fails to keep the required records or fails to make them available to the department or its duly authorized agents immediately upon a reasonable request, the dealer or wholesaler is guilty of a misdemeanor and, upon conviction, must be fined not less than fifty dollars nor more than two hundred dollars or imprisoned for up to thirty days. The failure to keep or to make available to the department or its duly authorized agents complete records on each separate motor vehicle constitutes a separate offense.

HISTORY: 1983 Act No. 118 Section 12; 1996 Act No. 459, Section 226.

SECTION 56-15-350. Denial, suspension, or revocation of license; grounds; procedure.

Any license issued under this chapter may be denied, suspended, or revoked, if the applicant or licensee or an agency of the applicant or licensee acting for the applicant or licensee is determined by the Department of Motor Vehicles to have:

- (a) made a material misstatement in the application for the license;
- (b) violated any provision of this chapter;
- (c) been found by a court of competent jurisdiction to have committed any fraud connected with the sale or transfer of a motor vehicle;
- (d) employed fraudulent devices, methods, or practices in connection with meeting the requirements placed on dealers and wholesalers by the laws of this State;
- (e) been convicted of any violation of law involving the acquisition or transfer of a title to a motor vehicle or of any violation of law involving tampering with, altering, or removing motor vehicle identification numbers or markings;
- (f) been found by a court of competent jurisdiction to have violated any federal or state law regarding the disconnecting, resetting, altering, or other unlawful tampering with a motor vehicle odometer, including the provisions of 49 U.S.C. 32701-32711 (Title 49, Subtitle VI, Part C, Chapter 327);
- (g) refused or failed to comply with the department's reasonable requests to inspect or copy the records, books, and files of the dealer or wholesaler or failed to maintain records of each

motor vehicle transaction as required by this chapter or by state and federal law pertaining to odometer records; or

(h) Given, loaned, or sold a dealer license plate to any person or otherwise to have allowed the use of any dealer license plate in any way not authorized by Section 56-3-2320. Any dealer license plate issued to a dealer or wholesaler pursuant to Section 56-3-2320 which is determined by the department to be improperly displayed on any vehicle or in the possession of any unauthorized person is prima facie evidence of a violation of this section by the dealer or wholesaler to whom the license plate was originally issued.

The department shall notify the licensee or applicant in writing at the mailing address provided in his application of its intention to deny, suspend, or revoke his license at least twenty days in advance and shall inform the licensee of his right to request a contested case hearing with the Office of Motor Vehicle Hearings in accordance with the rules of procedure for the Administrative Law Court and pursuant to the Administrative Procedures Act of this State. A licensee desiring a hearing shall file a request in writing with the Office of Motor Vehicle Hearings within ten days of receiving notice of the proposed denial, suspension, or revocation of his dealer's or wholesaler's license.

Upon a denial, suspension, or revocation of a license, the licensee shall immediately return to the department the license and all dealer license plates.

HISTORY: 1983 Act No. 118 Section 12; 2006 Act No. 304, Section 1, eff May 24, 2006; 2006 Act No. 381, Section 10, eff June 13, 2006; 2008 Act No. 279, Section 12, eff October 1, 2008.

ARTICLE 4

Nonfranchise Automobile Dealer Pre-licensing

SECTION 56-15-410. Required pre-licensing education courses.

An applicant for an initial nonfranchise automobile dealer license must complete successfully at least eight hours of pre-licensing education courses before he may be issued a license. At least one shareholder listed on the application for an initial nonfranchise automobile dealer license must comply with the education requirement contained in this section.

HISTORY: 2005 Act No. 9, Section 1, eff January 1, 2004.

SECTION 56-15-420. Promulgation of regulations.

The Department of Motor Vehicles shall promulgate regulations to implement the provisions contained in this article.

HISTORY: 2005 Act No. 9, Section 1, eff January 13, 2005; 2012 Act No. 264, Section 7, eff June 18, 2012.

SECTION 56-15-430. Applicability to franchised automobile dealers or nonfranchised dealers owned and operated by franchised dealers.

The provisions contained in Sections 56-15-410 and 56-15-420 shall not apply to a franchised automobile dealer or a nonfranchised automobile dealer owned and operated by a franchised automobile dealer.

HISTORY: 2005 Act No. 9, Section 1, eff January 1, 2004.

SECTION 56-15-440. Applicability to dealers engaged primarily in motor vehicle salvage.

The provisions contained in Sections 56-15-410 and 56-15-420 shall not apply to a nonfranchised automobile dealer whose primary business is salvage motor vehicles, regulated by Title 56.

HISTORY: 2005 Act No. 9, Section 1, eff January 1, 2004.

SECTION 56-15-450. Applicability to dealers primarily engaged in rental of motor vehicles.

The provisions contained in Sections 56-15-410 and 56-15-420 shall not apply to a nonfranchised automobile dealer whose primary business objective and substantial business activity is the rental of motor vehicles, regulated by Title 56.

HISTORY: 2005 Act No. 9, Section 1, eff January 1, 2004.

ARTICLE 5 Wholesale Motor Vehicle Auctions

SECTION 56-15-510. Definitions.

As used in this article:

(1) "Wholesale motor vehicle auction" is an entity in the business of providing auction services in wholesale transactions at its established place of business, and which does not buy, sell, or own the motor vehicles it auctions in the ordinary course of its business.

(2) "Motor vehicles" with regard to transactions taking place at a wholesale motor vehicle auction include, but are not limited to, motor homes, manufactured homes, recreational vehicles, boats, motorcycles, and motor vehicles as provided for in Section 56-3-20.

HISTORY: 1995 Act No. 70, Section 1.

SECTION 56-15-520. Transfer of title at wholesale motor vehicle auction; content of reassignment of title or bill of sale.

When a transfer of title is made as a result of a transaction at a wholesale motor vehicle auction, the reassignment of title or bill of sale must note the name and address of the wholesale motor vehicle auction. However, the wholesale motor vehicle auction is not deemed to be the owner, seller, transferor, or assignor of title of a motor vehicle by reason of its name appearing on a reassignment of title or bill of sale or by reason of its payment of a guarantee of payment to a seller, receipt of payment from a purchaser, or the reservation of a lien or security interest for the purpose of securing payment from a purchaser.

HISTORY: 1995 Act No. 70, Section 1.

SECTION 56-15-530. Buying or selling motor vehicles in name of wholesale motor vehicle auction.

A wholesale motor vehicle auction is not prohibited from buying or selling motor vehicles in its own name. However, in that instance, it shall comply with the provisions of South Carolina law pertaining to reassignment and delivery of title documents and disclosures to buyers.

HISTORY: 1995 Act No. 70, Section 1.

SECTION 56-15-540. Dealers and persons required by agency or law may purchase or sell at wholesale motor vehicle auction.

A motor vehicle dealer licensed by this or another jurisdiction may purchase or sell motor vehicles at a wholesale motor vehicle auction. A person may purchase or sell motor vehicles at a wholesale motor vehicle auction if required by an agency of government or by law.

HISTORY: 1995 Act No. 70, Section 1.

SECTION 56-15-550. Sales through auction of motor vehicles acquired incident to regular business.

The following may sell motor vehicles through a wholesale motor vehicle auction if the motor vehicles are acquired as an incident to regular business:

- (1) manufacturers;
- (2) marine dealers;
- (3) motor vehicle rental businesses;
- (4) motor vehicle lease businesses;
- (5) recreation vehicle dealers;
- (6) sellers of motor vehicle fleets;
- (7) manufacturers;
- (8) public officers while performing their official duties;
- (9) receivers;
- (10) trustees;
- (11) administrators;
- (12) executors;
- (13) guardians;
- (14) insurance companies;
- (15) banks;
- (16) finance companies;
- (17) other loan agencies or their agents.

HISTORY: 1995 Act No. 70, Section 1.

SECTION 56-15-560. Application for license for wholesale motor vehicle auction; fee.

Before engaging in business as a wholesale motor vehicle auction in this State, an application must be filed with the Department of Motor Vehicles furnishing the information it requires including, but not limited to, information adequately identifying by name and address individuals who own or control ten percent or more of the interest of the applicant. Each license issued expires twelve months from the month of issuance and must be displayed prominently at the established place of business. The license applies to only one place of business of the applicant

and is not transferable to another person or place of business. The fee for the license is fifty dollars.

HISTORY: 1995 Act No. 70, Section 1; 1996 Act No. 459, Section 227.

SECTION 56-15-570. Surety bond required.

(A) Each applicant for licensure as a wholesale motor vehicle auction shall furnish a surety bond in the penal amount of fifteen thousand dollars on a form prescribed by the Department of Motor Vehicles. The bond must be given to the department and executed by the applicant as principal and by a corporate surety company authorized to do business in this State as surety. The bond must be conditioned upon the applicant or licensee complying with the statutes applicable to the license and as indemnification for loss or damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representation made by the licensee in connection with the sale or transfer of a motor vehicle by the licensee or its agent acting for it or within the scope of employment of the agent or loss or damage suffered by reason of a violation by the licensee or its agent of this chapter.

(B) An owner or his legal representative who suffers loss or damage has a right of action against the wholesale motor vehicle auction and against the licensee's surety upon the bond and may recover damages as provided in this chapter. However, regardless of the number of years a bond remains in effect, the aggregate liability of the surety for all claims is limited to fifteen thousand dollars on each bond and to the amount of the actual loss incurred. The surety may terminate its liability under the bond by giving the department thirty days' written notice of its intent to cancel the bond. The surety shall notify the department if the bond is canceled. The cancellation does not affect liability incurred or accrued before the cancellation.

HISTORY: 1995 Act No. 70, Section 1; 1996 Act No. 459, Section 228.

SECTION 56-15-580. Change of information on application must be reported.

During a license year, if there is a change in the information that a wholesale motor vehicle auction gave the Department of Motor Vehicles to obtain or retain a license under this section, the licensee shall report the change to the department within thirty days after the change occurs on the form the department requires.

HISTORY: 1995 Act No. 70, Section 1.

SECTION 56-15-590. Establishment and retention of records.

(A) A wholesale motor vehicle auction shall establish and retain at its primary place of business complete records in an order appropriate for business requirements and that permits systematic retrieval for five years following the date of sale of each motor vehicle. The records must show the name of the most recent owner other than the wholesale motor vehicle auction, the name of the buyer, the vehicle identification number, and the odometer reading on the date which the wholesale motor vehicle auction took possession of the motor vehicle.

(B) The records kept by the wholesale motor vehicle auction must be maintained in a reasonably organized and orderly fashion with all entries being legible to the ordinary person upon inspection. Records which are illegible or incapable of accurate interpretation by the

recordkeeper or the Department of Motor Vehicles' inspector or agent are not in compliance with this section.

(C) If a wholesale motor vehicle auction fails to keep the required records or fails to make them available to the department or its authorized agents immediately upon a reasonable request, the wholesale motor vehicle auction is guilty of a misdemeanor and, upon conviction, is subject to the provisions of Chapter 54 of Title 12.

HISTORY: 1995 Act No. 70, Section 1.

SECTION 56-15-600. Wholesale motor vehicle auction license plates.

(A) The Department of Motor Vehicles may issue to a licensed wholesale motor vehicle auction, upon application and payment of the required fee to the department, wholesale motor vehicle auction license plates. The license plates are exclusively for the use of transporting motor vehicles in the course of doing business as a wholesale motor vehicle auction and must not be attached permanently. The license plate expires twelve months from the month of issuance. The documentation evidencing transport in the ordinary course of doing business as a wholesale motor vehicle auction must be by form approved by the Department of Revenue. The form at all times must accompany the license plates. A person who does not use the license plate exclusively to transport motor vehicles in the course of doing business as a wholesale motor vehicle auction is guilty of a misdemeanor and, upon conviction, must be fined five hundred dollars.

(B) Wholesale motor vehicle auction license plates must not be issued by the department unless the wholesale motor vehicle auction furnishes proof in a form acceptable to the department that it has a wholesale motor vehicle auction license as required by this article and that at least twenty sales of motor vehicles have taken place through the wholesale motor vehicle auction in the twelve months preceding its application for a license. The sales requirement may be waived by the department if the wholesale motor vehicle auction has been licensed for less than one year.

(C) A wholesale motor vehicle auction may be issued two license plates for the first twenty vehicles auctioned during the preceding year and one additional license plate for each fifty vehicles auctioned beyond the initial twenty during the preceding year but not to exceed seventy-five license plates. For good cause shown, the department in its discretion may issue additional license plates. If the wholesale motor vehicle auction has been licensed less than one year, the department shall issue a number of license plates based on an estimated number of sales for the coming year. The department may increase or decrease the number of license plates issued based on actual sales made.

(D) The cost of each wholesale motor vehicle auction license plate issued is twenty dollars annually.

HISTORY: 1995 Act No. 70, Section 1.