Senate Bill 122
By: Senators Kennedy of the 18th, Walker III of the 20th, Mullis of the 53rd, Butler of the 55th, Hufstetler of the 52nd and others

AS PASSED

A BILL TO BE ENTITLED
AN ACT

To amend Article 22 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to motor vehicle franchise practices, so as to provide for protection of certain consumer data in motor vehicle sales or lease transactions; to provide for definitions; to impose certain requirements and restrictions on the use and disclosure of consumer data by franchisors, manufacturers, distributors, and third parties; to provide for indemnification of motor vehicle dealers for certain claims and damages related to disclosure of consumer data; to change certain provisions for purposes of conformity; to change certain provisions relating to uniform warranty reimbursement policies amongst dealers; to provide for performance criteria and survey requirements; to specify certain requirements as to signs and other image elements; to modify certain provisions related to unlawful activities by franchisors; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 22 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to motor vehicle franchise practices, is amended in Code Section 10-1-622, relating to definitions relative to motor vehicle franchise practices, by adding two new paragraphs to read as follows:

"(1) 'Consumer data' means 'nonpublic personal information' as such term is defined in 15 U.S.C. s. 6809(4) as it existed on January 1, 2019, that is:

(A) Collected by a dealer; and

(B) Provided by the dealer directly to a manufacturer or third party acting on behalf of a manufacturer. Such term shall not include the same or similar data obtained by a manufacturer from any source other than the dealer or dealer's data management system.

(2) 'Data management system' means a computer hardware or software system that:

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(A) Is owned, leased, or licensed by a dealer, including a system of web based
applications, computer software, or computer hardware;
(B) Is located at the dealership or hosted remotely; and
(C) Stores and provides access to consumer data collected or stored by a dealer.
Such term shall include, but shall not be limited to, dealership management systems and
customer relations management systems."

SECTION 2.

Said article is further amended by adding a new Code section to read as follows:
"10-1-632.
(a) With respect to consumer data, a franchisor, manufacturer, distributor, or a third party
acting on behalf of a franchisor, manufacturer, or distributor:
(1) Shall comply with and shall not cause a dealer to violate any applicable restrictions
on reuse or disclosure of the consumer data established by federal or state law;
(2) Shall provide a written statement to the dealer upon request describing the established
procedures adopted by such franchisor, manufacturer, distributor, or third party acting on
behalf of the franchisor, manufacturer, or distributor which meet or exceed any federal
or state requirements to safeguard the consumer data, including, but not limited to, those
established in the Gramm-Leach-Bliley Act, 15 U.S.C. 6801, et seq.;
(3) Shall, upon the written request of the dealer, provide a written list of the consumer
data obtained from the dealer and all persons to whom any consumer data has been
provided by the franchisor, manufacturer, distributor, or a third party acting on behalf of
a franchisor, manufacturer, or distributor during the preceding six months. The dealer
may make such a request no more than once every six months. The list must indicate the
specific fields of consumer data which were provided to each person. Notwithstanding
the foregoing, such a list shall not be required to include:
(A) A person to whom consumer data was provided, or the specific consumer data
provided to such person, if the person was, at the time such consumer data was
provided, a service provider, subcontractor, or consultant acting in the course of
performance of services on behalf of or for the benefit of the franchisor, manufacturer,
distributor, third party, or dealer, provided that the franchisor, manufacturer, distributor,
third party, or dealer has entered into an agreement with such person requiring that such
person comply with the safeguard requirements of applicable state and federal law,
including, but not limited to, those established in the Gramm-Leach-Bliley Act, 15
U.S.C. 6801, et seq.; and
(B) A person to whom consumer data was provided, or the specific consumer data
provided to such person, if the dealer has previously consented in writing to such

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person receiving such consumer data and the dealer has not withdrawn such consent in writing;

(4) May not require that a dealer grant the franchisor, manufacturer, distributor or a third party acting on behalf of a franchisor, manufacturer, or distributor direct or indirect access to such dealer's data management system to obtain consumer data. A franchisor, manufacturer, distributor, or a third party acting on behalf of a franchisor, manufacturer, or distributor must permit a dealer to furnish consumer data in a widely accepted file format, such as comma delimited, and through a third-party vendor selected by the dealer.

However, a franchisor, manufacturer, or distributor, or a third party acting on behalf of a franchisor, manufacturer, or distributor may access or obtain consumer data directly from a dealer's data management system with the express consent of the dealer. The consent must be in the form of a written document that is separate from the parties' franchise agreement, is executed by the dealer, and may be withdrawn by the dealer upon 30 days' written notice to the franchisor, manufacturer, or distributor as applicable. For incentive programs beginning on or after July 1, 2019, such consent shall not be required as a condition to a motor vehicle dealer's participation in an incentive program unless such consent is necessary to obtain consumer data to implement the program; and

(5) Shall indemnify the dealer for any third-party claims asserted against or damages incurred by the dealer to the extent caused by access to, use of, or disclosure of consumer data in violation of this section by the franchisor, manufacturer, distributor or a third party to whom the franchisor, manufacturer or distributor has provided consumer data.

(b) Nothing contained in this Code section shall limit the ability of the franchisor, the manufacturer, or distributor, to require that the dealer provide, or use in accordance with the law, such customer information related solely to such manufacturer's or distributor's own vehicle makes to the extent necessary to do any of the following:

(1) Satisfy any safety or recall notice obligations or other legal notice obligations on the part of the manufacturer;

(2) Complete the sale and delivery of a new motor vehicle to a customer;

(3) Validate and pay customer or dealer incentives;

(4) Submit to the franchisor, manufacturer, or distributor claims for any services supplied by the dealer for any claim for warranty parts or repairs;

(5) Market analysis;

(6) Evaluate sales and service customer satisfaction with the dealer, including surveys;

or

(7) Reasonable marketing purposes that benefit the dealer.

(c) In any cause of action against a franchisor, manufacturer, or distributor for a violation of this Code section, the party bringing the action shall have the burden of proof."
SECTION 3.
Said article is further amended in Code Section 10-1-641, relating to dealer's predelivery preparation, warranty service, and recall work obligations to be provided in writing, recovery of costs, and 'stop-sale' defined, by revising subparagraph (a)(1)(B) and subsection (c) as follows:

"(B) Shall, at the election of the dealer, reasonably compensate the dealer for parts and labor provided for such warranty service work as provided in paragraph (2) of this subsection;"

"(c) Subject to subsection (c) of Code Section 10-1-645, a franchisor, manufacturer, or distributor shall not otherwise recover its costs from dealers within this state, including a surcharge imposed on a dealer solely intended to recover the cost of reimbursing the dealer for parts and labor pursuant to this Code section, provided that a franchisor, manufacturer, or distributor shall not be prohibited from increasing prices for vehicles or parts in the normal course of business."

SECTION 4.
Said article is further amended by revising Code Section 10-1-645, relating to the uniform warranty reimbursement policy amongst dealers, as follows:

"10-1-645. (a) Any motor vehicle manufacturer or franchisor and at least a majority of its dealers of the same line make may agree to a uniform warranty reimbursement agreement in an express written contract, citing this Code section, upon a uniform warranty reimbursement policy used by contracting dealers to perform warranty repairs executed by a dealer principal or authorized designee of the dealer principal that specifically cites this Code section. The policy agreement shall only involve either reimbursement for parts used in warranty repairs or the use of a uniform time standards manual, or both. Reimbursement for parts under the agreement shall be used instead of the dealers' prevailing retail price rate charged by that dealer for the same parts as defined in Code Section 10-1-641 to calculate compensation due from the franchisor for parts used in warranty repairs. This Code section does not authorize a franchisor and its dealers to establish a uniform hourly labor reimbursement.

(b) A manufacturer or franchisor that proposes a uniform reimbursement agreement must provide all of its line make dealers a minimum of 30 days to consider such proposal which shall be in writing and provided to the dealer principal or authorized designee of the dealer principal via certified mail or other trackable delivery method, including electronic transmission, to which a notice containing the following language in all capital letters shall be affixed:

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GEORGIA LAW ALLOWS TWO ALTERNATIVE METHODS OF WARRANTY REIMBURSEMENT:

1. DEALERS MAY SUBMIT A REQUEST TO RECEIVE RETAIL RATE PURSUANT TO O.C.G.A. SECTION 10-1-641; OR

2. A MAJORITY OF LINE MAKE DEALERS MAY AGREE TO A UNIFORM WARRANTY REIMBURSEMENT AGREEMENT, AS PROPOSED WITH THIS NOTICE.

IN THE EVENT A MAJORITY OF THE SAME LINE MAKE DEALERS AGREE TO THE ATTACHED UNIFORM WARRANTY REIMBURSEMENT AGREEMENT, DEALERS THAT OPT TO SEEK RETAIL RATE PURSUANT TO O.C.G.A. SECTION 10-1-641 MAY BE SUBJECT TO A COST RECOVERY SURCHARGE ON ALL NEW VEHICLE INVOICES.

(b)(c) Each franchisor shall only have one such agreement with each line make. Any such agreement shall:

(1) Establish a uniform parts reimbursement rate. The uniform parts reimbursement rate shall be greater than not less than the greater of the nationally established rate set forth in the franchisor’s sales and service agreement or other warranty manual or policy or the franchisor’s nationally established national average warranty parts reimbursement rate in effect at the time the first such agreement becomes effective;

(2) Apply to all warranty repair orders written during the period that the agreement is effective;

(3) Be available, during the period it is effective, to any motor vehicle dealer of the same line make at any time and on the same terms; and

(4) Be for a term not to exceed three years so long as any party to the agreement may terminate the agreement upon the annual anniversary of the agreement and with 30 days' prior written notice; however, the agreement shall remain in effect for the term of the agreement regardless of the number of dealers of the same line make that may terminate the agreement.

(e)(d)(1) As used in this subsection, the term 'costs' means the difference between the uniform reimbursement rate set forth in an agreement entered into pursuant to subsection (b) of this Code section and the prevailing retail price charged by that dealer received by those dealers of the same line make retail rate received by an individual dealer pursuant to Code Section 10-1-641.

(2) A manufacturer or franchisor that enters into a uniform warranty reimbursement agreement as provided in this Code section may seek to recover its costs from only those dealers that are receiving their retail rate pursuant to Code Section 10-1-641. A franchisor that enters into an agreement with its dealers may seek to recover its costs from only
those dealers that are receiving their prevailing retail price charged by that dealer under

Code Section 10-1-644 as follows:

(A) The costs shall be recovered only by increasing the invoice price on new vehicles
received by those dealers not a party to an agreement under this Code section; and
(B) Price increases imposed for the purpose of recovering costs under this Code section
may vary from time to time and from model to model but shall apply uniformly to all
dealers of the same line make in the State of Georgia that have requested
reimbursement for warranty repairs at their prevailing retail price charged by that
dealer, except that a franchisor may make an exception for vehicles that are titled in the
name of a consumer in another state.

(d)(e) If a manufacturer or franchisor enters into a uniform reimbursement agreement with
its dealers, the manufacturer or franchisor shall, within 60 days of entering into such
agreement, certify under oath to the Department of Revenue that a majority of the dealers
of that line make have entered into such an agreement and shall file a sample copy of the
agreement, the required notice, a list of the line make dealers that have agreed to the
uniform warranty reimbursement, and the date upon which such agreement was made. On
an annual basis, the manufacturer shall certify under oath to the department that the parts
warranty reimbursement in the agreement is no less than the greater of the franchisor's
nationally established rate or the national average parts reimbursement rate and that the
reimbursement costs it recovers under subsection (d) of this Code section do not exceed the
amounts authorized by subsection (d) of this Code section. The manufacturer or franchisor
shall maintain for a period of three years a file that contains the information upon which
its certification is based. If a franchisor contracts with its dealers, the franchisor shall
certify under oath to the Department of Revenue that a majority of the dealers of that line
make did agree to such an agreement and file a sample copy of the agreement. On an
annual basis, each dealer shall certify under oath to the department that the reimbursement
costs it recovers under subparagraph (c)(2)(A) of this Code section do not exceed the
amounts authorized by subparagraph (c)(2)(A) of this Code section. The franchisor shall
maintain for a period of three years a file that contains the information upon which its
certification is based.

(e)(f) For purposes of this Code section, a uniform time standard manual is a document
created by a franchisor that establishes the time allowances for the diagnosis and
performance of warranty work and service. The allowances shall be reasonable and
adequate for the work and service to be performed. Each franchisor shall have a reasonable
and fair process that allows a dealer to request a modification or adjustment of a standard or standards included in such a manual."

SECTION 5.

Said article is further amended in Code Section 10-1-651, relating to termination of franchise, grounds, notice, dealer costs reimbursed by franchisor, applicability to distributors, by revising subsection (c) as follows:

"(c) If the failure by the dealer, as defined in subsection (b) of this Code section, relates to the performance of the dealer in sales or service, then good cause shall be defined as in this Code section the term 'good cause' means the failure of the dealer to comply with reasonable performance criteria established by the franchisor in light of existing circumstances, including, but not limited to, current and forecasted economic conditions, provided the following conditions are satisfied:

1. The dealer was notified by the franchisor in writing of such failure;
2. Said notification stated that notice was provided of failure of performance pursuant to this Code section; and
3. The performance criteria established by the franchisor was:
   A. Reasonable, fair, and equitable;
   B. Based on accurate information;
   C. Inclusive of relevant and material local and regional data considered by the franchisor that was provided by the dealer that was beyond the control of the dealer and that adversely affected the dealer's performance; and
   D. Based on a statistically significant and valid random sample, if such performance criteria included a survey; and
   E. The dealer was afforded a reasonable opportunity, for a period of not less than six months, to comply with such criteria."

SECTION 6.

Said article is further amended in Code Section 10-1-661, relating to the delivery of motor vehicles, modification of facilities, transfer of sales contracts, and warranties, by revising paragraphs (7) and (8) of subsection (b) and adding new paragraphs to read as follows:

"(7) To acquire any line-make of motor vehicle or to give up, sell, or transfer any line-make of motor vehicle which has been acquired in accordance with this article once such dealer has notified the franchisor that it does not desire to acquire, give up, sell, or transfer such line-make or to retaliate or take any adverse action against a dealer based on such desire; or"
(8) To construct, renovate, or maintain exclusive facilities, personnel, or showroom area
dedicated to a particular line-make if the imposition of such a requirement would be
unreasonable in light of the existing circumstances, including the franchisor's reasonable
business considerations, present economic and market conditions, and forecasts for future
economic and market conditions in the dealer's retail territory. The franchisor shall have
the burden of proof to demonstrate that its demand for exclusivity is justified by
reasonable business considerations and reasonable in light of the dealer's circumstances,
but this provision shall not apply to a voluntary agreement when separate and adequate
consideration was offered and accepted, provided that the renewal of a franchise
agreement shall not by itself constitute separate and adequate consideration. The
franchisor shall have the burden of proof to show that the dealer has entered into a
voluntary, noncoerced agreement regarding exclusivity.

(9)(A) To substantially change, alter, or remodel its dealership or to install new signs
or other franchisor image elements that replace or substantially alter those
improvements, signs, or franchisor image elements completed within the preceding ten
years that were required and approved by the franchisor, factory branch, distributor, or
distributor branch or one of its affiliates as part of a program, standard, or policy.

(B) If, during such ten-year period, the manufacturer revises or discontinues an existing
program, standard, or policy or establishes a new program, standard, or policy or other
benefit relating to construction or substantial alteration of a dealership, a motor vehicle
dealer that completed construction or substantial alteration of a dealership as part of a
prior program, standard, or policy and elects not to participate in the new or revised
program, standard, or policy, shall not be entitled to bonus, incentive, benefit, or
otherwise under the new or revised program but shall remain entitled to all benefits
under the prior program, standard, or policy according to the terms of such prior
program, standard, or policy. If the prior program, standard, or policy under which the
dealer completed a construction or substantial alteration does not contain a specific time
period during which the manufacturer or distributor must provide payments or benefits
to a dealer, then the manufacturer or distributor may not deny the dealer payment or
benefits under the terms of that prior program, as it existed when the dealer began to
perform under the prior program, for the balance of the ten-year term, regardless of
whether the manufacturer's or distributor's program, standard, or policy has been
revised or discontinued.

(C) The provisions of this paragraph shall not prohibit a franchisor from:

(i) Continuing any facility improvement program in effect on July 1, 2019, with more
than one franchised dealer in the state;
(ii) Providing lump sum or regularly scheduled payments to assist a franchised dealer in making a facility improvement, including construction, alteration or remodeling, or installing signage or a franchisor image element; or

(iii) Providing compensation or reimbursement to a franchised dealer on reasonable, written terms for a portion of such franchised dealer's costs of making a facility improvement, including construction; alteration or remodeling; the purchase of goods, building materials or services; or installing signage or a franchisor image element which are not paid on a per vehicle basis.

(D) Nothing in this paragraph shall be construed to permit a dealer to erect or maintain signs that do not conform to the manufacturer's intellectual property rights, trademarks, or trade dress usage guidelines.

(E) As used in this paragraph, the term 'to substantially change, alter, or remodel' means to make an alteration that has a major impact on the architectural features, characteristics, or integrity of the structure or lot. Such term shall include the relocation or erection of freestanding signs, but shall not include routine maintenance, such as interior painting, reasonably necessary to keep a dealership facility in attractive condition;

(10)(A) To purchase goods or services to make improvements to the dealer's facilities from a vendor selected, identified, or designated by a manufacturer or one of its affiliates by program, incentive provision, or otherwise without making available to the dealer the option to obtain the goods or services of comparable grade, quality, and overall design, and the same or substantially the same materials and characteristics from a vendor chosen by the dealer and approved by the manufacturer; provided, however, that such approval by the manufacturer shall not be unreasonably withheld, and the dealer's option to select a vendor shall not be available if the manufacturer provides substantial reimbursement for the goods or services offered.

(B) If signs, other than signs containing the manufacturer's brand or logo or freestanding signs that are not directly attached to a building, or other franchisor image or design elements or trade dress are to be leased to the dealer by a vendor selected, identified, or designated by the manufacturer, such dealer has the right to purchase the signs or other franchisor image or design elements or trade dress of comparable grade, quality, and overall design, and the same or substantially the same materials and characteristics from a vendor selected by the dealer if such signs, franchisor image or design elements, or trade dress are approved by the manufacturer. Approval by the manufacturer shall not be unreasonably withheld.

(C) Nothing in this paragraph shall be construed to allow a dealer or vendor to impair, infringe upon, or eliminate, directly or indirectly, the intellectual property rights of the
manufacturer including, but not limited to, the manufacturer's intellectual property rights in any trademarks or trade dress, or other intellectual property interests owned or controlled by the manufacturer.

(D) As used in this paragraph, the term:

(i) 'Goods' shall not include movable displays, brochures, and promotional materials containing material subject to the intellectual property rights of a manufacturer, including copyright, trademark, or trade dress rights or any manufacturer's design or architectural review service.

(ii) 'Substantial reimbursement' means an amount equal to or greater than the cost savings that would result if the dealer were to utilize a vendor of the dealer's own selection instead of using the vendor identified by the manufacturer; or

(11) Whether by agreement, program, incentive, or otherwise, to sell, lease, offer to sell or lease, solicit, or advertise the sale or lease of new motor vehicles in a manner that violates a law or any properly promulgated rule or regulation of this state."

SECTION 7.

Said article is further amended in Code Section 10-1-662, relating to unlawful activities by franchisors, by revising paragraphs (13), (14), (18), and (19) of subsection (a) and by adding new paragraphs to read as follows:

"(13) To conduct an audit, investigation, or inquiry of any dealer or dealership as to any activity, transaction, conduct, or other occurrence which took place or as to any promotion or special event which ended more than one year prior to such audit, investigation, or inquiry or to base any decision adverse to the dealer or dealership on any activity, transaction, conduct, or other occurrence which took place or as to any promotion or special event which ended more than one year prior to such decision or which took place any time more than one year prior to the period of time covered by such audit, investigation, or inquiry or to apply the results of an audit, investigation, or inquiry to any activity, transaction, conduct, or other occurrence which took place any time prior to the time covered by such audit, investigation, or inquiry more than one year prior to such audit, investigation, or inquiry. If the franchisor has reason to believe that fraudulent or intentionally false claims have been submitted, the franchisor may extend the audit, investigation, or inquiry period beyond the time periods provided in this paragraph; provided, however, that in no event shall the time period be extended beyond four years prior to such audit, investigation, or inquiry;

(14) To charge back to, deduct from, or reduce any account of a dealer or any amount of money owed to a dealer by a franchisor any amount of money the franchisor alleges is owed to such franchisor by such dealer as a result of an audit, investigation, or inquiry.
of such dealer or based upon information obtained by the franchisor through other
resources which relates to any transaction that occurred more than 12 months one year
prior to notice to the dealer of the charge back or deduction, but rather if a franchisor
alleges that a dealer owes such franchisor any amount of money as a result of an audit,
investigation, or inquiry, such franchisor shall send a notice to such dealer for such
amount and the dealer shall have not less than 30 days to contest such amount or remit
payment and only if the franchisor can show by a preponderance of evidence that the
transaction was fraudulent, intentionally and materially false, not reasonably
substantiated, or did not follow the franchisor's written repair or claim submission
requirements. A franchisor shall not charge back to, deduct from, or reduce any account
of a dealer or any amount owed to a dealer based solely on such dealer's clerical error that
does not put into question the legitimacy of the claim. If a claim is rejected for a clerical
error, then the dealer may resubmit a corrected claim within 30 days. If a franchisor
alleges that a dealer owes such franchisor any amount of money as a result of an audit,
investigation, or inquiry, such franchisor shall send a notice to such dealer for such
amount and the dealer shall have not less than 30 days to contest such amount or remit
payment. If the dealer contests such amount, the charge shall be stayed pending a final
resolution as provided in this Code section. Upon the dealer contesting the charge, the
parties shall attempt to resolve the dispute through an internal dispute resolution
procedure of the franchisor, if available, provided that such procedure occurs within a
reasonable amount of time. If the internal dispute resolution procedure is unavailable,
unsuccessful, or does not occur in a timely manner, such dealer may file a petition with
the commissioner not later than 60 days after receipt of such notice from the franchisor
or not later than 30 days after conclusion of the internal dispute resolution procedure,
whichever is later. If such a petition is filed, the commissioner shall inform the
franchisor, manufacturer, or distributor that a timely petition has been filed and that a
hearing shall be held on such issue. In any hearing held pursuant to this paragraph, the
burden of proof shall be upon the franchisor to demonstrate by a preponderance of
evidence the transaction was fraudulent, intentionally and materially false, not reasonably
substantiated or did not follow the franchisor's written repair or claim submission
requirements.

"(18) To directly or indirectly condition a franchise agreement or renewal of a franchise
agreement, addition of a line-make, approval of relocation, or approval of a sale or
transfer on the dealer's or prospective dealer's willingness to enter into a site control
agreement; provided, however, that this paragraph shall not apply to a voluntary
agreement when separate and adequate consideration is paid to the dealer. The franchisor
shall have the burden of proof to show the voluntary, noncoerced acceptance of the site 
control agreement by the dealer; or

(19) To charge back, withhold payment, deny vehicle allocation, or take other adverse 
action against a dealer when a new vehicle sold by the dealer has been exported to a 
foreign country unless the franchisor can demonstrate that the dealer knew or reasonably 
should have known that the customer intended to export or resell the new vehicle. There 
shall be a rebuttable presumption that the dealer had no such knowledge if the vehicle is 
titled or registered in any state in this country;

(20) To take any materially adverse action against a dealer, including a dealer's ability 
to participate in or receive a benefit or payment owed from any incentive or 
reimbursement program, based on criteria it has established, implemented, or enforced 
for measuring the performance, including, but not limited to, sales or service 
performance, of a dealer unless such criteria:

(A) Is fair, reasonable, and equitable; and

(B) Is based on accurate and relevant information; or

(21) To deny, delay payment for, restrict, or bill back a claim by a dealer for payment 
or reimbursement for incentives, hold-backs, sales or service promotion or other special 
program money, or any other amount owed to such dealer by the franchisor, if based 
solely on the dealer's compliance with a specific program requirement of the franchisor 
that would cause the dealer to violate a law or any properly promulgated rule or 
regulation of this state."

SECTION 8.

All laws and parts of laws in conflict with this Act are repealed.