

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H.B. 447
Mar 22, 2023
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10212-ML-111B

Short Title: Clarify Motor Vehicle Dealer Laws.

(Public)

Sponsors: Representative B. Jones.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY VARIOUS MOTOR VEHICLE DEALER LAWS.
3 The General Assembly of North Carolina enacts:

4
5 **DEALER INDEPENDENCE AND INCREASING THE AVAILABILITY OF ELECTRIC**
6 **VEHICLES FOR RURAL CONSUMERS**

7 **SECTION 1.(a)** G.S. 20-305(53) reads as rewritten:

8 "(53) Notwithstanding the terms of any franchise or agreement, or the terms of any
9 program or policy, to do any of the following if it has any franchised dealers
10 in this ~~State and if State:~~

11 a. If it permits retail customers the option of reserving or requesting to
12 purchase or lease a vehicle directly from such manufacturer or
13 distributor; distributor, to do any of the following:

14 a.1. Fail to assign any retail vehicle reservation or request to
15 purchase or lease received by the manufacturer or distributor
16 from a resident of this State to the franchised dealer authorized
17 to sell that make and model which is designated by the
18 customer, or if none is designated, to its franchised dealer
19 authorized to sell that make and model located in closest
20 proximity to the customer's location, provided that if the
21 customer does not purchase or lease the vehicle from that
22 dealer within 10 days of the vehicle being assigned to the
23 dealer, or if the customer requests that the transaction be
24 assigned to another dealer, then the manufacturer or distributor
25 may assign the transaction to another franchised dealer
26 authorized to sell that make and model.

27 b.2. Prohibit a retail customer that has reserved or requested to
28 purchase or lease a vehicle directly from the manufacturer or
29 distributor from negotiating the final purchase price of the
30 vehicle directly with the dealer if the dealer is authorized to sell
31 that make and model and to agree on a final price for a new
32 motor vehicle which varies from the MSRP established by the
33 manufacturer or distributor.

34 e.3. Prohibit a retail customer that has reserved or requested to
35 purchase or lease a vehicle directly from the manufacturer or
36 distributor from using any vehicle financing or leasing source



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1 available from or through the dealer to whom the customer's
2 vehicle reservation or request to purchase or lease has been
3 assigned or to prohibit a franchised dealer in this State from
4 offering and negotiating directly with the customer the terms
5 of vehicle financing or leasing through all sources available to
6 the dealer.

7 ~~e.4.~~ Prohibit a retail customer that has reserved or requested to
8 purchase or lease a vehicle directly from the manufacturer or
9 distributor from purchasing on terms negotiated or agreed to
10 directly between the customer and the dealer to whom the
11 customer's reservation or request to purchase or lease has been
12 assigned, any service contract, extended warranty, vehicle
13 maintenance contract, or guaranteed asset protection (GAP)
14 agreement, or any other vehicle-related products and services
15 offered by the dealer, provided that a manufacturer, distributor,
16 or captive finance source shall not be required to finance any
17 such product or service that is not offered or supported by the
18 manufacturer or distributor.

19 ~~e.5.~~ Prohibit a retail customer that has reserved or requested to
20 purchase or lease a vehicle directly from the manufacturer or
21 distributor and the dealer to whom the customer's reservation
22 or request to purchase or lease has been assigned from directly
23 negotiating the trade-in value the customer will receive, or to
24 prohibit the dealer from conducting an on-site inspection of the
25 condition of a trade-in vehicle before the dealer becomes
26 contractually obligated to accept the trade-in value negotiated.

27 ~~f.6.~~ Use a third party to accomplish what would otherwise be
28 prohibited by this subdivision.

29 b. Fail or refuse to do any of the following:

30 1. Allow consumers located in this State the ability to directly
31 purchase from any of its franchised dealers in this State, either
32 at the dealer's dealership or through one or more websites
33 owned, operated, and controlled by the dealer, all makes and
34 models of new vehicles the dealer is authorized to sell.

35 2. Give equal reference and prominence on any website owned,
36 operated, or controlled by the manufacturer or distributor on
37 which consumers are permitted to order, purchase, or lease
38 vehicles, to all of the manufacturer's or distributor's franchised
39 dealers that are located in this State.

40 3. Require that all of the new vehicles manufactured or
41 distributed by the manufacturer or distributor that are sold or
42 leased to purchasers or lessees located in this State be
43 physically delivered to the ultimate purchaser or lessee by the
44 same line-make franchised dealer selected by the purchaser or
45 lessee, or in the absence of such selection, by the same
46 line-make dealer from whom the vehicle was purchased or
47 leased, or by the same line-make dealer that is located in
48 closest proximity to the purchaser or lessee.

49 c. Fail or refuse to allow all of its franchised dealers located in this State
50 to do any of the following:

- 1 1. Have the ability to maintain on the ground and in the dealer's
2 stock a reasonable supply of all makes and models of new
3 vehicles the dealer is authorized to sell; provided, however,
4 that this sub-subdivision is not violated if the inability of the
5 manufacturer to provide a reasonable on-the-ground supply of
6 new vehicles to dealers is based on Acts of God, labor strikes,
7 or material shortages beyond the control of the manufacturer
8 or distributor.
- 9 2. Have the right to store new and used batteries at a safe and
10 secure location selected by the dealer that is separate from the
11 dealership premises, fail or refuse to compensate dealers for
12 the full cost of storing used batteries more than 30 days after
13 the manufacturer or distributor has been notified by the dealer
14 of their availability to be picked up, or fail or refuse to
15 compensate and indemnify dealers for all loss and damage
16 caused by vehicle batteries supplied by or through the
17 manufacturer or distributor.
- 18 3. Have the same opportunity to purchase used vehicle inventory
19 distributed or made available by that manufacturer or
20 distributor without imposing any additional conditions or
21 requirements on their dealers.
- 22 4. Have the opportunity to order from or through the
23 manufacturer or distributor, receive, and maintain in stock a
24 reasonable supply of parts required for service and repair of the
25 manufacturer's or distributor's vehicles based on the volume of
26 service work performed by the dealer.
- 27 5. Have the right to independently determine the types of physical
28 and digital advertising media the dealer chooses to advertise
29 all brands, models, and types of vehicles offered for sale by the
30 dealer as well as the content and format of the advertising and
31 all locations where the dealer chooses to establish, publish,
32 broadcast, circulate, or display such advertising and the
33 individuals to whom advertising is targeted or directed;
34 provided, however, that nothing in this sub-subdivision shall
35 be deemed to interfere with the intellectual property rights of
36 manufacturers and distributors.
- 37 6. Have the ability to use any digital platform or digital retailing
38 tool selected by the dealer as long as it is capable of performing
39 the essential functions required by the manufacturer or
40 distributor.
- 41 d. Engage in any of the following actions:
 - 42 1. Maintain a website or other electronic or digital means of
43 communication for negotiating prices or other binding terms of
44 sale of new vehicles directly between the manufacturer or
45 distributor and end users located in this State, including, but
46 not limited to, agreements between the manufacturer or
47 distributor and the end user on prices or other substantive terms
48 of sale or leasing of new vehicles.
 - 49 2. Retain ownership of new motor vehicles until they are sold to
50 end users located in this State.

- 1 3. Consign new motor vehicles to its franchised dealers in this
2 State for dealer inventory or for sale to end users located in this
3 State.
4 4. Reserve the right to negotiate binding terms of sale directly
5 with buyers of new motor vehicles located in this State.
6 5. Designate its franchised dealers in this State to be only delivery
7 agents for new motor vehicles and service and parts outlets,
8 reserving for the respective manufacturer or distributor the
9 right to establish the binding terms of vehicle sales or the right
10 to negotiate the binding terms of sale directly with end users
11 located in this State.
12 6. Unreasonably impede or interfere with the ability of its rural
13 and other franchised dealers located in this State to obtain from
14 that manufacturer or distributor and sell or lease any series or
15 models of technologically advanced vehicles that the
16 manufacturer or distributor makes available for sale or lease in
17 this State by or through its same line-make dealers. For
18 purposes of this sub-sub-subdivision, the term "technologically
19 advanced vehicle" or "TAV" means a vehicle that utilizes an
20 alternative technology other than an internal combustion
21 engine for propulsion, such as an electric vehicle (EV) or
22 hydrogen vehicle, or a vehicle that utilizes autonomous or
23 self-driving technology rated at Level 3, 4, or 5 by the Society
24 of Automotive Engineers. For purposes of this
25 sub-sub-subdivision, the term "EV" means any plug-in electric
26 vehicle that does not rely on any nonelectric source of power
27 in all modes of operation. For purposes of this
28 sub-sub-subdivision, the term "unreasonably impede or
29 interfere with" includes, but is not limited to, any of the
30 following:
31 I. To fail or refuse to promptly cause, at a dealer's request
32 and at no cost to the dealer, a detailed, itemized,
33 individual dealer assessment to be performed for each
34 of its franchised dealers located in this State that desires
35 to sell and service that manufacturer's or distributor's
36 TAVs to determine the minimum TAV investment
37 each dealer would need to make for training, facilities,
38 tools, parts, equipment, and charging stations for
39 vehicle service and for training dealership employees
40 and customers. Charging stations for use by the public
41 and all other charges or expenditures not technically
42 essential to sell and service the manufacturer's or
43 distributor's TAVs shall not be required or included in
44 determining a dealer's minimum TAV investment. The
45 minimum TAV investment established for each dealer
46 must be scaled based on the estimated number of the
47 manufacturer's or distributor's new TAVs the dealer
48 would be anticipated to sell and the number of TAVs
49 the dealer would be expected to service within the
50 following three-year period. In the event that a
51 manufacturer or distributor had performed an

1 individualized dealer assessment required in this
2 sub-sub-sub-subdivision prior to July 1, 2023, such
3 assessment shall be deemed to have satisfied the
4 requirements contained in this sub-sub-sub-subdivision
5 as long as it complies with all of the requirements of an
6 individual TAV assessment established in this
7 sub-sub-sub-subdivision and contains no charges in
8 excess of those charges includable under this
9 sub-sub-sub-subdivision.

10 II. To charge a dealer or require that a dealer located in
11 this State invest or spend more than the minimum TAV
12 investment determined in sub-sub-sub-subdivision I. of
13 this sub-sub-subdivision in order to sell and service any
14 and all TAV models that the manufacturer or
15 distributor makes available for purchase or lease in this
16 State by or through its same line-make dealers. Any
17 requirement that a dealer invest or spend more than the
18 TAV investment determined in
19 sub-sub-sub-subdivision I. of this sub-sub-subdivision
20 shall be void and of no effect, and the affected
21 manufacturer or distributor shall be required to allocate
22 TAVs to the dealer and otherwise comply with all of
23 the requirements contained in this sub-subdivision as if
24 such excessive requirement had been satisfied.

25 III. To fail or refuse to allocate all TAV models offered by
26 the manufacturer or distributor for sale or lease in this
27 State in accordance with the requirements of this
28 sub-subdivision to each of its same line-make
29 franchised dealers located in this State that has made
30 the minimum TAV investment determined pursuant to
31 sub-sub-sub-subdivision I. of this sub-sub-subdivision.

32 e. Withhold all or any portion of any incentive payment from any of its
33 dealers located in this State on the basis of a dealer's failure to comply
34 with any condition or requirement that is unlawful, prohibited,
35 contrary, or inconsistent with any of the provisions of this subdivision.

36 Nothing contained in sub-subdivision a. of this subdivision shall (i) require
37 that a manufacturer or distributor allocate or supply additional or
38 supplemental inventory to a franchised dealer located in this State in order to
39 satisfy a retail customer's vehicle reservation or request submitted directly to
40 the manufacturer or distributor as provided in this section, (ii) apply to the
41 generation of sales leads; provided, however, that for purposes of this
42 subdivision the term "sales leads" shall not include any reservation or request
43 to purchase or lease a vehicle submitted directly by a customer or potential
44 customer to a manufacturer or distributor, or (iii) apply to a reservation or
45 request to purchase or lease a vehicle directly from the manufacturer or
46 distributor received from customer that is a resident of this State if the
47 customer designates a dealer outside of this State to be assigned the
48 reservation or request to purchase or lease, or if the dealer located in closest
49 proximity to the customer's location is in another state and the manufacturer
50 or distributor assigns the reservation or request to purchase or lease to that
51 dealer."

1 **SECTION 1.(b)** G.S. 20-305(44) reads as rewritten:

2 "(44) Notwithstanding the terms, provisions, or conditions of any agreement or
3 franchise, to require, coerce, or attempt to coerce any new motor vehicle
4 dealer located in this State to refrain from doing any of the following:

5 a. ~~displaying~~ Displaying in the dealer's showroom or elsewhere within
6 the dealership facility any sports-related honors, awards, photographs,
7 displays, or other artifacts or memorabilia; provided, however, that
8 such sports-related honors, awards, photographs, displays, or other
9 artifacts or memorabilia (i) pertain to an owner, investor, or executive
10 manager of the dealership; (ii) relate to professional sports; (iii) do not
11 reference or advertise a competing brand of motor vehicles; and (iv)
12 do not conceal or disparage any of the required branding elements that
13 are part of the dealership facility.

14 b. Using all or part of the name of a dealer's founder, owner, existing
15 trade name, or dealer principal in the dealer's trade name."

16 **SECTION 1.(c)** G.S. 20-305 is amended by adding a new subdivision to read:

17 "(55) To interfere with the independence and governance of a dealer or dealer
18 applicant having multiple owners by requiring, coercing, or attempting to
19 coerce the dealer or dealer applicant to adopt a corporate structure under
20 which a single individual has the sole legal authority to issue additional
21 corporate stock; add one or more new managers, members, or shareholders;
22 purchase or sell franchises or line-makes of vehicles; acquire or sell real
23 estate; invest in new or substantially remodeled or updated facilities; borrow
24 money in the name of the dealer; select a new or successor dealer principal;
25 file a petition in bankruptcy or receivership; or require that owners contribute
26 additional capital."

27 **OWNERSHIP OR CONTROL OF DEALERSHIP WEBSITE**

28 **SECTION 2.** G.S. 20-305, as amended by Section 1 of this act, is amended by adding
29 a new subdivision to read:

30 "(56) Notwithstanding the terms of any franchise, agreement, or policy, to
31 unreasonably interfere with the establishment, maintenance, operation, or
32 control of either a single location dealer website or a dealer group website.
33 For purposes of this subdivision, the term "single location dealer website"
34 means a website that is owned or operated by a new motor vehicle dealer or
35 an entity that is affiliated with a new motor vehicle dealer licensed in this State
36 and that advertises, markets, displays, sells, or leases new and used motor
37 vehicles that are only available for sale or lease at a single dealership location
38 within this State. For purposes of this subdivision, the term "dealer group
39 website" means a website that is owned or operated by one or more new motor
40 vehicle dealers or an entity that is affiliated with one or more new motor
41 vehicle dealers licensed in this State and that advertises, markets, displays,
42 sells, or leases new and used motor vehicles that are available for sale or lease
43 at more than one dealership location within this State. For purposes of this
44 subdivision, the term "unreasonable interference" includes, but is not limited
45 to, any contractual prohibition or any policy or any bonus or incentive
46 program created or sponsored by a manufacturer or distributor that does any
47 of the following:

48 a. Prohibits or in any way disincentivizes any of its franchised dealers in
49 this State who own or operate either a single location dealer website
50

- 1 or a dealer group website from prominently displaying throughout the
2 website the name and logo of the applicable dealer or dealer group.
- 3 b. Requires or provides bonuses or incentives for any dealer or dealer
4 group located in this State to use a digital platform or digital retailing
5 tool provided, recommended, endorsed, or approved by the
6 manufacturer or distributor; provided, however, that the digital
7 platform or digital retailing tool selected by the dealer possesses
8 substantially the same level of quality and performs substantially the
9 same functions as the digital platform or digital retailing tool provided,
10 recommended, endorsed, or approved by the manufacturer or
11 distributor.
- 12 c. Requires or provides bonuses or incentives for any dealer or dealer
13 group located in this State to use, on either a single location dealer
14 website or a dealer group website, one or more chat tools, appraisal
15 tools, payment calculators, or other online digital tools provided,
16 recommended, endorsed, or approved by the manufacturer or
17 distributor, provided, however, that any such digital retailing tools
18 selected by the dealer possesses substantially the same quality and
19 performs substantially the same functions as the digital retailing tools
20 provided, recommended, endorsed, or approved by the manufacturer
21 or distributor.
- 22 d. Restricts or in any way disincentivizes any of its franchised dealers in
23 this State who own or operate either a single location dealer website
24 or a dealer group website from using any method, procedure, or
25 protocol selected by the dealer in communicating with the dealer's
26 customers or permitting or allowing customers to make an
27 appointment to see a vehicle, hold or reserve a vehicle, or purchase or
28 lease a vehicle through a digital retail process.
- 29 e. Restricts or in any way disincentivizes any of its franchised dealers in
30 this State who own or operate a single location dealer website from
31 displaying, selling, or leasing all brands and line-makes of new and
32 used motor vehicles offered for sale or lease at that dealership location,
33 including the dealer's display of manufacturer logos and marks for all
34 such brands and line-makes of vehicles offered for sale or lease, to the
35 extent such display of manufacturer logos and marks does not interfere
36 with the intellectual property rights of the manufacturer.
- 37 f. Restricts or in any way disincentivizes any of its franchised dealers in
38 this State who own or operate a dealer group website from displaying,
39 selling, or leasing all brands and line-makes of new and used motor
40 vehicles offered for sale or lease at any dealership affiliated with the
41 dealer group, including the display of manufacturer logos and marks
42 for all such brands and line-makes of vehicles offered for sale or lease
43 at any such affiliated dealerships, to the extent such display of
44 manufacturer logos and marks does not interfere with the intellectual
45 property rights of the manufacturer.
- 46 Nothing contained in this subdivision shall prevent or prohibit a
47 manufacturer or distributor from requiring that, in establishing and operating
48 either single location dealer websites or dealer group websites, dealers not
49 violate the intellectual property rights of the manufacturer or distributor.
- 50 Any requirement, term, or condition contained in any bonus or incentive
51 program established by a manufacturer or distributor that is inconsistent with

1 any of the provisions contained in this subdivision shall be void and
2 unenforceable, and all dealers located in this State that are franchised or
3 licensed by such manufacturer or distributor shall be entitled to receive the
4 full amount of the bonus or incentive being offered by the manufacturer or
5 distributor whether or not the dealer has complied with the terms or conditions
6 of any such bonus or incentive program that are inconsistent with the
7 provisions of this subdivision."

8
9 **PROHIBITING UNFAIR COMPETITION/PREVENTING DEALERS FROM SELLING**
10 **ELECTRIC VEHICLES AND OTHER VEHICLES WITH ADVANCED**
11 **TECHNOLOGIES**

12 **SECTION 3.** G.S. 20-305.2 is amended by adding a new subsection to read:

13 "(g) It is unlawful for any manufacturer or distributor that has any franchised dealers in
14 this State to sell, lease, or otherwise distribute one or more models, brands, or series of motor
15 vehicles in this State that are solely or primarily electric or hydrogen vehicles or that utilize one
16 or more advanced technologies that are not available for purchase by all of its franchised dealers
17 located in this State; provided, however, that it shall not be a violation of this subsection if the
18 manufacturer or distributor makes a reasonable quantity of vehicles utilizing the same electric,
19 hydrogen, or other new technology available on some models, brands, or series of vehicles that
20 are available for all of its existing franchised dealers located within this State to purchase at no
21 additional charge to such dealers other than the minimum costs necessary for these dealers to sell
22 and service the electric, hydrogen, or other new technology vehicles. Additionally, it is not a
23 violation of this subsection if the manufacturer or distributor is selling, leasing, or otherwise
24 distributing new electric, hydrogen, or other new technology vehicles in this State as part of a
25 trial or introductory program in which fewer than 2,000 of such vehicles are sold, leased, or
26 otherwise distributed in this State during any 12-month period of time. The Commissioner shall
27 deny any new or renewal application for a manufacturer or distributor license or revoke any
28 manufacturer or distributor license previously issued to any manufacturer or distributor, or to any
29 entity affiliated with such manufacturer or distributor, that is in violation of this subsection."

30
31 **RURAL DEALER MINIMUM EARNED ALLOCATION RIGHTS**

32 **SECTION 4.** G.S. 20-305(14) reads as rewritten:

33 "(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or
34 accessories in reasonable quantities relative to the new motor vehicle dealer's
35 facilities and sales potential in the new motor vehicle dealer's market area as
36 determined in accordance with reasonably applied economic principles, or
37 within a reasonable time, after receipt of ~~an~~ a bona fide sold retail customer
38 order from a dealer having a franchise for the retail sale of any new motor
39 vehicle sold or distributed by the manufacturer or distributor, any new vehicle,
40 parts or accessories to new vehicles as are covered by such franchise, and such
41 vehicles, parts or accessories as are publicly advertised as being available or
42 actually being delivered. A manufacturer or distributor shall be required to fill
43 each bona fide retail customer order from one of its franchised dealers in this
44 State in the chronological sequence such order is received without regard for
45 or consideration of the dealer's previously earned allocation of vehicles. All
46 such bona fide sold retail customer orders shall be filled before the
47 manufacturer or distributor allocates vehicles that are similarly configured and
48 that have similar options to dealers based on any other allocation system,
49 program, policy, or criteria, except for those vehicles allocated in accordance
50 with sub-subdivision g. of this subdivision, and be filled by a manufacturer or
51 distributor from the entire allocation of all new motor vehicles that the

1 manufacturer or distributor has designated for distribution within this State
2 without regard to any allocation or distribution levels, tiers, pools, groups, or
3 priorities the manufacturer or distributor has established for dealers, or
4 whether such other sales are retail, wholesale, or fleet. The delivery to another
5 dealer of a motor vehicle of the same model and similarly equipped as the
6 vehicle ordered by a motor vehicle dealer who has not received delivery
7 thereof, but who has placed his written order for the vehicle prior to the order
8 of the dealer receiving the vehicle, shall be prima facie evidence of a delayed
9 delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer
10 within a reasonable time, without cause. Additionally, except as may be
11 required by any consent decree of the Commissioner or other order of the
12 Commissioner or court of competent jurisdiction, any sales objectives which
13 a manufacturer, factory branch, distributor, or distributor branch establishes
14 for any of its franchised dealers in this State must be reasonable, and every
15 manufacturer, factory branch, distributor, or distributor branch must allocate
16 its products within this State in a manner that does all of the following:

- 17 a. Provides each of its franchised dealers in this State an adequate supply
18 of vehicles by series, product line, and model in a fair, reasonable, and
19 equitable manner based on each dealer's historical selling pattern and
20 reasonable sales standards as compared to other same line-make
21 dealers in the State.
- 22 b. Allocates an adequate supply of vehicles to each of its dealers by
23 series, product line, and model so as to allow the dealer to achieve any
24 performance standards established by the manufacturer and
25 distributor.
- 26 b1. Allocates vehicles to each of its dealers that are configured in a manner
27 and that contain options that take into consideration the dealer's
28 historical experience and success in selling vehicles similarly
29 configured and that contain similar options.
- 30 c. Is fair and equitable to all of its franchised dealers in this State.
- 31 d. Makes available to each of its franchised dealers in this State a
32 minimum of one of each vehicle series, model, or product line that the
33 manufacturer makes available to any dealer in this State and advertises
34 in the State as being available for purchase.
- 35 e. Does not unfairly discriminate among its franchised dealers in its
36 allocation process.
- 37 f. Provides each of its franchised dealers in this State a process for a
38 dealer to appeal the dealer's vehicle allocation should the dealer
39 believe it was not allocated or did not receive vehicle inventory in a
40 manner that complies with both this subdivision and the
41 manufacturer's or distributor's uniformly applied allocation formula.
42 Participation in the appeal process does not waive or impair any rights,
43 claims, or defenses available to the dealer, manufacturer, or distributor
44 under applicable law. All in-person meetings, mediations, or other
45 proceedings related to the appeal process shall be conducted in this
46 State unless otherwise agreed to by the parties.
- 47 g. If, during the immediately preceding 12 calendar months, a new motor
48 vehicle dealer located in this State sold a total of 250 or fewer new
49 motor vehicles manufactured or distributed by a particular
50 manufacturer or distributor, that manufacturer or distributor shall be
51 required to allocate to the dealer and deliver in a timely manner,

1 monthly and on a model-by-model or series basis, no fewer than the
2 number of new motor vehicles of each such model or series that dealer
3 sold at retail during the immediately previous calendar month, not to
4 exceed 20 vehicles per month of any given model. The minimum
5 vehicle allocation rights of dealers pursuant to this sub-subdivision
6 shall be filled by a manufacturer or distributor from the entire
7 allocation of all new motor vehicles that the manufacturer or
8 distributor has designated for distribution within this State without
9 regard to any allocation or distribution levels, tiers, pools, groups, or
10 priorities the manufacturer or distributor has established for dealers, or
11 whether such other sales are retail, wholesale, or fleet.

12 This subdivision is not violated, however, if such failure is caused solely by
13 the occurrence of temporary international, national, or regional product
14 shortages resulting from natural disasters, unavailability of parts, labor strikes,
15 product recalls, and other factors and events beyond the control of the
16 manufacturer that temporarily reduce a manufacturer's product supply. In the
17 event of any such shortages in vehicle availability, each manufacturer or
18 distributor shall be required to allocate and distribute all available new motor
19 vehicles to its franchised dealers in this State in accordance with the allocation
20 priorities established in this subdivision and in a fair, equitable, and
21 nondiscriminatory manner. The willful or malicious maintenance, creation, or
22 alteration of a vehicle allocation process or formula by a manufacturer, factory
23 branch, distributor, or distributor branch that is in any part designed or
24 intended to force or coerce a dealer in this State to close or sell the dealer's
25 franchise, cause the dealer financial distress, or to relocate, update, or renovate
26 the dealer's existing dealership facility shall constitute an unfair and deceptive
27 trade practice under G.S. 75-1.1."
28

29 **FAIR AND REASONABLE VEHICLE ALLOCATION**

30 **SECTION 5.** G.S. 20-305, as amended by Sections 1 and 2 of this act, is amended
31 by adding a new subdivision to read:

32 "(14a) To establish a system of motor vehicle allocation or distribution or to
33 implement a system of allocation or distribution of motor vehicles to one or
34 more of its franchised motor vehicle dealers which reduces or alters
35 allocations or supplies of new motor vehicles to the dealer to achieve, directly
36 or indirectly, a purpose that is prohibited by this Article; or which
37 conditionally or unconditionally reserves a specific motor vehicle identified
38 by Vehicle Identification Number or other unique identifier for a specifically
39 named person; or which requires or incentivizes motor vehicle dealers to sell
40 or lease, or to negotiate the sale or lease of, a specific motor vehicle identified
41 by Vehicle Identification Number or other unique identifier to a specifically
42 named person; or which requires or incentivizes motor vehicle dealers to sell
43 or lease a motor vehicle at a specified price or profit margin; or which
44 otherwise is unfair, inequitable, unreasonably discriminatory, or not
45 supportable by reason and good cause after considering the equities of the
46 affected motor vehicles dealer or dealers. An applicant or licensee shall
47 maintain for three years records that describe its methods or formula of
48 allocation and distribution of its motor vehicles and records of its actual
49 allocation and distribution of motor vehicles to its motor vehicle dealers in
50 this State. As used in this subdivision, "unfair" includes, without limitation,
51 (i) the refusal or failure to offer to any dealer an equitable supply of new

vehicles under its franchise, by model, mix, or colors as the licensee offers or allocates to its other same line-make dealers in the State or (ii) using as a factor in allocation of motor vehicles the number of motor vehicles preordered or reserved by consumers."

ECONOMIC COERCION

SECTION 6. G.S. 20-305, as amended by Sections 1, 2, and 5 of this act, is amended by adding a new subdivision to read:

"(57) To use economic coercion to influence a dealer to participate in or comply with any program or policy sponsored, endorsed, or supported by the manufacturer or distributor, to sell any model, type, or series of vehicle or other products or services, or to take or refuse to take any action or to engage in or refuse to engage in any conduct. For purposes of this subdivision, the terms "economic coercion," "coerce," and "attempt to coerce" shall include the manufacturer's or distributor's use of rebates, credits, incentive payments, or other consideration that has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State or that offers participating or compliant dealers the ability to sell or receive any model, type, or series of vehicle or other products or services offered by or through the manufacturer or distributor. Each of the manufacturer's or distributor's franchised dealers in this State shall be entitled to receive the maximum rebate, credit, incentive payment, or other consideration the manufacturer or distributor is offering under its program or policy, or to sell or receive any model, type, or series of vehicle or other products or services offered by or through the manufacturer or distributor, regardless of whether the dealer has complied with any or all of the conditions or requirements of the manufacturer's program or policy.

Nothing contained in this subdivision shall be deemed to prohibit a manufacturer or distributor from establishing for each dealer reasonable requirements for training, facilities, parts, and equipment necessary to sell and service any model, type, or series of vehicle or other products or services offered by or through the manufacturer or distributor, as long as these requirements are scaled to take into consideration that dealer's reasonably anticipated sales volumes of these products or services over the following three-year period."

ADD DEFINITION OF "SELL" OR "SELLING"

SECTION 7. G.S. 20-286 reads as rewritten:

"§ 20-286. Definitions.

The following definitions apply in this Article:

...
(15a) Sell or selling. – Includes taking deposits or receiving payment for the purchase, lease, exchange, subscription, or use of a motor vehicle; accepting a reservation for a specific motor vehicle identified by Vehicle Identification Number or other product identifier from a retail consumer; setting the retail price for the purchase, lease, or exchange of a motor vehicle; offering or negotiating terms for the purchase, lease, finance, or exchange of a motor vehicle with a retail consumer; negotiating directly with a retail consumer the value of a motor vehicle being traded in as part of the purchase, lease, exchange, subscription, or use of a motor vehicle; offering or negotiating directly with a retail consumer any service contract, extended warranty,

1 vehicle maintenance contract, guaranteed asset protection agreement, or any
2 other vehicle-related products and services in connection with the purchase,
3 lease, or exchange of a motor vehicle; any transaction where the title of a
4 motor vehicle or a used motor vehicle is transferred to a retail consumer; and
5 also any retail lease transaction where a retail customer leases a vehicle for a
6 period of at least 12 months. The terms "sell," "selling," "sold," "exchange,"
7 "retail sales," "selling activities," and "leases" are synonymous.

8 (15b) Special tool or essential tool. – A tool designed and required by the
9 manufacturer or distributor and not readily available from another source that
10 is utilized for the purpose of performing service repairs on a motor vehicle
11 sold by a manufacturer or distributor to its franchised new motor vehicle
12 dealers in this State.

13"
14

15 MANUFACTURER SALE OR SUBSCRIPTION OF ADD-ON PRODUCTS

16 **SECTION 8.(a)** G.S. 20-305, as amended by Sections 1, 2, 5, and 6 of this act, is
17 amended by adding a new subdivision to read:

18 "(58) To engage in this State in any of the activities of a motor vehicle dealer as
19 defined in G.S. 20-286, except as expressly permitted by G.S. 20-305.2, or to
20 compete with any of its same line-make dealers in this State with respect to
21 the sale of any products or services that the dealer is authorized to sell pursuant
22 to the dealer's franchise with the manufacturer or distributor, by the
23 manufacturer's or distributor's remote electronic transmission to the end user
24 of any motor vehicle accessory, option, add-on, feature, improvement, or
25 upgrade."

26 **SECTION 8.(b)** G.S. 20-305, as amended by Sections 1, 2, 5, and 6 of this act and
27 subsection (a) of this section, is amended by adding a new subdivision to read:

28 "(59) To sell or lease any motor vehicle of a line-make for which it has any
29 franchised dealers in this State directly to an end user located in this State or
30 to activate for a fee any permanent or temporary motor vehicle accessory,
31 option, add-on, feature, improvement, or upgrade, on or to any vehicle owned
32 or leased by an end user located in this State, in a manner other than through
33 a same line-make dealer."

34 **SECTION 8.(c)** Subsection (a) of G.S. 20-305.2 is amended by adding a new
35 subdivision to read:

36 "(9) Notwithstanding the provisions of G.S. 20-305(59), and provided that the new
37 motor vehicle dealers of the line-make located in this State are permitted to
38 sell end users the same motor vehicle accessory, option, add-on, feature,
39 improvement, or upgrade for a motor vehicle of the line-make manufactured,
40 imported, or distributed by the manufacturer or distributor, a manufacturer or
41 distributor may, on the same terms offered to the dealer, also sell to the end
42 user or activate for a fee a permanent or temporary motor vehicle accessory,
43 option, add-on, feature, improvement, or upgrade for a motor vehicle of a
44 line-make manufactured, imported, or distributed by the manufacturer;
45 provided, however, that the accessory, option, add-on, feature, improvement,
46 or upgrade is activated or installed directly on the end user's motor vehicle
47 through remote electronic transmission, and further provided that if such
48 motor vehicle was sold or leased as new by a franchised new motor vehicle
49 dealer in this State within the five-year period preceding such remote
50 electronic transmission, then the manufacturer must pay such franchised new
51 motor vehicle dealer a minimum of twenty percent (20%) of the gross revenue

1 received by the manufacturer, agent, or common entity for such sale or
2 activation and renewals during such five-year period. The manufacturer must
3 provide each of its franchised dealers with a quarterly statement of the revenue
4 received by the manufacturer, its agent, or its common entity during that
5 quarter for such remote sales or activations and renewals relating to those
6 vehicles sold or leased by the dealer during the preceding five years."
7

8 **WARRANTY REIMBURSEMENT CLARIFICATION**

9 **SECTION 9.** G.S. 20-305.1 reads as rewritten:

10 **"§ 20-305.1. Automobile dealer warranty and recall obligations.**

11 ...

12 (a1) The retail rate customarily charged by the dealer for parts and labor may be
13 established at the election of the dealer by the dealer submitting to the manufacturer or distributor
14 100 sequential nonwarranty customer-paid service repair orders which contain warranty-like
15 parts, or 60 consecutive days of nonwarranty customer-paid service repair orders which contain
16 warranty-like parts, whichever is less, covering repairs made no more than 180 days before the
17 submission and declaring the average percentage markup. The average of the parts markup rate
18 and the average labor rate shall both be presumed to be ~~reasonable, accurate,~~ however, a
19 manufacturer or distributor may, not later than 30 days after submission, rebut that presumption
20 by reasonably substantiating that the rate is ~~unfair and unreasonable in light of the retail rates~~
21 ~~charged for parts and labor by all other franchised motor vehicle dealers located in the dealer's~~
22 ~~relevant market area offering the same line make vehicles. In the event there are no other~~
23 ~~franchised dealers offering the same line make of vehicle in the dealer's relevant market area, the~~
24 ~~manufacturer or distributor may compare the dealer's retail rate for parts and labor with the retail~~
25 ~~rates charged for parts and labor by other same segment franchised dealers who are selling~~
26 ~~competing line makes of vehicles within the dealer's relevant market area. In the event there is~~
27 ~~also no other same segment franchised dealer who is selling a competing line make of vehicle~~
28 ~~within the dealer's relevant market area, the manufacturer or distributor may then compare the~~
29 ~~dealer's retail rate for parts and labor with the retail rates charged for parts and labor by other~~
30 ~~same line make dealers or same segment franchised dealers who are selling competing~~
31 ~~line makes of vehicles that are located within the relevant market area of the franchised dealer~~
32 ~~who is located in closest proximity, measured by straight line distance, to the dealer, provided~~
33 ~~they are not all owned, operated, or controlled by the subject dealer. For the purposes of this~~
34 ~~section, the term "relevant market area" shall have the same meaning as set forth in~~
35 ~~G.S. 20-286(13b).~~ requested is not supported by the submission and by declaring the accurate
36 rate based upon the submission repair orders. The retail rate and the average labor rate shall go
37 into effect 30 days following the manufacturer's approval, but in no event later than 60 days
38 following the declaration, subject to ~~audit review~~ of the accuracy of the submitted repair orders
39 by the manufacturer or distributor and a rebuttal of the declared rate as described above. ~~If the~~
40 ~~declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the~~
41 ~~average percentage markup based on that rebuttal not later than 30 days after such audit, but in~~
42 ~~no event later than 60 days after submission.~~ ~~If the dealer does not agree with the proposed~~
43 ~~average percentage markup, the dealer may file a protest with the Commissioner not later than~~
44 ~~30 days after receipt of that proposal by the manufacturer or distributor. If such a protest is filed,~~
45 ~~the Commissioner shall inform the manufacturer or distributor that a timely protest has been filed~~
46 ~~and that a hearing will be held on such protest. In any hearing held pursuant to this subsection,~~
47 ~~the manufacturer or distributor shall have the burden of proving by a preponderance of the~~
48 ~~evidence that the rate declared by the dealer was unreasonable-inaccurate as described in this~~
49 ~~subsection and that the proposed adjustment of the average percentage markup is reasonable~~
50 ~~pursuant to the provisions of this subsection.~~ correct. If the dealer prevails at a protest hearing,
51 the dealer's proposed rate, affirmed at the hearing, shall be effective as of 60 days after the date

1 of the dealer's initial submission of the customer-paid service orders to the manufacturer or
2 distributor. If the manufacturer or distributor prevails at a protest hearing, the rate proposed by
3 the manufacturer or distributor, that was affirmed at the hearing, shall be effective beginning 30
4 days following issuance of the final order.

5 (a2) In calculating the retail rate customarily charged by the dealer for parts and labor, the
6 following work shall not be included in the calculation:

- 7 (1) Repairs for manufacturer or distributor special events, specials, coupons, or
8 other promotional discounts for retail customer repairs.
- 9 (2) Parts sold at wholesale or at reduced or specially negotiated rates for insurance
10 repairs.
- 11 (3) Engine and transmission assemblies.
- 12 (4) Routine maintenance, including fluids, filters, alignments, flushes, oil
13 changes, belts, and brake drums/rotors and shoes/pads not provided in the
14 course of repairs.
- 15 (5) Nuts, bolts, fasteners, and similar items that do not have an individual part
16 number.
- 17 (6) Tires and vehicle alignments.
- 18 (7) Vehicle reconditioning.
- 19 (8) Batteries and light bulbs.

20"

21 SEVERABILITY CLAUSE

22 **SECTION 10.** If any provision of this act or its application is held invalid, the
23 invalidity does not affect other provisions or applications of this act that can be given effect
24 without the invalid provisions or application and, to this end, the provisions of this act are
25 severable.
26

27 EFFECTIVE DATE

28 **SECTION 11.** This act is effective when it becomes law and applies to all current
29 and future franchises and other agreements in existence between any new motor vehicle dealer
30 located in this State and a manufacturer or distributor as of the effective date of this act.
31