

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 455

Short Title: Clarify Motor Vehicle Dealer Laws. (Public)

Sponsors: Representatives Ross and Wray (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Transportation, if favorable, Rules, Calendar, and Operations of the House

March 27, 2019

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 **UPDATE DEFINITIONS**

6 **SECTION 1.** G.S. 20-286 is amended by adding a new subdivision to read:

7 "(15a) Special tool or essential tool. – A tool designed by the manufacturer or
8 distributor and not readily available from another source that is utilized for the
9 purpose of performing service repairs on a motor vehicle sold by a
10 manufacturer or distributor to its franchised new motor vehicle dealers in this
11 State."

12
13 **CLARIFY DIAGNOSTIC EQUIPMENT EXCEPTION AND ADDRESS SPECIAL**
14 **TOOLS FOR SMALLER DEALERS**

15 **SECTION 2.(a)** G.S. 20-305(9) reads as rewritten:

16 "(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this
17 State to purchase ~~non-diagnostic~~ or lease computer equipment or programs
18 hardware or software used for any purpose other than the maintenance or
19 repair of motor vehicles, to participate monetarily in an advertising campaign
20 or contest, or to purchase unnecessary or unreasonable quantities of any
21 promotional materials, training materials, training programs, showroom or
22 other display decorations, materials, computer equipment or programs, or
23 special tools at the expense of the new motor vehicle dealer, provided that
24 nothing in this subsection shall preclude a manufacturer or distributor from
25 including an unitemized uniform charge in the base price of the new motor
26 vehicle charged to the dealer where such charge is attributable to advertising
27 costs incurred or to be incurred by the manufacturer or distributor in the
28 ordinary courses of its business. Notwithstanding the terms or conditions of
29 any franchise or other agreement, in lieu of purchasing or leasing any special
30 tools required by any manufacturer, factory branch, distributor, or distributor
31 branch, a dealer may share access to special tools with other dealers; provided,
32 however, that (i) all the participating dealers have franchises with the same
33 manufacturer, factory branch, distributor, or distributor branch, (ii) the
34 participating dealers share access to the special tools pursuant to a written
35 agreement executed by all of the participating dealers which lists with



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1 specificity all of the special tools to be shared, (iii) all of the participating
2 dealers are located within a 75-mile radius of one another, and (iv) the sharing
3 of tools will not unreasonably delay completion of repairs."

4 **SECTION 2.(b)** G.S. 20-305(46) reads as rewritten:

5 "(46) To require, coerce, or attempt to coerce a dealer located in this State to
6 purchase goods or services of any nature from a vendor selected, identified,
7 or designated by a manufacturer, distributor, affiliate, or captive finance
8 source when the dealer may obtain goods or services of substantially similar
9 quality and design from a vendor selected by the dealer, provided the dealer
10 obtains prior approval from the manufacturer, distributor, affiliate, or captive
11 finance source, for the use of the dealer's selected vendor. Such approval by
12 the manufacturer, distributor, affiliate, or captive finance source may not be
13 unreasonably withheld. For purposes of this subdivision, the term "goods"
14 does not include moveable displays, brochures, and promotional materials
15 containing material subject to the intellectual property rights of a
16 manufacturer or distributor, or special tools or parts as reasonably required by
17 the ~~manufacturer, or parts~~ manufacturer to be used in repairs under warranty
18 obligations of a manufacturer or distributor. If the manufacturer, distributor,
19 affiliate, or captive finance source claims that a vendor chosen by the dealer
20 cannot supply goods and services of substantially similar quality and design,
21 the dealer may file a protest with the Commissioner. When a protest is filed,
22 the Commissioner shall promptly inform the manufacturer, distributor,
23 affiliate, or captive finance source that a protest has been filed. The
24 Commissioner shall conduct a hearing on the merits of the protest within 90
25 days following the filing of a response to the protest. The manufacturer,
26 distributor, affiliate, or captive finance source shall bear the burden of proving
27 that the goods or services chosen by the dealer are not of substantially similar
28 quality and design to those required by the manufacturer, distributor, affiliate,
29 or captive finance source."
30

31 **AREA OF RESPONSIBILITY PROTEST RIGHTS**

32 **SECTION 3.** G.S. 20-305(38) reads as rewritten:

33 "(38) Notwithstanding the terms, provisions, or conditions of any agreement,
34 franchise, novation, waiver, or other written instrument, to assign or change a
35 franchised new motor vehicle dealer's area of responsibility under the
36 franchise arbitrarily or without due regard to the present or projected future
37 pattern of motor vehicle sales and registrations within the dealer's market and
38 without having provided the affected dealer with written notice of the change
39 in the dealer's area of responsibility and a detailed description of the change
40 in writing by registered or certified mail, return receipt requested. A
41 franchised new motor vehicle dealer who believes that a manufacturer, factory
42 branch, distributor, or distributor branch with whom the dealer has entered
43 into a franchise has assigned or changed the dealer's area of responsibility, is
44 proposing to assign or change the dealer's area of responsibility arbitrarily or
45 without due regard to the present or projected future pattern of motor vehicle
46 sales and registrations within the dealer's market, or failed to provide the
47 dealer with the notice required under this subdivision may file a petition
48 within 60 days of receiving notice of a manufacturer, factory branch,
49 distributor, or distributor branch's proposed assignment or change to the
50 dealer's area of responsibility and have an evidentiary hearing before the
51 Commissioner as provided in G.S. 20-301(b) contesting the franchised new

1 motor vehicle dealer's assigned area of responsibility. A franchised new motor
2 vehicle dealer who at any point in time believes that it is unreasonable for a
3 manufacturer, factory branch, distributor, or distributor branch with whom
4 that dealer has entered into a franchise to include one or more portions of the
5 dealer's existing area of responsibility previously assigned to that dealer by
6 the manufacturer, factory branch, distributor, or distributor branch may
7 request the elimination of the contested territory from the dealer's area of
8 responsibility by submitting the request in writing to the manufacturer, factory
9 branch, distributor, or distributor branch. The dealer's request shall be deemed
10 accepted by the manufacturer, factory branch, distributor, or distributor
11 branch if the manufacturer, factory branch, distributor, or distributor branch
12 has not sent the dealer notice of objection to the dealer's request via U.S.
13 registered or certified mail, return receipt requested, within 30 days after
14 receipt of the dealer's request. A dealer may file a petition within 60 days of
15 receiving notice from the manufacturer, factory branch, distributor, or
16 distributor branch of the manufacturer's rejection, in whole or in part, of the
17 dealer's request for the elimination of the contested territory from the dealer's
18 area of responsibility and have an evidentiary hearing before the
19 Commissioner as provided in G.S. 20-301(b) contesting the manufacturer's
20 rejection, in whole or in part, of the dealer's request for the elimination of the
21 contested territory from the franchised new motor vehicle dealer's assigned
22 area of responsibility. In determining at ~~the~~ an evidentiary hearing requested
23 under this subdivision whether ~~a manufacturer, factory branch, distributor, or~~
24 ~~distributor branch has assigned or changed the dealer's area of responsibility~~
25 ~~or is proposing to assign or change the dealer's area of responsibility~~ all or any
26 portion of the existing or proposed area of responsibility assigned to the dealer
27 is unreasonable or has been assigned arbitrarily or without due regard to the
28 present or projected future pattern of motor vehicle sales and registrations
29 within the dealer's market, the Commissioner may take into consideration the
30 relevant circumstances, including, but not limited to:

- 31 a. The investment of time, money, or other resources made for the
32 purpose of developing the market for the vehicles of the same
33 line-make in the existing or proposed area of responsibility by the
34 petitioning dealer, other same line-make dealers who would be
35 affected by the change in the area of responsibility, or by the
36 manufacturer, factory branch, distributor, distributor branch, or any
37 dealer or regional advertising association.
- 38 b. The present and future projected traffic patterns and drive times
39 between consumers and the same line-make franchised dealers of the
40 affected manufacturer, factory branch, distributor, or distributor
41 branch who are located within the market.
- 42 c. The historical and projected future pattern of new vehicle sales and
43 registrations of the affected manufacturer, factory branch, distributor,
44 or distributor branch within various portions of the area of
45 responsibility and within the market as a whole.
- 46 d. The growth or decline in population, density of population, and new
47 car registrations in the market.
- 48 e. If the affected manufacturer, factory branch, distributor, or distributor
49 branch has removed territory from a dealer's area of responsibility or
50 is proposing to remove territory from a dealer's area of responsibility,
51 the projected economic effects, if any, that these changes in the dealer's

1 area of responsibility will have on the petitioning dealer, other same
 2 line-make dealers, the public, and the manufacturer, factory branch,
 3 distributor, or distributor branch.

4 f. The projected effects that the changes in the petitioning dealer's area
 5 of responsibility that have been made or proposed by the affected
 6 manufacturer, manufacturer branch, distributor, or distributor branch
 7 will have on the consuming public within the market.

8 g. The presence or absence of natural geographical obstacles or
 9 boundaries, such as mountains and rivers.

10 h. The proximity of census tracts or other geographic units used by the
 11 affected manufacturer, factory branch, distributor, or distributor
 12 branch in determining same line-make dealers' respective areas of
 13 responsibility.

14 i. The public interest, consumer welfare, and customer convenience.

15 j. The reasonableness of the change or proposed change to the dealer's
 16 area of responsibility considering the benefits and harm to the
 17 petitioning dealer, other same line-make dealers, and the
 18 manufacturer, factory branch, distributor, or distributor branch.

19 At the evidentiary hearing before the Commissioner, the affected
 20 manufacturer, factory branch, distributor, or distributor branch shall have the
 21 burden of proving that all portions of its current or proposed area of
 22 responsibility for the petitioning franchised new motor vehicle dealer are
 23 reasonable in light of the present or projected future pattern of motor vehicle
 24 sales and registrations within the franchised new motor vehicle dealer's
 25 market. A policy or protocol of a manufacturer, factory branch, distributor, or
 26 distributor branch that determines a dealer's area of responsibility based solely
 27 on the proximity of census tracts or other geographic units to its franchised
 28 dealers and the existence of natural boundaries fails to satisfy the burden of
 29 proof on the affected manufacturer, factory branch, distributor, or distributor
 30 branch under this subdivision. Upon the filing of a petition before the
 31 Commissioner under this subdivision, any changes in the petitioning
 32 franchised new motor vehicle dealer's area of responsibility that have been
 33 proposed by the affected manufacturer, factory branch, distributor, or
 34 distributor branch shall be stayed during the pendency of the determination by
 35 the Commissioner. If a protest is or has been filed under G.S. 20-305(5) and
 36 the franchised new motor vehicle dealer's area of responsibility is included in
 37 the relevant market area under the protest, any protest filed under this
 38 subdivision shall be consolidated with that protest for hearing and joint
 39 disposition of all of the protests. Nothing in this subdivision shall apply to the
 40 determination of whether good cause exists for the establishment by a
 41 manufacturer, factory branch, distributor, or distributor branch of an
 42 additional new motor vehicle dealer or relocation of an existing new motor
 43 vehicle dealer, which shall be governed in accordance with the requirements
 44 and criteria contained in G.S. 20-305(5) and not this subdivision."
 45

46 **PERFORMANCE MEASURES**

47 **SECTION 4.** G.S. 20-305(51) reads as rewritten:

48 "(51) To establish, implement, or enforce criteria for measuring the sales or service
 49 performance of any of its franchised new motor vehicle dealers in this State
 50 ~~for the purpose of cancelling, terminating or nonrenewing a franchise~~
 51 ~~agreement which~~ that (i) are unfair, unreasonable, arbitrary, or inequitable; (ii)

1 do not consider available relevant and material local, State, and regional
 2 criteria, data, and facts. ~~Relevant facts, relevant~~ and material criteria, data, or
 3 facts include those of motor vehicle dealerships of comparable size in
 4 comparable markets; and (iii) if such performance measurement criteria are
 5 based, in whole or in part, on a survey, such survey must be based on a
 6 statistically significant and valid random sample. In any proceeding under this
 7 subdivision, the applicable manufacturer or distributor shall bear the burden
 8 of proof (i) with regard to all issues raised in the proceeding and (ii) that the
 9 dealer performance measurements comply with all of the provisions hereof
 10 and ~~are are~~, and have ~~been been~~, implemented and enforced uniformly by the
 11 applicable manufacturer or distributor among its franchised dealers in this
 12 State. In the event it is determined that the performance criteria employed by
 13 a manufacturer or distributor for measuring the sales, service, or customer
 14 satisfaction performance of any of its franchised motor vehicle dealers in this
 15 State ~~for the purpose of cancelling, terminating or nonrenewing a franchise~~
 16 ~~agreement~~ are unfair, unreasonable, arbitrary, or inequitable, or that the
 17 performance criteria does not consider available local, State, and regional
 18 criteria, data, and facts required in this subsection, or that the performance
 19 criteria have not been implemented and enforced uniformly by the ~~applicable~~
 20 manufacturer or distributor among its franchised dealers in this State, the
 21 performance criteria of the manufacturer or distributor may not constitute any
 22 part of the basis for a determination in any franchise-related decision
 23 pertaining to ~~whether good cause exists for the termination of a dealer's~~
 24 ~~franchise pursuant to G.S. 20-305(6)~~ any of the following:

- 25 a. Determining eligibility for compensation or any other benefits under
 26 any incentive, bonus, or other policy or program.
- 27 b. Whether to allow a dealer's proposed transfer of ownership, change in
 28 executive management, or relocation pursuant to subdivision (4) of
 29 this section.
- 30 c. Whether good cause exists for the establishment of an additional new
 31 motor vehicle dealer or relocation of an existing dealer pursuant to
 32 subdivision (5) of this section.
- 33 d. Whether good cause exists for the termination of a dealer's franchise
 34 pursuant to subdivision (6) of this section.
- 35 e. Whether to allow appointment of a designated successor to a franchise
 36 pursuant to subdivision (7) of this section."

38 DEALER'S RIGHT TO SELL PARTS AND ACCESSORIES OVER THE INTERNET

39 SECTION 5. G.S. 20-305 is amended by adding a new subdivision to read:

40 "(52) To prohibit or to in any way limit or restrict a dealer from selling over the
 41 Internet, including online e-commerce marketplaces, parts and accessories
 42 obtained by the dealer from the manufacturer, factory branch, distributor, or
 43 distributor branch, or from any source recommended or approved by the
 44 manufacturer, factory branch, distributor, or distributor branch."

46 AUDITS LIMITED TO ONE PER 12-MONTH PERIOD/PROHIBITION ON 47 CONTINGENCY AUDITS

48 SECTION 6. G.S. 20-305.1 reads as rewritten:

49 "§ 20-305.1. Automobile dealer warranty and recall obligations.

50 ...

1 (b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor
2 vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of
3 its warranty or recall obligations with respect to a motor vehicle, to fail to fully compensate its
4 motor vehicle dealers licensed in this State for a qualifying used motor vehicle pursuant to
5 subsections (i) and (j) of this section or warranty and recall parts other than parts used to repair
6 the living facilities of recreational vehicles, including motor homes, travel trailers, fifth-wheel
7 trailers, camping trailers, and truck campers as defined in G.S. 20-4.01(32b), at the prevailing
8 retail rate according to the factors in subsection (a) of this section, or, in service in accordance
9 with the schedule of compensation provided the dealer pursuant to subsection (a) of this section,
10 or to otherwise recover all or any portion of its costs for compensating its motor vehicle dealers
11 licensed in this State for warranty or recall parts and service or for payments for a qualifying
12 used motor vehicle pursuant to subsections (i) and (j) of this section either by reduction in the
13 amount due to the dealer, or by separate charge, surcharge, or other imposition, and to fail to
14 indemnify and hold harmless its franchised dealers licensed in this State against any judgment
15 for damages or settlements agreed to by the manufacturer, including, but not limited to, court
16 costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims
17 or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or
18 implied warranty, or rescission or revocation of acceptance of the sale of a motor vehicle as defined
19 in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective
20 negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other
21 functions by the manufacturer, factory branch, distributor or distributor branch, beyond the
22 control of the dealer. Any audit for warranty or recall parts or service compensation, or
23 compensation for a qualifying used motor vehicle in accordance with subsections (i) and (j) of
24 this section may only be conducted one time within any 12-month period and shall only be for
25 the 12-month period immediately following the date of the payment of the claim by the
26 manufacturer, factory branch, distributor, or distributor branch. Any audit for sales incentives,
27 service incentives, rebates, or other forms of incentive compensation may only be conducted one
28 time within any 12-month period and shall only be for the 12-month period immediately
29 following the date of the payment of the claim by the manufacturer, factory branch, distributor,
30 or distributor branch pursuant to a sales incentives program, service incentives program, rebate
31 program, or other form of incentive compensation program. Provided, however, these limitations
32 shall not be effective in the case of fraudulent claims.

33 ...

34 (5) Any audit of a dealer by a manufacturer for sales or leases made to exporters
35 or brokers may only be conducted one time within any 12-month period and
36 shall only be for the 12-month period immediately preceding the audit.

37 (b4) Any person or other entity employed or contracted by a manufacturer, factory branch,
38 distributor, or distributor branch to conduct an audit of a motor vehicle dealer regulated by this
39 section shall comply with all the requirements of this section. It shall be unlawful for any
40 manufacturer, factory branch, distributor, or distributor branch to contract with or employ any
41 person or other entity to conduct an audit of any motor vehicle dealer located in this State
42 regulated under this section for which the person or other entity conducting the audit of the dealer
43 would be in any part compensated on the basis of the dollar amount, volume, or number of
44 chargebacks that would result to the dealer from the audit."

45 MOTOR VEHICLE SUBSCRIPTIONS

46 SECTION 7. G.S. 20-305.2(a) reads as rewritten:

47 "(a) It is unlawful for any motor vehicle manufacturer, factory branch, distributor,
48 distributor branch, or subsidiary thereof, to directly or indirectly through any subsidiary or
49 affiliated entity, own any ownership interest in, operate, or control any motor vehicle dealership
50

1 in this State, State that offers motor vehicles for sale, lease, or subscription provided that this
2 section shall not be construed to prohibit:"
3

4 DEALERSHIP DATA

5 SECTION 8. G.S. 20-305.7 reads as rewritten:

6 "(a) Except as expressly authorized in this section, no manufacturer, factory branch,
7 distributor, or distributor branch shall require a new motor vehicle dealer to provide its customer
8 lists, customer information, consumer contact information, transaction data, or service files. Any
9 requirement by a manufacturer, factory branch, distributor, or distributor branch that a new motor
10 vehicle dealer provide its customer lists, customer information, consumer contact information,
11 transaction data, or service files to the manufacturer, factory branch, distributor, or distributor
12 branch, or to any third party as a condition to the dealer's participation in any incentive program
13 or contest that is either required or voluntary on the part of the dealer, for a customer or dealer to
14 receive any incentive payments otherwise earned under an incentive program or contest, for the
15 dealer to obtain consumer or customer leads, or for the dealer to receive any other benefits, rights,
16 merchandise, or services for which the dealer would otherwise be entitled to obtain under the
17 franchise or any other contract or agreement, or which shall customarily be provided to dealers,
18 shall be ~~voidable at the option of the dealer, void and the dealer shall automatically be entitled to~~
19 the benefits offered under the applicable incentive program or contest or any other contract or
20 agreement, unless all of the following conditions are satisfied: (i) the customer information
21 requested relates solely to the specific program requirements or goals associated with such
22 manufacturer's or distributor's own vehicle makes and does not require that the dealer provide
23 general customer information or other information related to the dealer; (ii) such requirement is
24 lawful and would also not require the dealer to allow any customer the right to opt out under the
25 federal Gramm-Leach-Bliley Act, 15 U.S.C., Subchapter I, § 1608, et seq.; and (iii) the dealer is
26 ~~not required to allow the manufacturer or distributor or any third party to have direct access to is~~
27 either permitted to restrict the data fields that may be accessed in the dealer's computer system,
28 ~~but or the dealer is instead~~ permitted to provide the same dealer, consumer, or customer data or
29 information specified by the manufacturer or distributor by timely obtaining and pushing or
30 otherwise furnishing the required data in a widely accepted file format such as comma delimited
31 in accordance with subsection (g1) of this section. Nothing contained in this section shall limit
32 the ability of the manufacturer, factory branch, distributor, or distributor branch to require that
33 the dealer provide, or use in accordance with the law, such customer information related solely
34 to such manufacturer's or distributor's own vehicle makes to the extent necessary to do any of the
35 following:

- 36 (1) Satisfy any safety or recall notice obligations.
- 37 (2) Complete the sale and delivery of a new motor vehicle to a customer.
- 38 (3) Validate and pay customer or dealer incentives.
- 39 (4) Submit to the manufacturer, factory branch, distributor, or distributor branch
40 claims for any services supplied by the dealer for any claim for warranty parts
41 or repairs.

42 At the request of a manufacturer or distributor or of a third party acting on behalf of a
43 manufacturer or distributor, a dealer may only be required to provide customer information
44 related solely to such manufacturer's or distributor's own vehicle makes for reasonable marketing
45 purposes, market research, consumer surveys, market analysis, and dealership performance
46 analysis, but the dealer is only required to provide such customer information to the extent
47 lawfully permissible; to the extent the requested information relates solely to specific program
48 requirements or goals associated with such manufacturer's or distributor's own vehicle makes and
49 does not require the dealer to provide general customer information or other information related
50 to the dealer; and to the extent the requested information can be provided without requiring that

1 the dealer allow any customer the right to opt out under the federal Gramm-Leach-Bliley Act, 15
2 U.S.C., Subchapter I, § 6801, et seq.

3 No manufacturer, factory branch, distributor, or distributor branch shall access or obtain
4 dealer or customer data from or write dealer or customer data to a dealer management computer
5 system utilized by a motor vehicle dealer located in this State, or require or coerce a motor vehicle
6 dealer located in this State to utilize a particular dealer management computer system, unless the
7 dealer management computer system allows the dealer to reasonably maintain the security,
8 integrity, and confidentiality of the data maintained in the system. No manufacturer, factory
9 branch, distributor, distributor branch, dealer management computer system vendor, or any third
10 party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or
11 dealer management computer system vendor shall prohibit a dealer from providing a means to
12 regularly and continually monitor the specific data accessed from or written to the dealer's
13 computer system and from complying with applicable State and federal laws and any rules or
14 regulations promulgated thereunder. These provisions shall not be deemed to impose an
15 obligation on a manufacturer, factory branch, distributor, distributor branch, dealer management
16 computer system vendor, or any third party acting on behalf of any manufacturer, factory branch,
17 distributor, distributor branch, or dealer management computer system vendor to provide such
18 capability. Notwithstanding the terms or conditions of any incentive program or contest that is
19 either required or voluntary on the part of the dealer, or the terms or conditions of any other
20 contract or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or
21 distributor branch to fail or refuse to provide dealer notice, in a standalone written document, at
22 least 60 days prior to making any changes in any of the dealer or customer data the dealer is
23 requested or required to share with a manufacturer, factory branch, distributor, or distributor
24 branch, or any third party. The changes in any of the dealer or customer data the dealer is required
25 or requested to provide shall be void unless the applicable manufacturer, factory branch,
26 distributor, or distributor branch complies with the notice requirements contained in this
27 paragraph.

28 ...

29 (b1) It shall be unlawful for any manufacturer, factory branch, distributor, distributor
30 branch, dealer management computer system vendor, or any third party having access to any
31 dealer management computer system, to:

32 (1) Take any action, by contract, by technical means, or otherwise, that would
33 prohibit or limit a dealer's ability to protect, store, copy, share, or use any
34 customer or dealer information maintained in a dealer management computer
35 system utilized by a new motor vehicle dealer located in this State. Unlawful
36 conduct prohibited by this section includes, but is not limited to:

37 a. Imposing any unreasonable fees or other restrictions of any kind on
38 the dealer or any third party for access to or sharing of customer or
39 dealer information, or for writing data to a dealer management
40 computer system. For purposes of this section, the term "unreasonable
41 fees" means charges for access to customer or dealer data beyond any
42 direct costs incurred by any dealer management computer system
43 vendor in providing access to the dealer's customer or dealer data to a
44 third party that the dealer has authorized to access its dealer
45 management computer system or allowing any third party that the
46 dealer has authorized to access its dealer management computer
47 system to write data to its dealer management computer system. Any
48 charges must be (i) disclosed to the dealer and (ii) justified by
49 documentary evidence of the costs associated with access or it will be
50 deemed a prohibited unreasonable fee under this section.

- 1 b. Prohibiting any third party that the dealer has authorized to access its
2 dealer management computer system from integrating into that
3 dealer's dealer management computer system, or placing unreasonable
4 restrictions on integration by any authorized third party that the dealer
5 has selected to access its dealer management computer system.
6 Examples of unreasonable restrictions include, but are not limited to,
7 any of the following:
- 8 1. Unreasonable restrictions on the scope or nature of the data
9 shared with a third party authorized by the dealer to access the
10 dealer's dealer management computer system.
- 11 2. Unreasonable restrictions on the ability of a third party
12 authorized by the dealer to access the dealer's dealer
13 management computer system to write data to a dealer
14 management computer system.
- 15 3. Unreasonable restrictions or conditions on a third party
16 authorized by the dealer to access the dealer's dealer
17 management computer system to share customer or dealer
18 information.
- 19 4. Requiring unreasonable access to sensitive, competitive, or
20 other confidential business information of a third party as a
21 condition for access to customer or dealer information or
22 sharing customer or dealer information with any third party
23 authorized by the dealer to access the dealer's dealer
24 management computer system.
- 25 c. Prohibiting or limiting a dealer's ability to store, copy, securely share,
26 or use customer or dealer information outside the dealer's dealer
27 management computer system in any manner and for any reason.
- 28 d. Permitting access to or accessing customer or dealer information
29 without first obtaining the dealer's express written consent in a
30 standalone document.
- 31 (2) Engage in any act of cyber ransom. For purposes of this section, the term
32 "cyber ransom" shall mean to encrypt, restrict or prohibit access, or threaten
33 or attempt to encrypt, restrict, or prohibit access to a dealer's customer or
34 dealer data for monetary gain or for political or ideological purposes.
- 35 (b2) It is unlawful for any dealer management computer system vendor or other third party
36 who has access to any dealer management computer system to fail or refuse to:
- 37 (1) Adopt and make available a standardized framework for the exchange,
38 integration, and sharing of data from dealer management computer systems
39 with any party authorized to access a dealer management computer system,
40 and retrieval of such data by any party authorized to access a dealer
41 management computer system (use of the Standards for Technology in
42 Automotive Retail (STAR) or a standard compatible with the STAR Standards
43 shall be deemed to be in compliance with this requirement).
- 44 (2) Provide access to open application programming interfaces (APIs) to any
45 party authorized to access a dealer management computer system. In the event
46 that APIs are no longer the reasonable commercial or technical standard for
47 secure data integration, a similar open access integration method may be
48 provided, to the extent it provides the same or better access to any party
49 authorized to access a dealer management computer system as an API and
50 utilizes the required standardized framework.

- 1 (3) Access, use, store, or share any data from a dealer management computer
 2 system only to the extent permitted in its written agreement with the dealer.
 3 (4) Make any agreement regarding access to, sharing or selling of, copying, using,
 4 or transmitting data on any dealer management computer system terminable
 5 upon no more than 90 days' notice from the dealer.
 6 (5) Upon receipt of notice of the dealer's intent to terminate its contract and in
 7 order to prevent any risk of consumer harm or inconvenience, work to ensure
 8 a secure transition to a successor dealer management computer system vendor
 9 or any other party authorized to access a dealer management computer system.
 10 This includes, but is not limited to: (i) providing unrestricted access to all data
 11 maintained on the dealer management computer system in a commercially
 12 reasonable time and format that a successor dealer management computer
 13 system vendor or other party authorized to access a dealer management
 14 computer system can access and use and (ii) returning to the dealer all
 15 confidential or proprietary information obtained from the dealer management
 16 computer system prior to termination of the contract pursuant to any written
 17 directions of the dealer.
 18 (6) Promptly provide a dealer, upon the dealer's request, with a listing of all
 19 entities with whom it is sharing any data from the dealer management
 20 computer system, or to whom it has allowed access to any data from the dealer
 21 management computer system.
 22 (7) Allow and facilitate a dealer to audit the dealer management computer system
 23 vendor's access and use of its dealer management computer system and any
 24 data obtained or obtainable from its dealer management computer system.
 25 (b3) The rights conferred on dealers in this section are not waivable and may not be
 26 reduced or otherwise modified by any contract or agreement.
 27 "

29 STANDING TO INITIATE AN ACTION

30 SECTION 9. G.S. 20-308.1(d) reads as rewritten:

31 "(d) Any association that is comprised of a minimum of 400 new motor vehicle dealers,
 32 or a minimum of 10 motorcycle dealers, substantially all of whom are new motor vehicle dealers
 33 located within North Carolina, and which represents the collective interests of its members, shall
 34 have standing to initiate an action or participate as a party to any civil or administrative
 35 proceeding in any of the courts or administrative agencies of this State, including the right to file
 36 a petition before the Commissioner or a cause of action in any court of competent jurisdiction for
 37 itself, or on behalf of any or all of its members, seeking declaratory and injunctive relief. ~~Prior~~
 38 to bringing an action, the association and manufacturer, factory branch, distributor, or distributor
 39 branch shall initiate mediation as set forth in G.S. 20-301.1(b). An action brought pursuant to
 40 this subsection may seek a determination whether one or more manufacturers, factory branches,
 41 distributors, or distributor branches doing business in this State have violated any of the
 42 provisions of this Article, or for the determination of any rights created or defined by this Article,
 43 so long as the association alleges an injury to the collective interest of its members cognizable
 44 under this section. A cognizable injury to the collective interest of the members of the association
 45 shall be deemed to occur if a manufacturer, factory branch, distributor, or distributor branch
 46 doing business in this State ~~has engaged in any conduct or taken any action which actually harms~~
 47 ~~or affects all of the franchised new motor vehicle dealers holding franchises with that~~
 48 ~~manufacturer, factory branch, distributor, or distributor branch in this State.~~ engages in any
 49 conduct or takes any action which has harmed or would harm or which has affected or would
 50 affect all or a substantial number of franchised new motor vehicle dealers in this State. With
 51 respect to any administrative or civil action filed by an association pursuant to this subsection,

1 the relief granted shall be limited to declaratory and injunctive relief and in no event shall the
2 Commissioner or court enter an award of monetary damages."
3

4 **SEVERABILITY CLAUSE**

5 **SECTION 10.** If any provision of this act or its application is held invalid, the
6 invalidity does not affect other provisions or applications of this act that can be given effect
7 without the invalid provisions or application, and to this end the provisions of this act are
8 severable.
9

10 **EFFECTIVE DATE**

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