

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

H.B. 649  
Apr 22, 2021  
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH30180-MW-68B

Short Title: Clarify Motor Vehicle Franchise Laws.

(Public)

Sponsors: Representative B. Jones.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO REVISE AND CLARIFY THE LAWS GOVERNING NEW MOTOR VEHICLE  
3 DEALER FRANCHISES.

4 The General Assembly of North Carolina enacts:

5  
6 **DEALERSHIP TRANSFERS/RIGHT OF FIRST REFUSAL CLARIFICATION**

7 **SECTION 1.(a)** G.S. 20-305(4) reads as rewritten:

8 "(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to  
9 approve the sale or transfer of the ownership of a dealership by the sale of the  
10 business, stock transfer, or otherwise, or the transfer, sale or assignment of a  
11 dealer franchise, or a change in the executive management or principal  
12 operator of the dealership, change in use of an existing facility to provide for  
13 the sales or service of one or more additional line-makes of new motor  
14 vehicles, or relocation of the dealership to another site within the dealership's  
15 relevant market area, if the Commissioner has determined, if requested in  
16 writing by the dealer within 30 days after receipt of an objection to the  
17 proposed transfer, sale, assignment, relocation, or change, and after a hearing  
18 on the matter, that the failure to permit or honor the transfer, sale, assignment,  
19 relocation, or change is unreasonable under the circumstances.

20 a. No franchise may be transferred, sold, assigned, relocated, or the  
21 executive management or principal operators changed, or the use of an  
22 existing facility changed, unless the franchisor has been given at least  
23 30 days' prior written notice ~~as to the~~ of all of the following:

- 24 1. The proposed transferee's name and address, financial ability,  
25 and qualifications of the proposed transferee, a copy of the  
26 purchase agreement between the dealership and the proposed  
27 transferee, the transferee.  
28 2. The identity and qualifications of the persons proposed to be  
29 involved in executive management or as principal operators,  
30 and the operators.  
31 3. The location and site plans of any proposed relocation or  
32 change in use of a dealership facility.

33 b. The If the franchisor objects to the proposed transfer, sale, assignment,  
34 relocation, or change, the franchisor shall send the dealership and the  
35 proposed transferee notice of objection, by registered or certified mail,  
36 return receipt requested, to the proposed transfer, sale, assignment,



1 relocation, or change within 30 days after receipt of notice from the  
2 dealer, as provided in this section. The notice of objection shall state  
3 in detail all factual and legal bases for the objection on the part of the  
4 franchisor to the proposed transfer, sale, assignment, relocation, or  
5 change that is specifically referenced in this subdivision. An objection  
6 to a proposed transfer, sale, assignment, relocation, or change in the  
7 executive management or principal operator of the dealership or  
8 change in the use of the facility may only be premised upon the factual  
9 and legal bases specifically referenced in this subdivision or  
10 G.S. 20-305(11), as it relates to change in the use of a facility. A  
11 manufacturer's notice of objection which is based upon factual or legal  
12 issues that are not specifically referenced in this subdivision or  
13 G.S. 20-305(11) with respect to a change in the use of an existing  
14 facility as being issues upon which the Commissioner shall base his  
15 determination shall not be effective to preserve the franchisor's right  
16 to object to the proposed transfer sale, assignment, relocation, or  
17 change, provided the dealership or proposed transferee has submitted  
18 written notice, as required above, as to the proposed transferee's name  
19 and address, financial ability, and qualifications of the proposed  
20 transferee, a copy of the purchase agreement between the dealership  
21 and the proposed transferee, the identity and qualifications of the  
22 persons proposed to be involved in the executive management or as  
23 principal operators, and the location and site plans of any proposed  
24 relocation or change in the use of an existing facility.

25 c. Failure by the franchisor to send notice of objection within 30 days  
26 shall constitute waiver by the franchisor of any right to object to the  
27 proposed transfer, sale, assignment, relocation, or change. If the  
28 franchisor requires additional information to complete its review, the  
29 franchisor shall notify the dealership within 15 days after receipt of the  
30 ~~proposed transferee's name and address, financial ability, and~~  
31 ~~qualifications, a copy of the purchase agreement between the~~  
32 ~~dealership and the proposed transferee, the identity and qualifications~~  
33 ~~of the persons proposed to be involved in executive management or as~~  
34 ~~principal operators, and the location and site plans of any proposed~~  
35 ~~relocation or change in use of the dealership facility. notice to~~  
36 franchisor under sub-subdivision a. of this subdivision. If the  
37 franchisor fails to request additional information from the dealer or  
38 proposed transferee within 15 days of receipt of this initial  
39 information, the 30-day time period within which the franchisor may  
40 provide notice of objection shall be deemed to run from the initial  
41 receipt date. Otherwise, the 30-day time period within which the  
42 franchisor may provide notice of objection shall run from the date the  
43 franchisor has received the supplemental information requested from  
44 the dealer or proposed transferee; provided, however, that failure by  
45 the franchisor to send notice of objection within 60 days of the  
46 franchisor's receipt of the initial information from the dealer shall  
47 constitute waiver by the franchisor of any right to object to the  
48 proposed transfer, sale, assignment, relocation, or change.

49 d. With respect to a proposed transfer of ownership, sale, or assignment,  
50 the sole issue for determination by the Commissioner and the sole  
51 issue upon which the Commissioner shall hear or consider evidence is

1 whether, by reason of lack of good moral character, lack of general  
2 business experience, or lack of financial ability, the proposed  
3 transferee is unfit to own the dealership. For purposes of this  
4 subdivision, the refusal by the manufacturer to accept a proposed  
5 transferee who is of good moral character and who otherwise meets  
6 the written, reasonable, and uniformly applied business experience and  
7 financial requirements, if any, required by the manufacturer of owners  
8 of its franchised automobile dealerships is presumed to demonstrate  
9 the manufacturer's failure to prove that the proposed transferee is unfit  
10 to own the dealership.

11 e. With respect to a proposed change in the executive management or  
12 principal operator of the dealership, the sole issue for determination  
13 by the Commissioner and the sole issue on which the Commissioner  
14 shall hear or consider evidence shall be whether, by reason of lack of  
15 training, lack of prior experience, poor past performance, or poor  
16 character, the proposed candidate for a position within the executive  
17 management or as principal operator of the dealership is unfit for the  
18 position. For purposes of this subdivision, the refusal by the  
19 manufacturer to accept a proposed candidate for executive  
20 management or as principal operator who is of good moral character  
21 and who otherwise meets the written, reasonable, and uniformly  
22 applied standards or qualifications, if any, of the manufacturer relating  
23 to the business experience and prior performance of executive  
24 management required by the manufacturers of its dealers is presumed  
25 to demonstrate the manufacturer's failure to prove the proposed  
26 candidate for executive management or as principal operator is unfit  
27 to serve the capacity.

28 f. With respect to a proposed change in use of a dealership facility to  
29 provide for the sales or service of one or more additional line-makes  
30 of new motor vehicles, the sole issue for determination by the  
31 Commissioner is whether the new motor vehicle dealer has a  
32 reasonable line of credit for each make or line of motor vehicle and  
33 remains in compliance with any reasonable capital standards and  
34 facilities requirements of the manufacturer or distributor. The  
35 reasonable facilities requirements of the manufacturer or distributor  
36 shall not include any requirement that a new motor vehicle dealer  
37 establish or maintain exclusive facilities, personnel, or display space.

38 g. With respect to a proposed relocation or other proposed change, the  
39 issue for determination by the Commissioner is whether the proposed  
40 relocation or other change is unreasonable under the circumstances.  
41 For purposes of this subdivision, the refusal by the manufacturer to  
42 agree to a proposed relocation which meets the written, reasonable,  
43 and uniformly applied standards or criteria, if any, of the manufacturer  
44 relating to dealer relocations is presumed to demonstrate that the  
45 manufacturer's failure to prove the proposed relocation is unreasonable  
46 under the circumstances.

47 h. The manufacturer shall have the burden of proof before the  
48 Commissioner under this subdivision.

49 i. It is unlawful for a manufacturer to, in any way, ~~condition its do any~~  
50 of the following:



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"(7) Notwithstanding the terms of any contract or agreement, to prevent or refuse to honor the succession to a dealership, including the franchise, by a motor vehicle dealer's designated successor as provided for under this subsection.

...

b. Any objections by a manufacturer or distributor to an owner's appointment of a designated successor shall be asserted in accordance with the following procedure:

1. Within 30 days after receiving written notice of the identity of the owner's designated successor and general information as to the financial ability and general business qualifications of the designated successor, the franchisor shall send the owner and designated successor notice of objection, by registered or certified mail, return receipt requested, to the appointment of the designated successor. The notice of objection shall state in detail all facts which constitute the basis for the contention on the part of the manufacturer or distributor that good cause, as defined in this sub-subdivision below, exists for rejection of the designated successor. Failure by the franchisor to send notice of objection within 30 days and otherwise as provided in this sub-subdivision shall constitute waiver by the franchisor of any right to object to the appointment of the designated successor.

...

3. The Commissioner shall endeavor to hold the evidentiary hearing required under this sub-subdivision and render a determination within 180 days after receipt of the written request from the owner or designated successor. In determining whether good cause exists for rejection of the owner's appointed designated successor, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or ~~does not meet the franchisor's existing written and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area.~~ does not possess reasonable minimum general business experience.

...

5. Nothing in this sub-subdivision shall preclude a manufacturer or distributor from, upon its receipt of written notice from an owner of the identity of the owner's designated successor, requiring that the designated successor promptly provide personal and financial data that is reasonably necessary to determine the financial ability and general business qualifications of the designated successor; provided, however, that such a request for additional information shall not delay any of the time periods or constraints contained herein.

...

d. Within 60 days after the death or incapacity of the owner or principal operator, a designated successor appointed in substantial compliance with this section shall give the affected manufacturer or distributor written notice of his or her succession to the position of owner or

1 principal operator of the new motor vehicle dealership; provided,  
2 however, that the failure of the designated successor to give the  
3 manufacturer or distributor written notice as provided above within 60  
4 days of the death or incapacity of the owner or principal operator shall  
5 not result in the waiver or termination of the designated successor's  
6 right to succeed to the ownership of the new motor vehicle dealership  
7 unless the manufacturer or distributor gives written notice of this  
8 provision to either the designated successor or the deceased or  
9 incapacitated owner's executor, administrator, guardian or other  
10 fiduciary by certified or registered mail, return receipt requested, and  
11 said written notice grants not less than 30 ~~days~~ time ~~days~~ within which  
12 the designated successor may give the notice required hereunder,  
13 provided the designated successor or the deceased or incapacitated  
14 owner's executor, administrator, guardian or other fiduciary has given  
15 the manufacturer reasonable notice of death or incapacity. Within 30  
16 days of receipt of the notice by the manufacturer or distributor from  
17 the designated successor provided in this sub-subdivision, the  
18 manufacturer or distributor may request that the designated successor  
19 complete the application forms generally utilized by the manufacturer  
20 or distributor to review the designated successor's general business  
21 qualifications to establish a successor dealership. Within 30 days of  
22 receipt of the completed forms, the manufacturer or distributor shall  
23 send a letter by certified or registered mail, return receipt requested,  
24 advising the designated successor of facts and circumstances which  
25 have changed since the manufacturer's or distributor's original  
26 approval of the designated successor, and which have caused the  
27 manufacturer or distributor to object to the designated successor. Upon  
28 receipt of such notice, the designated successor may either designate  
29 an alternative successor or may file a request for evidentiary hearing  
30 in accordance with the procedures provided in sub-subdivisions b.2. –  
31 5. of this subdivision. In any such hearing, the manufacturer or  
32 distributor shall be limited to facts and circumstances which did not  
33 exist at the time the designated successor was originally approved or  
34 evidence which was originally requested to be produced by the  
35 designated successor at the time of the original request and was  
36 fraudulent.

37 e. The designated successor shall agree to be bound by all terms and  
38 conditions of the franchise in effect between the manufacturer or  
39 distributor and the owner at the time of the owner's or principal  
40 operator's death or incapacity, if so requested in writing by the  
41 manufacturer or distributor subsequent to the owner's or principal  
42 operator's death or incapacity.

43 f. This section does not preclude an owner of a new motor vehicle  
44 dealership from designating any person as his or her successor by  
45 written instrument filed with the manufacturer or distributor, and, in  
46 the event there is an inconsistency between the successor named in  
47 such written instrument and the designated successor otherwise  
48 appointed by the owner consistent with the provisions of this section,  
49 and that written instrument has not been revoked by the owner of the  
50 new motor vehicle dealership in writing to the manufacturer or  
51 distributor, then the written instrument filed with the manufacturer or

1 distributor shall govern as to the appointment of the successor. The  
2 failure or refusal of the designated successor to agree to any terms or  
3 provisions that are in addition to or that vary from any of the terms or  
4 provisions contained in the existing franchise between the parties shall  
5 not constitute good cause for the manufacturer or distributor to object  
6 to the designated successor.

7 ...."

8 **SECTION 1.(c)** G.S. 20-305(18) reads as rewritten:

9 "(18) To prevent or attempt to prevent a dealer from receiving fair and reasonable  
10 compensation for the value of the franchised business transferred in  
11 accordance with G.S. 20-305(4) above, or to prevent or attempt to prevent,  
12 through the exercise of any contractual right of first refusal or otherwise, a  
13 dealer located in this State from either (i) transferring the franchised business  
14 to such persons or other entities as the dealer shall designate in accordance  
15 with ~~G.S. 20-305(4)~~-G.S. 20-305(4) or (ii) purchasing, entering into an option  
16 to purchase, or complying with any subjective standards or asserting any legal  
17 or equitable rights relating to the franchise. The opinion or determination of a  
18 manufacturer that the existence or location of one of its franchised dealers  
19 situated in this State is not viable or is not consistent with the manufacturer's  
20 distribution or marketing forecast or plans shall not constitute a lawful basis  
21 for the manufacturer to fail or refuse to approve a dealer's proposed transfer  
22 of ownership submitted in accordance with G.S. 20-305(4), or "good cause"  
23 for the termination, cancellation, or nonrenewal of the franchise under  
24 G.S. 20-305(6) or grounds for the objection to an owner's designated  
25 successor appointed pursuant to G.S. 20-305(7)."

## 27 **ELECTRIC VEHICLES/FACILITATE SALES OF ELECTRIC VEHICLES**

28 **SECTION 2.(a)** G.S. 20-305(6)g. reads as rewritten:

29 "g. A franchise shall continue in full force and operation notwithstanding  
30 a change, in whole or in part, of an established plan or system of  
31 distribution of the motor vehicles offered for sale under the franchise.  
32 The appointment of a new manufacturer, factory branch, distributor,  
33 or distributor branch for motor vehicles offered for sale under the  
34 franchise agreement or the establishment of a separate franchise that  
35 sells or distributes exclusively or primarily electric vehicles shall be  
36 deemed to be a change of an established plan or system of distribution.

37 Upon the occurrence of the change, the Division shall deny an  
38 application of a manufacturer, factory branch, distributor, or  
39 distributor branch for a license or license renewal unless the applicant  
40 for a license as a manufacturer, factory branch, distributor, or  
41 distributor branch offers to each motor vehicle dealer who is a party to  
42 a franchise for that ~~line make line-make~~, without any separate or  
43 additional fee or charge, a new franchise agreement containing  
44 substantially the same provisions which were contained in the  
45 previous franchise agreement or files an affidavit with the Division  
46 acknowledging its undertaking to assume and ~~fulfill~~-fulfill, without  
47 any separate or additional fee or charge to its dealers, the rights, duties,  
48 and obligations of its predecessor under the previous franchise  
49 agreement. Should the Division fail to deny an application following  
50 the change, as required by this subsection, the Division shall then deny  
51 any subsequent renewal of such license until such time as the

1 manufacturer, factory branch, distributor, or distributor branch offers  
2 to each motor vehicle dealer who is a party to a franchise for that  
3 line-make a new franchise agreement on substantially the same  
4 provisions which were contained in the previous franchise agreement."

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

6 "(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this  
7 State to purchase or lease a specific dealer management computer system for  
8 communication with the manufacturer, factory branch, distributor, or  
9 distributor branch or any computer hardware or software used for any purpose  
10 other than the maintenance or repair of motor vehicles, to participate  
11 monetarily in an advertising campaign or contest, or to purchase unnecessary  
12 or unreasonable quantities of any promotional materials, training materials,  
13 training programs, showroom or other display decorations, materials,  
14 computer equipment or programs, or special tools at the expense of the new  
15 motor vehicle dealer, provided that nothing in this subsection shall preclude a  
16 manufacturer or distributor from including an unitemized uniform charge in  
17 the base price of the new motor vehicle charged to the dealer where such  
18 charge is attributable to advertising costs incurred or to be incurred by the  
19 manufacturer or distributor in the ordinary courses of its business.

20 Notwithstanding the terms or conditions of any franchise or other  
21 agreement, policy, or incentive program, it is unlawful for any manufacturer  
22 or distributor to require, coerce, or attempt to coerce any of its franchised  
23 dealers in this State to either (i) purchase or lease any electric vehicle charging  
24 stations at the dealer's expense unless the dealer is actually offering for sale to  
25 the public or providing warranty service on electric vehicles manufactured or  
26 distributed by that manufacturer or distributor or (ii) purchase or lease, at the  
27 dealer's expense, more than one electric vehicle charging station per  
28 dealership location owned by the dealer.

29 Notwithstanding the terms or conditions of any franchise or other  
30 agreement, policy, or incentive program, it is unlawful for any manufacturer  
31 or distributor to require that any of its franchised dealers in this State purchase  
32 or lease any diagnostic equipment or tool for the maintenance, servicing, or  
33 repair of electric vehicles if the dealer has other diagnostic equipment or tools  
34 available that can perform the work to the standards required by the applicable  
35 manufacturer or distributor. To the extent practicable, manufacturers and  
36 distributors having franchised dealers in this State that sell or service multiple  
37 brands of electric vehicles manufactured or distributed by the same  
38 manufacturer or distributor are required to design, manufacture, and distribute  
39 diagnostic equipment, tools, and parts that can be used interchangeably with  
40 all brands of electric vehicles sold or distributed to their dealers in this State.

41 Notwithstanding the terms or conditions of any franchise or other  
42 agreement, a franchised dealer that sells fewer than 250 new motor vehicles  
43 per year may request approval from the manufacturer to enter into a tool loaner  
44 agreement with another dealer, in lieu of purchasing or leasing any special  
45 tools required by any manufacturer, factory branch, distributor, or distributor  
46 branch, provided, however, that all of the following conditions are satisfied:

47 ...."

48 **SECTION 2.(c)** G.S. 20-286(10) reads as rewritten:

49 "(10) Motor vehicle. – Any motor propelled vehicle, regardless of the size and type  
50 of motor, source of power, or mode of operation, trailer or semitrailer,



1 required to be registered under the laws of this State. This term does not  
2 include mopeds, as that term is defined in G.S. 20-4.01.  
3 ...."

4  
5 **REQUIREMENT TO PURCHASE PRE-OWNED VEHICLES**

6 **SECTION 3.(a)** G.S. 20-305(9), as rewritten by subsection (b) of Section 2 of this  
7 act, reads as rewritten:

8 "(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this  
9 State to purchase or lease a specific dealer management computer system for  
10 communication with the manufacturer, factory branch, distributor, or  
11 distributor branch or any computer hardware or software used for any purpose  
12 other than the maintenance or repair of motor vehicles, to participate  
13 monetarily in an advertising campaign or contest, to purchase off-lease or  
14 other pre-owned vehicles either as a part of the franchise agreement or as a  
15 part of an incentive program, or to purchase unnecessary or unreasonable  
16 quantities of any promotional materials, training materials, training programs,  
17 showroom or other display decorations, materials, computer equipment or  
18 programs, or special tools at the expense of the new motor vehicle dealer,  
19 provided that nothing in this subsection shall preclude a manufacturer or  
20 distributor from including an unitemized uniform charge in the base price of  
21 the new motor vehicle charged to the dealer where such charge is attributable  
22 to advertising costs incurred or to be incurred by the manufacturer or  
23 distributor in the ordinary courses of its business.

24 Notwithstanding the terms or conditions of any franchise or other  
25 agreement, policy, or incentive program, it is unlawful for any manufacturer  
26 or distributor to require, coerce, or attempt to coerce any of its franchised  
27 dealers in this State to either (i) purchase or lease any electric vehicle charging  
28 stations at the dealer's expense unless the dealer is actually offering for sale to  
29 the public or providing warranty service on electric vehicles manufactured or  
30 distributed by that manufacturer or distributor or (ii) purchase or lease, at the  
31 dealer's expense, more than one electric vehicle charging station per  
32 dealership location owned by the dealer.

33 Notwithstanding the terms or conditions of any franchise or other  
34 agreement, policy, or incentive program, it is unlawful for any manufacturer  
35 or distributor to require that any of its franchised dealers in this State purchase  
36 or lease any diagnostic equipment or tool for the maintenance, servicing or  
37 repair of electric vehicles if the dealer has other diagnostic equipment or tools  
38 available that can perform the work to the standards required by the applicable  
39 manufacturer or distributor. To the extent practicable, manufacturers and  
40 distributors having franchised dealers in this State that sell or service multiple  
41 brands of electric vehicles manufactured or distributed by the same  
42 manufacturer or distributor are required to design, manufacture and distribute  
43 diagnostic equipment, tools and parts that can be used interchangeably with  
44 all brands of electric vehicles sold or distributed to their dealers in this State.

45 Notwithstanding the terms or conditions of any franchise or other  
46 agreement, a franchised dealer that sells fewer than 250 new motor vehicles  
47 per year may request approval from the manufacturer to enter into a tool loaner  
48 agreement with another dealer, in lieu of purchasing or leasing any special  
49 tools required by any manufacturer, factory branch, distributor, or distributor  
50 branch, provided, however, that all of the following conditions are satisfied:  
51 ...."

1           **SECTION 3.(b)** G.S. 20-305(28) reads as rewritten:

2           "(28) To require, coerce, or attempt to coerce any new motor vehicle dealer to  
3           ~~purchase or order any purchase, order, or accept any pre-owned or new motor~~  
4           vehicle as a precondition to purchasing, ordering, or receiving any other new  
5           motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from  
6           requiring that a new motor vehicle dealer fairly represent and inventory the  
7           full line of current model year new motor vehicles which are covered by the  
8           franchise agreement, provided that such inventory representation  
9           requirements are not unreasonable under the circumstances."

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11           **CLARIFICATION OF DEALER'S RIGHT TO CONTROL LOCATION**

12           **SECTION 4.(a)** G.S. 20-305(12) reads as rewritten:

13           "(12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this  
14           State to change location of the dealership, ~~or to make any substantial~~  
15           ~~alterations to the dealership premises or facilities, when to do so would be~~  
16           ~~unreasonable, or without written assurance of a sufficient supply of new motor~~  
17           ~~vehicles so as to justify such an expansion, in light of the current market and~~  
18           ~~economic conditions, dealership."~~

19           **SECTION 4.(b)** G.S. 20-305 is amended by adding a new subdivision to read:

20           "(12a) To require, coerce, or attempt to coerce any new motor vehicle dealer in this  
21           State to make any substantial alterations to the dealership premises or  
22           facilities, when to do so would be unreasonable, or without written assurance  
23           of a sufficient supply of new motor vehicles so as to justify such an expansion,  
24           in light of the current market and economic conditions."

25  
26           **RELEASES/WAIVERS**

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

28           "(13a) To enter into any release or waiver of rights created under this Article with  
29           one of its franchised dealers in this State unless the release or waiver of rights  
30           complies with all of the following:

- 31           a. The dealer's release or waiver of rights would not release or waive any  
32           rights relating to any provision contained in this Article which  
33           specifically provides that the dealer's rights are nonreleasable or  
34           nonwaivable;  
35           b. The dealer's release or waiver of rights relates to an actual, active, and  
36           current claim or dispute between a manufacturer and a dealer and is in  
37           no part prospective;  
38           c. The specific wording of the dealer's release or waiver of rights does  
39           not cause the dealer to release or waive any rights the dealer may have  
40           under this Article that are not directly related to resolution of an actual,  
41           active, and current claim or dispute between the dealer and  
42           manufacturer;  
43           d. The dealer's release or waiver of rights is contained in a standalone  
44           document that is executed by an authorized owner or officer of the  
45           dealer and contains or references no other matters or issues other than  
46           facts and terms of settlement directly related to the resolution of the  
47           specific issues that comprise an actual, active, and current claim or  
48           dispute between the manufacturer and a dealer;  
49           e. The dealer's release or waiver of rights would not require any dispute  
50           between the manufacturer and dealer related to its interpretation or  
51           either of the parties' performance or breach to be referred to any person

1 other than the duly constituted courts of the State or the United States  
2 of America, or to the Commissioner, if such referral would be binding  
3 upon the dealer; and

4 f. The dealer's release or waiver of rights is supported by adequate and  
5 reasonable consideration from the manufacturer that is fully disclosed  
6 in the release or waiver of rights itself and is negotiated and agreed to  
7 by both the dealer and manufacturer without any threats, coercion, or  
8 undue influence.

9 This subdivision shall be strictly construed, and a dealer's release or waiver of  
10 rights that fails to comply with any of the requirements or other provisions  
11 contained in sub-subdivisions a. through f. of this subdivision shall be null and  
12 void."

13  
14 **MINIMUM VEHICLE ALLOCATION**

15 **SECTION 6.** G.S. 20-305(14) reads as rewritten:

16 "(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or  
17 accessories in reasonable quantities relative to the new motor vehicle dealer's  
18 facilities and sales potential in the new motor vehicle dealer's market area as  
19 determined in accordance with reasonably applied economic principles, or  
20 within a reasonable time, after receipt of an order from a dealer having a  
21 franchise for the retail sale of any new motor vehicle sold or distributed by the  
22 manufacturer or distributor, any new vehicle, parts or accessories to new  
23 vehicles as are covered by such franchise, and such vehicles, parts or  
24 accessories as are publicly advertised as being available or actually being  
25 delivered. The delivery to another dealer of a motor vehicle of the same model  
26 and similarly equipped as the vehicle ordered by a motor vehicle dealer who  
27 has not received delivery thereof, but who has placed his written order for the  
28 vehicle prior to the order of the dealer receiving the vehicle, shall be evidence  
29 of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor  
30 vehicle dealer within a reasonable time, without cause. Additionally, except  
31 as may be required by any consent decree of the Commissioner or other order  
32 of the Commissioner or court of competent jurisdiction, any sales objectives  
33 which a manufacturer, factory branch, distributor, or distributor branch  
34 establishes for any of its franchised dealers in this State must be reasonable,  
35 and every manufacturer, factory branch, distributor, or distributor branch must  
36 allocate its products within this State in a manner that does all of the following:

37 a. Provides each of its franchised dealers in this State an adequate supply  
38 of vehicles by series, product line, and model in a fair, reasonable, and  
39 equitable manner based on each dealer's historical selling pattern and  
40 ~~reasonable sales standards as compared to other same line make~~  
41 ~~dealers in the State.~~ planning potential.

42 ...

43 f. If, during the immediately preceding 12 calendar months, a new motor  
44 vehicle dealer located in this State sold a total of 250 or fewer new  
45 motor vehicles manufactured or distributed by a particular  
46 manufacturer or distributor, that manufacturer or distributor shall be  
47 required to allocate to the dealer and deliver in a timely manner,  
48 monthly and on a model by model or series basis, no fewer than the  
49 number of new motor vehicles of each such model or series that dealer  
50 sold at retail during the immediately previous calendar month;  
51 provided, however, that nothing contained in this subdivision or in any

1 franchise shall prevent or prohibit any dealer from refusing to accept  
 2 all or any portion of any allocation of vehicles made available to the  
 3 dealer by the manufacturer or distributor pursuant to this subdivision.

4 g. Provides in writing to each of its franchised dealers in this State the  
 5 manufacturer's formula used for allocating motor vehicles as well as a  
 6 monthly summary of the number of motor vehicles allocated to each  
 7 of its franchised dealers in this State by series, product line, and model.

8 This subsection is not violated, however, if such failure is caused solely by the  
 9 occurrence of temporary international, national, or regional product shortages  
 10 resulting from natural disasters, unavailability of parts, labor strikes, product  
 11 recalls, and other factors and events beyond the control of the manufacturer  
 12 that temporarily reduce a manufacturer's product supply. The willful or  
 13 malicious maintenance, creation, or alteration of a vehicle allocation process  
 14 or formula by a manufacturer, factory branch, distributor, or distributor branch  
 15 that is in any part designed or intended to force or coerce a dealer in this State  
 16 to close or sell the dealer's franchise, cause the dealer financial distress, or to  
 17 relocate, update, or renovate the dealer's existing dealership facility shall  
 18 constitute an unfair and deceptive trade practice under G.S. 75-1.1."  
 19

20 **LOANER/RENTAL CAR REIMBURSEMENT**

21 **SECTION 7.** G.S. 20-305(33) reads as rewritten:

22 "(33) To fail to reimburse a dealer located in this State in full for the actual ~~cost~~ cost,  
 23 including applicable taxes and third-party fees, of providing a loaner or rental  
 24 vehicle to any customer who is having a vehicle serviced at the dealership if  
 25 the provision of such a loaner or rental vehicle is ~~required by the~~  
 26 ~~manufacturer~~ is either required by the manufacturer, or if the manufacturer  
 27 has represented or otherwise indicated to the customer that a loaner or rental  
 28 vehicle will be provided or that the customer is entitled to a loaner or rental  
 29 vehicle. It is unlawful for a manufacturer to fail to reimburse the dealer in full  
 30 as provided above (i) whether or not the dealer provides the customer with a  
 31 model vehicle similar to the vehicle the customer brought in for service, in the  
 32 event the dealer does not have a similar model loaner or rental vehicle  
 33 available, or (ii) in the event that all or any portion of the time the dealer has  
 34 provided the customer with a loaner or rental is due to the unavailability of  
 35 one or more parts."  
 36

37 **FACILITY EXPENDITURES**

38 **SECTION 8.** G.S. 20-305(50) reads as rewritten:

39 "(50) To require, coerce, or attempt to coerce any new motor vehicle dealer located  
 40 in this State to change location of its dealership, or to make any substantial  
 41 alterations to its dealership premises or facilities, if the dealer (i) has changed  
 42 the location of its dealership or made substantial alterations to its dealership  
 43 premises or facilities within the preceding 10 years at a cost of more than two  
 44 hundred fifty thousand dollars (\$250,000), indexed to the Consumer Price  
 45 Index, over this 10-year period, and (ii) the change in location or alteration  
 46 was made toward compliance with a facility initiative or facility program that  
 47 was sponsored or supported by the manufacturer, factory branch, distributor,  
 48 or distributor branch, with the approval of the manufacturer, factory branch,  
 49 distributor, or distributor branch. If a manufacturer, factory branch,  
 50 distributor, or distributor branch offers incentives, or other payments under a  
 51 program that are in any part conditioned on a dealer's construction of a new

1 facility, facility improvements, or installation of signs or other image  
2 elements, a dealer that constructed a new facility, made facility improvements,  
3 or installed signs or other image elements required by or approved by the  
4 manufacturer that were completed at a cost of more than two hundred fifty  
5 thousand dollars (\$250,000), indexed to the Consumer Price Index, within the  
6 preceding 10 years shall be deemed to be in compliance with the  
7 manufacturer's new or successor program requirements, and the dealer shall  
8 be entitled to receive all such incentives or other payments awardable under  
9 the new or successor program. For any dealer that did not change the location  
10 of its dealership or make substantial alterations to its dealership premises or  
11 facilities within the preceding 10 years at a cost of more than two hundred  
12 fifty thousand dollars (\$250,000), indexed to the Consumer Price Index, the  
13 dealer's obligation ~~to change location of its dealership, or to make any~~  
14 substantial alteration to its dealership premises or facilities, at the request of a  
15 manufacturer, factory branch, distributor, or distributor branch, or to satisfy a  
16 requirement or condition of an incentive program sponsored by a  
17 manufacturer, factory branch, distributor, or distributor branch, shall be  
18 governed by the applicable provisions of subdivisions (4), (11), (12), (25),  
19 (30), (32), and (42) of this section. This section shall not apply to any facility  
20 or premises improvement or alteration that is voluntarily agreed to by the new  
21 motor vehicle dealer and for which the dealer receives facilities-related  
22 compensation from the manufacturer or distributor for the facility  
23 improvement or alteration equivalent to at least a majority of the cost incurred  
24 by the dealer for the facility improvement or alteration."  
25

## 26 **WARRANTY REQUIREMENTS**

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

### 28 **"§ 20-305.1. Automobile dealer warranty and recall obligations.**

29 (a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch,  
30 shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's  
31 obligations for preparation, delivery, warranty, manufacturer-sponsored maintenance programs,  
32 manufacturer extended warranty, goodwill repairs, parts exchange programs, and recall service  
33 on its products. The disclosure required under this subsection shall include the schedule of  
34 compensation to be paid the dealers for parts, work, and service in connection with preparation,  
35 delivery, warranty, and recall service, and the time allowances for the performance of the work  
36 and service. In no event shall the schedule of compensation fail to include reasonable  
37 compensation for diagnostic ~~work-work,~~ battery disposal or other disposal charges and shipping  
38 and all other associated fees, and associated administrative requirements as well as repair service  
39 and labor. Time allowances for the performance of preparation, delivery, warranty, and recall  
40 work and service shall be reasonable and adequate for the work to be performed. The  
41 compensation paid under this section shall be reasonable, provided, however, that under no  
42 circumstances shall the reasonable compensation under this section for warranty and recall  
43 service be in an amount less than the dealer's current retail labor rate and the amount charged to  
44 retail customers for the manufacturer's or distributor's original parts for nonwarranty work of like  
45 kind, provided the amount is competitive with the retail rates charged for parts and labor by other  
46 franchised dealers of the same line-make located within the dealer's market. If there is no other  
47 same line-make dealer located in the dealer's market or if all other same line-make dealers in the  
48 dealer's market are owned or operated by the same entities or individuals as the dealership being  
49 compared, the retail rates charged for parts and labor by other franchised dealers located in the  
50 dealer's market that sell competing line-make motor vehicles as the dealer may be considered  
51 when determining whether the dealer's rates are competitive.

1 (a1) The retail rate customarily charged by the dealer for parts and labor may be  
2 established at the election of the dealer by the dealer submitting to the manufacturer or distributor  
3 100 sequential nonwarranty customer-paid service repair orders which contain warranty-like  
4 parts, or 60 consecutive days of nonwarranty customer-paid service repair orders which contain  
5 warranty-like parts, whichever is less, covering repairs made no more than 180 days before the  
6 submission and declaring the average percentage markup. The average of the parts markup rate  
7 and the average labor rate shall both be presumed to be reasonable, however, a manufacturer or  
8 distributor may, not later than 30 days after submission, rebut that presumption by reasonably  
9 substantiating that the rate is unfair and unreasonable in light of the retail rates charged for parts  
10 and labor by all other franchised motor vehicle dealers located in the dealer's market-city or town  
11 offering the same line-make vehicles. In the event there are no other franchised dealers offering  
12 the same line-make of vehicle in the dealer's market-city or town, the manufacturer or distributor  
13 may compare the dealer's retail rate for parts and labor with the retail rates charged for parts and  
14 labor by other same segment franchised dealers who are selling competing line-makes of vehicles  
15 within the dealer's market-city or town. The retail rate and the average labor rate shall go into  
16 effect 30 days following the manufacturer's approval, but in no event later than 60 days following  
17 the declaration, subject to audit of the submitted repair orders by the manufacturer or distributor  
18 and a rebuttal of the declared rate as described above. If the declared rate is rebutted, the  
19 manufacturer or distributor shall propose an adjustment of the average percentage markup based  
20 on that rebuttal not later than 30 days after such audit, but in no event later than 60 days after  
21 submission. If the dealer does not agree with the proposed average percentage markup, the dealer  
22 may file a protest with the Commissioner not later than 30 days after receipt of that proposal by  
23 the manufacturer or distributor. If such a protest is filed, the Commissioner shall inform the  
24 manufacturer or distributor that a timely protest has been filed and that a hearing will be held on  
25 such protest. In any hearing held pursuant to this subsection, the manufacturer or distributor shall  
26 have the burden of proving by a preponderance of the evidence that the rate declared by the dealer  
27 was unreasonable as described in this subsection and that the proposed adjustment of the average  
28 percentage markup is reasonable pursuant to the provisions of this subsection. If the dealer  
29 prevails at a protest hearing, the dealer's proposed rate, affirmed at the hearing, shall be effective  
30 as of 60 days after the date of the dealer's initial submission of the customer-paid service orders  
31 to the manufacturer or distributor. If the manufacturer or distributor prevails at a protest hearing,  
32 the rate proposed by the manufacturer or distributor, that was affirmed at the hearing, shall be  
33 effective beginning 30 days following issuance of the final order.

34 ...

35 (b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor  
36 vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of  
37 its warranty or recall obligations with respect to a motor vehicle, to fail to fully compensate its  
38 motor vehicle dealers licensed in this State for a qualifying used motor vehicle pursuant to  
39 subsections (i) and (j) of this section or warranty and recall parts other than parts used to repair  
40 the living facilities of recreational vehicles, including motor homes, travel trailers, fifth-wheel  
41 trailers, camping trailers, and truck campers as defined in G.S. 20-4.01(32b), at the prevailing  
42 retail rate according to the factors in subsection (a) of this section, or, in service in accordance  
43 with the schedule of compensation provided the dealer pursuant to subsection (a) of this section,  
44 or to otherwise recover all or any portion of its costs for compensating its motor vehicle dealers  
45 licensed in this State for warranty or recall parts and service or for payments for a qualifying  
46 used motor vehicle pursuant to subsections (i) and (j) of this section either by reduction in the  
47 amount due to the dealer, or by separate charge, surcharge, or other imposition, and to fail to  
48 indemnify and hold harmless its franchised dealers licensed in this State against any judgment  
49 for damages or settlements agreed to by the manufacturer, including, but not limited to, court  
50 costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims  
51 or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or

1 implied warranty, or rescission or revocation of acceptance of the sale of a motor vehicle as defined  
2 in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective or  
3 negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other  
4 functions by the manufacturer, factory branch, distributor or distributor branch, beyond the  
5 control of the dealer. Any audit, other than an audit conducted for cause, for warranty or recall  
6 parts or service compensation, or compensation for a qualifying used motor vehicle in accordance  
7 with subsections (i) and (j) of this section may only be conducted one time within any ~~12-month~~  
8 ~~period~~ 24-month period and shall only be for the 12-month period immediately following the  
9 date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor  
10 branch. Any audit, other than an audit conducted for cause, for sales incentives, service  
11 incentives, rebates, or other forms of incentive compensation may only be conducted one time  
12 within any ~~12-month period~~ 24-month period and shall only be for the 12-month period  
13 immediately following the date of the payment of the claim by the manufacturer, factory branch,  
14 distributor, or distributor branch pursuant to a sales incentives program, service incentives  
15 program, rebate program, or other form of incentive compensation program. Provided, however,  
16 these limitations shall not be effective in the case of fraudulent claims. For purposes of this  
17 subsection, the term "audit conducted for cause" is defined as an audit based on any of the  
18 following: (i) statistical evidence that the dealer's claims are unreasonably high in comparison to  
19 other dealers similarly situated or the dealer's claim history, (ii) that the ~~dealer's claims~~  
20 ~~submissions violate reasonable claims documentation or other requirements of the applicable~~  
21 ~~manufacturer, factory branch, distributor, or distributor branch, dealer cannot reasonably~~  
22 ~~substantiate the claim either in accordance with the manufacturer's reasonable written procedures~~  
23 ~~or by other reasonable means,~~ (iii) a follow up to an earlier audit in which the dealer was notified  
24 of a claim documentation procedure violation that occurred within the prior 12-month period,  
25 provided the audit and any chargeback are in compliance with subdivision (b1) or (b2) of this  
26 section and are limited in scope to just the specific violation determined previously, or (iv)  
27 reasonable evidence of malfeasance or fraud. In the event a manufacturer, factory branch,  
28 distributor, or distributor branch elects to perform an audit conducted for cause, the manufacturer,  
29 factory branch, distributor, or distributor branch, simultaneously with providing the affected  
30 dealer with written notice of the audit, shall further be required to explain in detail in the notice  
31 the data or other foundation upon which the cause is based.

32 (b1) All claims made by motor vehicle dealers pursuant to this section for compensation  
33 for delivery, preparation, warranty, and recall work, including compensation for a qualifying  
34 used motor vehicle in accordance with subsection (i) of this section, labor, parts, and other  
35 expenses, shall be paid by the manufacturer within 30 days after receipt of claim from the dealer.  
36 When any claim is disapproved, the dealer shall be notified in writing of the grounds for  
37 disapproval. Any claim not specifically disapproved in writing within 30 days after receipt shall  
38 be considered approved and payment is due immediately. No claim which has been approved  
39 and paid may be charged back to the dealer unless it can be shown that the claim was false or  
40 fraudulent, that the repairs were not properly made or were unnecessary to correct the defective  
41 condition, or the dealer failed to reasonably substantiate the claim either in accordance with the  
42 manufacturer's reasonable written procedures or by other reasonable means. A manufacturer or  
43 distributor shall not deny a claim or reduce the amount to be reimbursed to the dealer as long as  
44 the dealer has provided reasonably sufficient documentation that the dealer:

- 45 (1) Made a good faith attempt to perform the work in compliance with the written
- 46 policies and procedures of the manufacturer; and
- 47 (2) Actually performed the work.

48 Notwithstanding the foregoing, a manufacturer shall not fail to fully compensate a dealer for  
49 warranty or recall work or make any chargeback to the dealer's account based on the dealer's  
50 failure to comply with the manufacturer's claim documentation procedure or procedures ~~unless~~

1 ~~both of the following requirements have been met:~~if the dealer has documented by other  
 2 reasonable means.

- 3 (1) ~~The dealer has, within the previous 12 months, failed to comply with the same~~  
 4 ~~specific claim documentation procedure or procedures; and~~
- 5 (2) ~~The manufacturer has, within the previous 12 months, provided a written~~  
 6 ~~warning to the dealer by certified United States mail, return receipt requested,~~  
 7 ~~identifying the specific claim documentation procedure or procedures violated~~  
 8 ~~by the dealer.~~

9 Nothing contained in this subdivision shall be deemed to prevent or prohibit a manufacturer from  
 10 adopting or implementing a policy or procedure which provides or allows for the self-audit of  
 11 dealers, provided, however, that if any such self-audit procedure contains provisions relating to  
 12 claim documentation, such claim documentation policies or procedures shall be subject to the  
 13 prohibitions and requirements contained in this subdivision. Notices sent by a manufacturer  
 14 under a bona fide self-audit procedure shall be deemed sufficient notice to meet the requirements  
 15 of this subsection provided that the dealer is given reasonable opportunity through self-audit to  
 16 identify and correct any out-of-line procedures for a period of at least 60 days before the  
 17 manufacturer conducts its own audit of the dealer warranty operations and procedures. A  
 18 manufacturer may further not charge a dealer back subsequent to the payment of the claim unless  
 19 a representative of the manufacturer has met in person at the dealership, or by telephone, with an  
 20 officer or employee of the dealer designated by the dealer and explained in detail the basis for  
 21 each of the proposed charge-backs and thereafter given the dealer's representative a reasonable  
 22 opportunity at the meeting, or during the telephone call, to explain the dealer's position relating  
 23 to each of the proposed charge-backs. In the event the dealer was selected for audit or review on  
 24 the basis that some or all of the dealer's claims were viewed as excessive in comparison to  
 25 average, mean, or aggregate data accumulated by the manufacturer, or in relation to claims  
 26 submitted by a group of other franchisees of the manufacturer, the manufacturer shall, at or prior  
 27 to the meeting or telephone call with the dealer's representative, provide the dealer with a written  
 28 statement containing the basis or methodology upon which the dealer was selected for audit or  
 29 review.

30 ...

31 (c) In the event there is a dispute between the manufacturer, factory branch, distributor,  
 32 or distributor branch, and the dealer with respect to any matter referred to in subsection (a), (b),  
 33 (b1), (b2), (b3), ~~(b4)~~, (d), or (i) of this section, either party may petition the Commissioner in  
 34 writing, within 30 days after either party has given written notice of the dispute to the other, for  
 35 a hearing on the subject and the decision of the Commissioner shall be binding on the parties,  
 36 subject to rights of judicial review and appeal as provided in Chapter 150B of the General  
 37 Statutes; provided, however, that nothing contained herein shall give the Commissioner any  
 38 authority as to the content of any manufacturer's or distributor's warranty. Upon the filing of a  
 39 petition before the Commissioner under this subsection, any chargeback to or any payment  
 40 required of a dealer by a manufacturer relating to warranty or recall parts or service  
 41 compensation, or to sales incentives, service incentives, rebates, other forms of incentive  
 42 compensation, or the withholding or chargeback of other compensation or support that a dealer  
 43 would otherwise be eligible to receive, shall be stayed during the pendency of the determination  
 44 by the Commissioner.

45 ...."

46  
 47 **CLARIFY DEFINITION OF MOTOR VEHICLE DEALER**

48 **SECTION 10.** G.S. 20-286(11)a. reads as rewritten:

49 "a. A person who does any of the following:

- 50 1. For commission, money, or other thing of value, buys, sells,  
 51 leases, offers for subscription, or exchanges, whether outright



- 1 or on conditional sale, bailment lease, chattel mortgage, or
- 2 otherwise, five or more motor vehicles within any 12
- 3 consecutive months, regardless of who owns the motor
- 4 vehicles.
- 5 2. On behalf of another and for commission, money, or other
- 6 thing of value, arranges, offers, attempts to solicit, or attempts
- 7 to negotiate the sale, purchase, or exchange of an interest in
- 8 five or more motor vehicles within any 12 consecutive months,
- 9 regardless of who owns the motor vehicles.
- 10 3. Engages, wholly or in part, in the business of ~~selling~~ selling,
- 11 leasing, or offering for subscription new motor vehicles or new
- 12 or used motor vehicles, or used motor vehicles only, whether
- 13 or not the motor vehicles are owned by that person, and sells
- 14 five or more motor vehicles within any 12 consecutive months.
- 15 4. Offers to sell, displays, or permits the display for sale for any
- 16 form of compensation five or more motor vehicles within any
- 17 12 consecutive months.
- 18 5. Primarily engages in the leasing or renting of motor vehicles
- 19 to others and sells or offers to sell those vehicles at retail."
- 20

**DEALERSHIP FINANCIAL STATEMENTS REQUIRED NO MORE THAN ONCE PER QUARTER**

**SECTION 11.** G.S. 20-305(20) reads as rewritten:

"(20) To release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or new motor vehicle dealer, any confidential business, financial, or personal information which may be from time to time provided by the new motor vehicle dealer to the manufacturer, without the express written consent of the new motor vehicle dealer. A manufacturer shall not require, or include in any incentive program, a requirement that any of its motor vehicle dealers in this State provide (i) a financial statement more than once per calendar quarter or (ii) an exclusive financial statement for a franchise when the dealer company operates more than one franchise."

**SEVERABILITY CLAUSE**

**SECTION 12.** If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

**EFFECTIVE DATE**

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