

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 438  
PROPOSED COMMITTEE SUBSTITUTE S438-PCS35254-SU-16

Short Title: Clarify Motor Vehicle Licensing Law.

(Public)

Sponsors:

Referred to:

March 29, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY MOTOR VEHICLE DEALERS AND MANUFACTURERS  
3 LICENSING LAW.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 20-288(a1) reads as rewritten:

6 "(a1) A used motor vehicle dealer may obtain a license by filing an application, as  
7 prescribed in subsection (a) of this section, and providing the following:

8 (1) The required fee.

9 (2) Proof that the applicant, within the last 12 months, has completed a 12-hour  
10 licensing course approved by the Division if the applicant is seeking an  
11 initial license and a six-hour course approved by the Division if the applicant  
12 is seeking a renewal license. The requirements of this subdivision do not  
13 apply to a used motor vehicle dealer the primary business of which is the  
14 sale of salvage vehicles on behalf of insurers or to a manufactured home  
15 dealer licensed under G.S. 143-143.11 who complies with the continuing  
16 education requirements of G.S. 143-143.11B. The requirement of this  
17 subdivision does not apply to persons age 62 or older as of July 1, 2002, who  
18 are seeking a renewal license. This subdivision also does not apply to an  
19 applicant who holds a license as a new motor vehicle dealer as defined in  
20 G.S. 20-286(13) ~~and operates from an established showroom one mile or~~  
21 ~~less from the established showroom for which the applicant seeks a used~~  
22 ~~motor vehicle dealer license. An applicant who also holds a license as a new~~  
23 ~~motor vehicle dealer may designate a representative to complete the~~  
24 ~~licensing course required by this subdivision.~~

25 (3) If the applicant is an individual, proof that the applicant is at least 18 years  
26 of age and proof that all salespersons employed by the dealer are at least 18  
27 years of age.

28 (4) The application for a dealer license plate."

29 **SECTION 2.** G.S. 20-288 is amended by adding a new subsection to read:

30 "(b1) The Division shall require in such license application and each application for  
31 renewal of license a certification that the applicant is familiar with the North Carolina Motor  
32 Vehicle Dealers and Manufacturers Licensing Law and with other North Carolina laws  
33 governing the conduct and operation of the business for which the license or license renewal is  
34 sought and that the applicant shall comply with the provisions of these laws, with the



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1 provisions of Article 12 of Chapter 20 of the General Statutes, and with other lawful regulations  
2 of the Division."

3 **SECTION 3.** G.S. 20-301 is amended by adding a new subsection to read:

4 "(g) Notwithstanding any other statute, regulation, or rule or the existence of a pending  
5 legal or administrative proceeding in any other forum any franchised new motor vehicle dealer  
6 or any manufacturer, factory branch, distributor, or distributor branch may elect to file a  
7 petition before the Commissioner for resolution of any dispute that may arise with respect to  
8 any of the rights or obligations of the dealer or of the manufacturer, factory branch, distributor,  
9 or distributor branch related to a franchise or franchise-related form agreement. The  
10 Commissioner shall have the authority to apply principles of law, equity, and good faith in  
11 determining such matters. The filing of a petition by a dealer or a manufacturer, factory branch,  
12 distributor, or distributor branch pursuant to this section shall not preclude the party filing the  
13 petition from pursuing any other form of recourse it may have, either before the Commissioner  
14 or in another form, including any damages and injunctive relief. The Commissioner shall have  
15 the authority to receive and evaluate the facts in the matter of controversy and render a decision  
16 by entering an order which shall thereafter become binding and enforceable with respect to the  
17 parties, subject to the right of review of the decision in a court of competent jurisdiction  
18 pursuant to Chapter 150B of the General Statutes."

19 **SECTION 4.** G.S. 20-301.1(a) reads as rewritten:

20 "(a) Notwithstanding the terms of any contract, franchise, novation, or agreement, it  
21 shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to  
22 charge or assess one of its franchised motor vehicle dealers located in this State, or to charge or  
23 debit the account of the franchised motor vehicle dealer for merchandise, tools, or equipment,  
24 or other charges or amounts which total more than five thousand dollars (\$5,000), other than  
25 the published cost of new motor vehicles, and merchandise, tools, or equipment specifically  
26 ordered by the franchised motor vehicle dealer, unless the franchised motor vehicle dealer  
27 receives a detailed itemized description of the nature and amount of each charge in writing at  
28 least 10 days prior to the date the charge or account debit is to become effective or due. For  
29 purposes of this subsection, ~~the prior written notice is required for~~ pursuant to this subsection  
30 includes, but is not limited to, all charges or debits to a dealer's account for ~~the following~~  
31 ~~charges or debits:~~ advertising or advertising materials; advertising or showroom displays;  
32 customer informational materials; computer or communications hardware or software; special  
33 tools; equipment; dealership operation guides; Internet programs; and any additional charges or  
34 surcharges made or proposed for merchandise, tools, or equipment previously charged to the  
35 dealer. ~~dealer; and any other charges or amounts which total more than five thousand dollars~~  
36 (\$5,000). If the franchised new motor vehicle dealer disputes all or any portion of an actual or  
37 proposed charge or debit to the dealer's account, the dealer may proceed as provided in  
38 G.S. 20-301(b) and G.S. 20-308.1. Upon the filing of a petition pursuant to G.S. 20-301(b) or a  
39 civil action pursuant to G.S. 20-308.1, the affected manufacturer, factory branch, distributor, or  
40 distributor branch shall not require payment from the dealer, or debit or charge the dealer's  
41 account, unless and until a final judgment supporting the payment or charge has been rendered  
42 by the Commissioner or court."

43 **SECTION 5.** G.S. 20-305(4) reads as rewritten:

44 "(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse  
45 to approve the sale or transfer of the ownership of a dealership by the sale of  
46 the business, stock transfer, or otherwise, or the transfer, sale or assignment  
47 of a dealer franchise, or a change in the executive management or principal  
48 operator of the dealership, change in use of an existing facility to provide for  
49 the sales or service of one or more additional line-makes of new motor  
50 vehicles, or relocation of the dealership to another site within the dealership's  
51 relevant market area, if the Commissioner has determined, if requested in

1 writing by the dealer within 30 days after receipt of an objection to the  
2 proposed transfer, sale, assignment, relocation, or change, and after a  
3 hearing on the matter, that the failure to permit or honor the transfer, sale,  
4 assignment, relocation, or change is unreasonable under the circumstances.  
5 No franchise may be transferred, sold, assigned, relocated, or the executive  
6 management or principal operators changed, or the use of an existing facility  
7 changed, unless the franchisor has been given at least 30 days' prior written  
8 notice as to the proposed transferee's name and address, financial ability, and  
9 qualifications of the proposed transferee, a copy of the purchase agreement  
10 between the dealership and the proposed transferee, the identity and  
11 qualifications of the persons proposed to be involved in executive  
12 management or as principal operators, and the location and site plans of any  
13 proposed relocation or change in use of a dealership facility. The franchisor  
14 shall send the dealership and the proposed transferee notice of objection, by  
15 registered or certified mail, return receipt requested, to the proposed transfer,  
16 sale, assignment, relocation, or change within 30 days after receipt of notice  
17 from the dealer, as provided in this section. The notice of objection shall  
18 state in detail all factual and legal bases for the objection on the part of the  
19 franchisor to the proposed transfer, sale, assignment, relocation, or change  
20 that is specifically referenced in this subdivision. An objection to a proposed  
21 transfer, sale, assignment, relocation, or change in the executive  
22 management or principal operator of the ~~dealership~~ dealership or change in  
23 the use of the facility may only be premised upon the factual and legal bases  
24 specifically referenced in this ~~subdivision~~ subdivision or G.S. 20-305(11), as  
25 it relates to change in the use of a facility. A manufacturer's notice of  
26 objection which is based upon factual or legal issues that are not specifically  
27 referenced in this subdivision or G.S. 20-305(11) with respect to a change in  
28 the use of an existing facility as being issues upon which the Commissioner  
29 shall base his determination shall not be effective to preserve the franchisor's  
30 right to object to the proposed transfer sale, assignment, relocation, or  
31 change, provided the dealership or proposed transferee has submitted written  
32 notice, as required above, as to the proposed transferee's name and address,  
33 financial ability, and qualifications of the proposed transferee, a copy of the  
34 purchase agreement between the dealership and the proposed transferee, the  
35 identity and qualifications of the persons proposed to be involved in the  
36 executive management or as principal operators, and the location and site  
37 plans of any proposed ~~relocation~~ relocation or change in the use of an  
38 existing facility. Failure by the franchisor to send notice of objection within  
39 30 days shall constitute waiver by the franchisor of any right to object to the  
40 proposed transfer, sale, assignment, relocation, or change. If the franchisor  
41 requires additional information to complete its review, the franchisor shall  
42 notify the dealership within 15 days after receipt of the proposed transferee's  
43 name and address, financial ability, and qualifications, a copy of the  
44 purchase agreement between the dealership and the proposed transferee, the  
45 identity and qualifications of the persons proposed to be involved in  
46 executive management or as principal operators, and the location and site  
47 plans of any proposed relocation or change in use of the dealership facility.  
48 If the franchisor fails to request additional information from the dealer or  
49 proposed transferee within 15 days of receipt of this initial information, the  
50 30-day time period within which the franchisor may provide notice of  
51 objection shall be deemed to run from the initial receipt date. Otherwise, the

1 30-day time period within which the franchisor may provide notice of  
2 objection shall run from the date the franchisor has received the  
3 supplemental information requested from the dealer or proposed transferee;  
4 provided, however, that failure by the franchisor to send notice of objection  
5 within 60 days of the franchisor's receipt of the initial information from the  
6 dealer shall constitute waiver by the franchisor of any right to object to the  
7 proposed transfer, sale, assignment, relocation, or change. With respect to a  
8 proposed transfer of ownership, sale, or assignment, the sole issue for  
9 determination by the Commissioner and the sole issue upon which the  
10 Commissioner shall hear or consider evidence is whether, by reason of lack  
11 of good moral character, lack of general business experience, or lack of  
12 financial ability, the proposed transferee is unfit to own the dealership. For  
13 purposes of this subdivision, the refusal by the manufacturer to accept a  
14 proposed transferee who is of good moral character and who otherwise  
15 meets the written, reasonable, and uniformly applied business experience  
16 and financial requirements, if any, required by the manufacturer of owners  
17 of its franchised automobile dealerships is presumed to demonstrate the  
18 manufacturer's failure to prove that the proposed transferee is unfit to own  
19 the dealership. With respect to a proposed change in the executive  
20 management or principal operator of the dealership, the sole issue for  
21 determination by the Commissioner and the sole issue on which the  
22 Commissioner shall hear or consider evidence shall be whether, by reason of  
23 lack of training, lack of prior experience, poor past performance, or poor  
24 character, the proposed candidate for a position within the executive  
25 management or as principal operator of the dealership is unfit for the  
26 position. For purposes of this subdivision, the refusal by the manufacturer to  
27 accept a proposed candidate for executive management or as principal  
28 operator who is of good moral character and who otherwise meets the  
29 written, reasonable, and uniformly applied standards or qualifications, if any,  
30 of the manufacturer relating to the business experience and prior  
31 performance of executive management required by the manufacturers of its  
32 dealers is presumed to demonstrate the manufacturer's failure to prove the  
33 proposed candidate for executive management or as principal operator is  
34 unfit to serve the capacity. With respect to a proposed change in use of a  
35 dealership facility to provide for the sales or service of one or more  
36 additional line-makes of new motor vehicles, the sole issue for determination  
37 by the Commissioner is whether the new motor vehicle dealer has a  
38 reasonable line of credit for each make or line of motor vehicle and remains  
39 in compliance with any reasonable capital standards and facilities  
40 requirements of the manufacturer or distributor. The reasonable facilities  
41 requirements of the manufacturer or distributor shall not include any  
42 requirement that a new motor vehicle dealer establish or maintain exclusive  
43 facilities, personnel, or display space. With respect to a proposed relocation  
44 or other proposed change, the issue for determination by the Commissioner  
45 is whether the proposed relocation or other change is unreasonable under the  
46 circumstances. For purposes of this subdivision, the refusal by the  
47 manufacturer to agree to a proposed relocation which meets the written,  
48 reasonable, and uniformly applied standards or criteria, if any, of the  
49 manufacturer relating to dealer relocations is presumed to demonstrate that  
50 the manufacturer's failure to prove the proposed relocation is unreasonable  
51 under the circumstances. The manufacturer shall have the burden of proof

1 before the Commissioner under this subdivision. It is unlawful for a  
2 manufacturer to, in any way, condition its approval of a proposed transfer,  
3 sale, assignment, change in the dealer's executive management, principal  
4 operator, or appointment of a designated successor, on the existing or  
5 proposed dealer's willingness to construct a new facility, renovate the  
6 existing facility, acquire or refrain from acquiring one or more line-makes of  
7 vehicles, separate or divest one or more line-makes of vehicle, or establish or  
8 maintain exclusive facilities, personnel, or display space. It is unlawful for a  
9 manufacturer to, in any way, condition its approval of a proposed relocation  
10 on the existing or proposed dealer's willingness to acquire or refrain from  
11 acquiring one or more line-makes of vehicles, separate or divest one or more  
12 line-makes of vehicle, or establish or maintain exclusive facilities, personnel,  
13 or display space. The opinion or determination of a franchisor that the  
14 continued existence of one of its franchised dealers situated in this State is  
15 not viable, or that the dealer holds or fails to hold licensing rights for the sale  
16 of other line-makes of vehicles in a manner consistent with the franchisor's  
17 existing or future distribution or marketing plans, shall not constitute a  
18 lawful basis for the franchisor to fail or refuse to approve a dealer's proposed  
19 change in use of a dealership facility or relocation: provided, however, that  
20 nothing contained in this subdivision shall be deemed to prevent or prohibit  
21 a franchisor from failing to approve a dealer's proposed relocation on  
22 grounds that the specific site or facility proposed by the dealer is otherwise  
23 unreasonable under the circumstances. Approval of a relocation pursuant to  
24 this subdivision shall not in itself constitute the franchisor's representation or  
25 assurance of the dealer's viability at that location."

26 **SECTION 6.** G.S. 20-305(6)d.3. reads as rewritten:

27 "3. In addition to the other payments set forth in this section, if a  
28 termination, cancellation, or nonrenewal is premised upon  
29 any of the occurrences set forth in G.S. 20-305(6)c.1.IV., then  
30 the manufacturer or distributor shall be liable to the dealer for  
31 an amount at least equivalent to the fair market value of the  
32 franchise on (i) the date the franchisor announces the action  
33 which results in termination, cancellation, or nonrenewal; or  
34 (ii) the date the action which results in termination,  
35 cancellation, or nonrenewal first became general knowledge;  
36 or (iii) the day ~~12 months~~ 18 months prior to the date on  
37 which the notice of termination, cancellation, or nonrenewal  
38 is issued, whichever amount is higher. Payment is due not  
39 later than 90 days after the manufacturer or distributor has  
40 received notice in writing from, or on behalf of, the new  
41 motor vehicle dealer specifying the elements of compensation  
42 requested by the dealer. If the termination, cancellation, or  
43 nonrenewal is due to a manufacturer's change in distributors,  
44 the manufacturer may avoid paying fair market value to the  
45 dealer if the new distributor or the manufacturer offers the  
46 dealer a franchise agreement with terms acceptable to the  
47 dealer."

48 **SECTION 7.** G.S. 20-305(14) reads as rewritten:

49 "(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or  
50 accessories in reasonable quantities relative to the new motor vehicle dealer's  
51 facilities and sales potential in the new motor vehicle dealer's market area as

1 determined in accordance with reasonably applied economic principles, or  
2 within a reasonable time, after receipt of an order from a dealer having a  
3 franchise for the retail sale of any new motor vehicle sold or distributed by  
4 the manufacturer or distributor, any new vehicle, parts or accessories to new  
5 vehicles as are covered by such franchise, and such vehicles, parts or  
6 accessories as are publicly advertised as being available or actually being  
7 delivered. The delivery to another dealer of a motor vehicle of the same  
8 model and similarly equipped as the vehicle ordered by a motor vehicle  
9 dealer who has not received delivery thereof, but who has placed his written  
10 order for the vehicle prior to the order of the dealer receiving the vehicle,  
11 shall be evidence of a delayed delivery of, or refusal to deliver, a new motor  
12 vehicle to a motor vehicle dealer within a reasonable time, without cause.  
13 ~~Except~~ Additionally, except as may be required by any consent decree of the  
14 Commissioner or other order of the Commissioner or court of competent  
15 jurisdiction, ~~each any sales objectives which a manufacturer, factory branch,~~  
16 ~~distributor, or distributor branch shall establishes for any of its franchised~~  
17 ~~dealers in this State must be reasonable, and every manufacturer, factory~~  
18 ~~branch, distributor, or distributor branch must allocate its products within~~  
19 ~~this State in a manner that provides each of its franchised dealers in this~~  
20 ~~State an adequate supply of vehicles by series, product line, and model to~~  
21 ~~achieve the manufacturer's minimum sales requirements, planning volume,~~  
22 ~~or sales objectives and that is fair and equitable to all of its franchised~~  
23 ~~dealers in this State. Additionally, each manufacturer shall make available to~~  
24 ~~each of its franchised dealers in this State a minimum of one of each vehicle~~  
25 ~~series, model, or product line that the manufacturer advertises nationally as~~  
26 ~~being available for purchase. A manufacturer shall not unfairly discriminate~~  
27 ~~among its franchised dealers in this allocation process.~~ that does all of the  
28 following:

- 29 a. Provides each of its franchised dealers in this State an adequate  
30 supply of vehicles by series, product line, and model in a fair,  
31 reasonable, and equitable manner based on each dealer's historical  
32 selling pattern and reasonable sales standards as compared to other  
33 same line-make dealers in the State.
- 34 b. Allocates an adequate supply of vehicles to each dealer by series,  
35 product line, and model for the dealer to achieve the performance  
36 standards established by the manufacturer and distributor.
- 37 c. Is fair and equitable to all of its franchised dealers in this State.
- 38 d. Makes available to each of its franchised dealers in this State a  
39 minimum of one of each vehicle series, model, or product line that  
40 the manufacturer makes available to any dealer in this State and  
41 advertises in the State as being available for purchase.
- 42 e. Does not unfairly discriminate among its franchised dealers in its  
43 allocation process.

44 This subsection is not violated, however, if such failure is caused solely by  
45 acts or causes beyond the control of the manufacturer, distributor, factory  
46 branch, or factory representative the occurrence of temporary international,  
47 national, or regional product shortages resulting from natural disasters,  
48 unavailability of parts, labor strikes, product recalls, and other factors and  
49 events beyond the control of the manufacturer that temporarily reduce a  
50 manufacturer's product supply. The willful or malicious maintenance,  
51 creation, or alteration of a vehicle allocation process or formula by a

1 manufacturer, factory branch, distributor, or distributor branch that is in any  
2 part designed or intended to force or coerce a dealer in this State to close or  
3 sell the dealer's franchise, cause the dealer financial distress, or to relocate,  
4 update, or renovate the dealer's existing dealership facility shall constitute an  
5 unfair and deceptive trade practice under G.S. 75-1.1."

6 **SECTION 8.** G.S. 20-305(39) reads as rewritten:

7 "(39) Notwithstanding the terms, provisions, or conditions of any agreement,  
8 franchise, novation, waiver, or other written instrument, to require, coerce,  
9 or attempt to coerce any of its franchised motor vehicle dealers in this State  
10 to ~~purchase or lease~~ purchase, lease, erect, or relocate one or more signs  
11 displaying the name of the manufacturer or franchised motor vehicle dealer  
12 upon unreasonable or onerous terms or conditions or if installation of the  
13 additional signage would violate local signage or zoning laws to which the  
14 franchised motor vehicle dealer is subject. Any term, provision, or condition  
15 of any agreement, franchise, waiver, novation, or any other written  
16 instrument which is in violation of this subdivision shall be deemed null and  
17 void and without force and effect."

18 **SECTION 9.** G.S. 20-305 is amended by adding two new subdivisions to read:

19 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel**  
20 **franchise; preventing transfer of ownership; granting additional franchises;**  
21 **terminating franchises without good cause; preventing family succession.**

22 It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch,  
23 or any field representative, officer, agent, or any representative whatsoever of any of them:

24 ...

25 (43) To require, coerce, or attempt to coerce any new motor vehicle dealer in this  
26 State to change location of the dealership, or to make any substantial  
27 alterations to the dealership premises or facilities, if the dealer has changed  
28 the location of the dealership or made substantial alterations to the  
29 dealership premises or facilities within the preceding seven years at a cost of  
30 more than five hundred thousand dollars (\$500,000) and the change in  
31 location or alteration was made at the written request of the manufacturer,  
32 factory branch, distributor, or distributor branch. This subdivision shall not  
33 apply to improvements required by the manufacturer which are solely  
34 necessary to conform to applicable laws and regulations for safety or health  
35 reasons or to accommodate the reasonable and necessary sales and service  
36 requirements based on the technology of a motor vehicle offered for sale by  
37 the dealer.

38 (44) Notwithstanding the terms, provisions, or conditions of any agreement,  
39 franchise, novation, waiver, or other written instrument, to require, coerce,  
40 or attempt to coerce any of its franchised motor vehicle dealers in this State  
41 to change the principal operator, general manager, or any other manager or  
42 supervisor employed by the dealer. Any term, provision, or condition of any  
43 agreement, franchise, waiver, novation, or any other written instrument that  
44 is inconsistent with this subdivision shall be deemed null and void and  
45 without force and effect."

46 **SECTION 10.** G.S. 20-305.1 reads as rewritten:

47 **"§ 20-305.1. Automobile dealer warranty obligations.**

48 (a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch,  
49 shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's  
50 obligations for preparation, delivery and warranty service on its products, the schedule of  
51 compensation to be paid such dealers for parts, work, and service in connection with warranty

1 service, and the time allowances for the performance of such work and service. In no event  
2 shall such schedule of compensation fail to include reasonable compensation for diagnostic  
3 work and associated administrative requirements as well as repair service and labor. Time  
4 allowances for the performance of warranty work and service shall be reasonable and adequate  
5 for the work to be performed. The compensation which must be paid under this section must be  
6 reasonable, provided, however, that under no circumstances may the reasonable compensation  
7 under this section be in an amount less than the dealer's current retail labor rate and the amount  
8 charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty  
9 work of like kind, provided such amount is competitive with other franchised dealers within the  
10 dealer's market.

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

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

- 41 (1) Repairs for manufacturer or distributor special events, specials, or  
42 promotional discounts for retail customer repairs;
- 43 (2) Parts sold at wholesale or at reduced or specially negotiated rates for  
44 insurance repairs;
- 45 (3) Engine assemblies and transmission assemblies;
- 46 (4) Routine maintenance not covered under warranty, such as fluids, filters, and  
47 belts not provided in the course of repairs;
- 48 (5) Nuts, bolts, fasteners, and similar items that do not have an individual part  
49 number;
- 50 (6) Tires; and
- 51 (7) Vehicle reconditioning.



1       (a3) If a manufacturer or distributor furnishes a part or component to a dealer, at no cost,  
2 to use in performing repairs under a recall, campaign service action, or warranty repair, the  
3 manufacturer or distributor shall compensate the dealer for the part or component in the same  
4 manner as warranty parts compensation under this section by compensating the dealer the  
5 average markup on the cost for the part or component as listed in the manufacturer's or  
6 distributor's price schedule less the cost for the part or component.

7       (a4) A manufacturer or distributor may not require a dealer to establish the retail rate  
8 customarily charged by the dealer for parts and labor by an unduly burdensome or  
9 time-consuming method or by requiring information that is unduly burdensome or time  
10 consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction  
11 calculations.

12       ...

13       (h) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor  
14 vehicle manufacturer, factory branch, distributor, or distributor branch to deny a franchised  
15 new motor vehicle dealer the right to return any part or accessory that the dealer has not sold  
16 after 15 months where the part or accessory was not obtained through a specific order initiated  
17 by the franchised new motor vehicle dealer but instead was specified for, sold to, and shipped  
18 to the dealer pursuant to an automated ordering system, provided that such part or accessory is  
19 in the condition required for return to the manufacturer, factory branch, distributor, or  
20 distributor branch and the dealer returns the part within 60 days of it becoming eligible under  
21 this subsection. For purposes of this subsection, an "automated ordering system" shall be a  
22 computerized system required by the manufacturer that automatically specifies parts and  
23 accessories for sale and shipment to the dealer without specific order thereof initiated by the  
24 dealer. The manufacturer, factory branch, distributor, or distributor branch shall not charge a  
25 restocking or handling fee for any part or accessory being returned under this subsection."

26       **SECTION 11.** G.S. 20-305.7 reads as rewritten:

27       **"§ 20-305.7. Protecting dealership data and consent to access dealership information.**

28       (a) Except as expressly authorized in this section, no manufacturer, factory branch,  
29 distributor, or distributor branch shall require a new motor vehicle dealer to provide its  
30 customer lists, customer information, consumer contact information, transaction data, or service  
31 files. Any requirement by a manufacturer, factory branch, distributor, or distributor branch that  
32 a new motor vehicle dealer provide its customer lists, customer information, consumer contact  
33 information, transaction data, or service files as a condition to the dealer's participation in any  
34 incentive program or contest for a customer or dealer to receive any incentive payments  
35 otherwise earned under an incentive program or contest, for the dealer to obtain consumer or  
36 customer leads, or for the dealer to receive any other benefits, rights, merchandise, or services  
37 for which the dealer would otherwise be entitled to obtain under the franchise or any other  
38 contract or agreement, or which shall customarily be provided to dealers, shall be voidable at  
39 the option of the dealer, unless all of the following conditions are satisfied: (i) the customer  
40 information requested relates solely to the specific program requirements or goals associated  
41 with such manufacturer's or distributor's own vehicle makes and does not require that the dealer  
42 provide general customer information or other information related to the dealer; (ii) such  
43 requirement is lawful and would also not require the dealer to allow any customer the right to  
44 opt out under the federal Gramm-Leach-Bliley Act, 15 U.S.C., Subchapter I, § 1608, et seq.;  
45 and (iii) the dealer is not required to allow the manufacturer or distributor or any third party to  
46 have direct access to the dealer's computer system, but the dealer is instead permitted to provide  
47 the same dealer, consumer, or customer data or information specified by the manufacturer or  
48 distributor by timely obtaining and pushing or otherwise furnishing the required data in a  
49 widely accepted file format such as comma delimited in accordance with subsection (h) of this  
50 section. Nothing contained in this section shall limit the ability of the manufacturer, factory  
51 branch, distributor, or distributor branch to require that the dealer provide, or use in accordance

1 with the law, such customer information related solely to such manufacturer's or distributor's  
2 own vehicle makes to the extent necessary to do any of the following:

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

9 At the request of a manufacturer or distributor or of a third party acting on behalf of a  
10 manufacturer or distributor, a dealer may only be required to provide customer information  
11 related solely to such manufacturer's or distributor's own vehicle makes for reasonable  
12 marketing purposes, market research, consumer surveys, market analysis, and dealership  
13 performance analysis, but the dealer is only required to provide such customer information to  
14 the extent lawfully permissible; to the extent the requested information relates solely to specific  
15 program requirements or goals associated with such manufacturer's or distributor's own vehicle  
16 makes and does not require the dealer to provide general customer information or other  
17 information related to the dealer; and to the extent the requested information can be provided  
18 without requiring that the dealer allow any customer the right to opt out under the federal  
19 Gramm-Leach-Bliley Act, 15 U.S.C., Subchapter I, § 6801, et seq.

20 No manufacturer, factory branch, distributor, or distributor branch shall access or obtain  
21 dealer or customer data from or write dealer or customer data to a dealer management computer  
22 system utilized by a motor vehicle dealer located in this State, or require or coerce a motor  
23 vehicle dealer located in this State to utilize a particular dealer management computer system,  
24 unless the dealer management computer system allows the dealer to reasonably maintain the  
25 security, integrity, and confidentiality of the data maintained in the system. No manufacturer,  
26 factory branch, distributor, distributor branch, dealer management computer system vendor, or  
27 any third party acting on behalf of any manufacturer, factory branch, distributor, distributor  
28 branch, or dealer management computer system vendor shall prohibit a dealer from providing a  
29 means to regularly and continually monitor the specific data accessed from or written to the  
30 dealer's computer system and from complying with applicable State and federal laws and any  
31 rules or regulations promulgated thereunder. These provisions shall not be deemed to impose  
32 an obligation on a manufacturer, factory branch, distributor, distributor branch, dealer  
33 management computer system vendor, or any third party acting on behalf of any manufacturer,  
34 factory branch, distributor, distributor branch, or dealer management computer system vendor  
35 to provide such capability.

36 (b) No manufacturer, factory branch, distributor, distributor branch, dealer management  
37 computer system vendor, or any third party acting on behalf of any manufacturer, factory  
38 branch, distributor, distributor branch, or dealer management computer system vendor may  
39 access or utilize customer or prospect information maintained in a dealer management  
40 computer system utilized by a motor vehicle dealer located in this State for purposes of  
41 soliciting any such customer or prospect on behalf of, or directing such customer or prospect to,  
42 any other dealer. The limitations in this subsection do not apply to:

- 43 (1) A customer that requests a reference to another dealership;
- 44 (2) A customer that moves more than 60 miles away from the dealer whose data  
45 was accessed;
- 46 (3) Customer or prospect information that was provided to the dealer by the  
47 manufacturer, factory branch, distributor, or distributor branch; or
- 48 (4) Customer or prospect information obtained by the manufacturer, factory  
49 branch, distributor, or distributor branch where the dealer agrees to allow the  
50 manufacturer, factory branch, distributor, distributor branch, dealer  
51 management computer system vendor, or any third party acting on behalf of

1 any manufacturer, factory branch, distributor, distributor branch, or dealer  
2 management computer system vendor the right to access and utilize the  
3 customer or prospect information maintained in the dealer's dealer  
4 management computer system for purposes of soliciting any customer or  
5 prospect of the dealer on behalf of, or directing such customer or prospect to,  
6 any other dealer in a separate, stand-alone written instrument dedicated  
7 solely to such authorization.

8 No manufacturer, factory branch, distributor, distributor branch, dealer management computer  
9 system vendor, or any third party acting on behalf of any manufacturer, factory branch,  
10 distributor, distributor branch, or dealer management computer system vendor, may provide  
11 access to customer or dealership information maintained in a dealer management computer  
12 system utilized by a motor vehicle dealer located in this State, without first obtaining the  
13 dealer's prior express written consent, revocable by the dealer upon five business days written  
14 notice, to provide such access. Prior to obtaining said consent and prior to entering into an  
15 initial contract or renewal of a contract with a dealer located in this State, the manufacturer,  
16 factory branch, distributor, distributor branch, dealer management computer system vendor, or  
17 any third party acting on behalf of, or through any manufacturer, factory branch, distributor,  
18 distributor branch, or dealer management computer system vendor shall provide to the dealer a  
19 written list of all specific third parties to whom any ~~North Carolina dealer management~~  
20 ~~computer system~~ data obtained from the dealer has actually been provided within the 12-month  
21 period ending November 1 of the prior year. The list shall further describe the scope and  
22 specific fields of the data provided. In addition to the initial list, a dealer management computer  
23 system vendor or any third party acting on behalf of, or through a dealer management computer  
24 system vendor shall provide to the dealer an annual list of third parties to whom said data is  
25 actually being provided on November 1 of each year and to whom said data has actually been  
26 provided in the preceding 12 months and describe the scope and specific fields of the data  
27 provided. Such list shall be provided to the dealer by January 1 of each year. Any dealer  
28 management computer system vendor's contract that directly relates to the transfer or accessing  
29 of dealer or dealer customer information must conspicuously state, "NOTICE TO DEALER:  
30 THIS AGREEMENT RELATES TO THE TRANSFER AND ACCESSING OF  
31 CONFIDENTIAL INFORMATION AND CONSUMER RELATED DATA". Such consent  
32 does not change any such person's obligations to comply with the terms of this section and any  
33 additional State or federal laws (and any rules or regulations promulgated thereunder)  
34 applicable to them with respect to such access. In addition, no dealer management computer  
35 system vendor may refuse to provide a dealer management computer system to a motor vehicle  
36 dealer located in this State if the dealer refuses to provide any consent under this ~~subsection,~~  
37 ~~except to the extent that consent is deemed by the parties to be reasonably necessary in order~~  
38 ~~for the vendor to provide the system to the dealer.~~subsection.

39 ...

40 (f) The following definitions apply to this section:

41 (1) "Dealer management computer system" – A computer hardware and  
42 software system ~~having dealer business process management modules that~~  
43 ~~provide real-time system that is owned or leased by the dealer, including a~~  
44 dealer's use of Web applications, software, or hardware, whether located at  
45 the dealership or provided at a remote location and that provides access to  
46 customer records and transactions by a motor vehicle dealer located in this  
47 State and that ~~allow~~allows such motor vehicle dealer timely information in  
48 order to sell vehicles, parts or services through such motor vehicle  
49 dealership.

1 (2) "Dealer management computer system vendor" – A seller or reseller of  
2 dealer management computer systems (but only to the extent that such  
3 person is engaged in such activities).

4 (3) "Security breach" – An incident of unauthorized access to and acquisition of  
5 records or data containing dealership or dealership customer information  
6 where unauthorized use of the dealership or dealership customer information  
7 has occurred or is reasonably likely to occur or that creates a material risk of  
8 harm to a dealership or a dealership's customer. Any incident of  
9 unauthorized access to and acquisition of records or data containing  
10 dealership or dealership customer ~~information~~ information, or any incident of  
11 disclosure of dealership customer information to one or more third parties  
12 which shall not have been specifically authorized by the dealer or customer,  
13 shall constitute a security breach.

14 ...

15 (h) Notwithstanding any of the terms or provisions contained in this section or in any  
16 consent, authorization, release, novation, franchise, or other contract or agreement, whenever  
17 any manufacturer, factory branch, distributor, distributor branch, dealer management computer  
18 system vendor, or any third party acting on behalf of or through any manufacturer, factory  
19 branch, distributor, distributor branch, or dealer management computer system vendor requires  
20 that a new motor vehicle dealer provide any dealer, consumer, or customer data or information  
21 through direct access to a dealer's computer system, the dealer is not required to provide, and  
22 may not be required to consent to provide in any written agreement, such direct access to its  
23 computer system. The dealer may instead provide the same dealer, consumer, or customer data  
24 or information specified by the requesting party by timely obtaining and pushing or otherwise  
25 furnishing the requested data to the requesting party in a widely accepted file format such as  
26 comma delimited; provided that, when a dealer would otherwise be required to provide direct  
27 access to its computer system under the terms of a consent, authorization, release, novation,  
28 franchise, or other contract or agreement, a dealer that elects to provide data or information  
29 through other means may be charged a reasonable initial set-up fee and a reasonable processing  
30 fee based on the actual incremental costs incurred by the party requesting the data for  
31 establishing and implementing the process for the dealer. Any term or provision contained in  
32 any consent, authorization, release, novation, franchise, or other contract or agreement which is  
33 inconsistent with any term or provision contained in this subsection shall be voidable at the  
34 option of the dealer.

35 (i) Notwithstanding the terms or conditions of any consent, authorization, release,  
36 novation, franchise, or other contract or agreement, every manufacturer, factory branch,  
37 distributor, distributor branch, dealer management computer system vendor, or any third party  
38 acting on behalf of or through any manufacturer, factory branch, distributor, distributor branch,  
39 or dealer management computer system vendor, having electronic access to consumer or  
40 customer data or other information in a computer system utilized by a new motor vehicle  
41 dealer, or who has otherwise been provided consumer or customer data or information by the  
42 dealer, shall fully indemnify and hold harmless any dealer from whom it has acquired such  
43 consumer or customer data or other information from all damages, costs, and expenses incurred  
44 by such dealer, including, but not limited to, judgments, settlements, fines, penalties, litigation  
45 costs, defense costs, court costs, and attorneys' fees arising out of complaints, claims, civil or  
46 administrative actions, and, to the fullest extent allowable under the law, governmental  
47 investigations and prosecutions to the extent caused by the access, storage, maintenance, use,  
48 sharing, disclosure, or retention of such dealer's consumer or customer data or other  
49 information by the manufacturer, factory branch, distributor, distributor branch, dealer  
50 management computer system vendor, or third party acting on behalf of or through such

1 manufacturer, factory branch, distributor, distributor branch, or dealer management computer  
2 system vendor."

3           **SECTION 12.** The terms and provisions of this act shall be applicable to all current  
4 and future franchises and other agreements in existence between any new motor vehicle dealer  
5 located in this State and a manufacturer or distributor as of the effective date of this act.

6           **SECTION 13.** If any provision of this act or its application is held invalid, the  
7 invalidity does not affect other provisions or applications of this act that can be given effect  
8 without the invalid provisions or application, and to this end the provisions of this act are  
9 severable.

10           **SECTION 14.** Section 6 of this act becomes effective January 1, 2014. The  
11 remainder of the act is effective when it becomes law.