

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

S

D

**SENATE BILL 327
PROPOSED COMMITTEE SUBSTITUTE S327-PCS85223-SU-23**

Short Title: Clarify Motor Vehicle Licensing Law.

(Public)

Sponsors:

Referred to:

March 19, 2013

A BILL TO BE ENTITLED
AN ACT TO CLARIFY THE MOTOR VEHICLE DEALERS' AND MANUFACTURERS'
LICENSING LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-286(11)a. is amended by adding a new sub-sub-subdivision
to read:

"(11) Motor vehicle dealer or dealer. –

a. A person who does any of the following:

1. For commission, money, or other thing of value, buys, sells, or exchanges, whether outright or on conditional sale, bailment lease, chattel mortgage, or otherwise, five or more motor vehicles within any 12 consecutive months, regardless of who owns the motor vehicles.
2. On behalf of another and for commission, money, or other thing of value, arranges, offers, attempts to solicit, or attempts to negotiate the sale, purchase, or exchange of an interest in five or more motor vehicles within any 12 consecutive months, regardless of who owns the motor vehicles.
3. Engages, wholly or in part, in the business of selling new motor vehicles or new or used motor vehicles, or used motor vehicles only, whether or not the motor vehicles are owned by that person, and sells five or more motor vehicles within any 12 consecutive months.
4. Offers to sell, displays, or permits the display for sale for any form of compensation five or more motor vehicles within any 12 consecutive months.
5. Primarily engages in the leasing or renting of motor vehicles to others and sells or offers to sell those vehicles at retail.
6. Engages in any of the activities referenced in sub-sub-subdivisions 1. through 5. of this sub-subdivision using a computer or other communications facilities, hardware, or equipment at any location within this State for the purpose of transmitting applications, contracts, or orders for motor vehicles purchased or leased by retail purchasers or lessees located in this State."

SECTION 2. G.S. 20-287(a) reads as rewritten:



* S 3 2 7 - P C S 8 5 2 2 3 - S U - 2 3 *

1 "(a) License Required. – It shall be unlawful for any new motor vehicle dealer, used
2 motor vehicle dealer, motor vehicle sales representative, manufacturer, factory branch, factory
3 representative, distributor, distributor branch, distributor representative, or wholesaler to
4 engage in business in this State without first obtaining a license as provided in this Article. If
5 any motor vehicle dealer acts as a motor vehicle sales representative, the dealer shall obtain a
6 motor vehicle sales representative's license in addition to a motor vehicle dealer's license. A
7 sales representative may have only one license. The license shall show the name of the dealer
8 or wholesaler employing the sales representative. The following license holders may operate as
9 a motor vehicle dealer without obtaining a motor vehicle dealer's license or paying an
10 additional fee: a manufacturer, a factory branch, a distributor, and a distributor branch. Any of
11 these license holders who operates as a motor vehicle dealer, including a license holder
12 who uses a computer or other communications facilities, hardware, or equipment at any
13 location within this State for the purpose of transmitting applications, contracts, or orders for
14 motor vehicles purchased or leased by retail purchasers or lessees located in this State, may sell
15 motor vehicles at retail only at an established salesroom."

16 **SECTION 3.** G.S. 20-305 reads as rewritten:

17 "**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel**
18 **franchise; preventing transfer of ownership; granting additional franchises;**
19 **terminating franchises without good cause; preventing family succession.**

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

22 ...
23 (30) To vary the price charged to any of its franchised new motor vehicle dealers
24 located in this State for new motor vehicles based on the dealer's purchase of
25 new facilities, supplies, tools, equipment, or other merchandise from the
26 manufacturer, the dealer's relocation, remodeling, repair, or renovation of
27 existing dealerships or construction of a new facility, the dealer's
28 participation in training programs sponsored, endorsed, or recommended by
29 the manufacturer, whether or not the dealer is dualed with one or more other
30 line makes of new motor vehicles, or the dealer's sales penetration. Except as
31 provided in this subdivision, it shall be unlawful for any manufacturer,
32 factory branch, distributor, or distributor branch, or any field representative,
33 officer, agent, or any representative whatsoever of any of them to vary the
34 price charged to any of its franchised new motor vehicle dealers located in
35 this State for new motor vehicles based on the dealer's sales volume, the
36 dealer's level of sales or customer service satisfaction, the dealer's purchase
37 of advertising materials, signage, nondiagnostic computer hardware or
38 software, communications devices, or furnishings, or the dealer's
39 participation in used motor vehicle inspection or certification programs
40 sponsored or endorsed by the manufacturer.

41 The price of the vehicle, for purposes of this subdivision shall include
42 the manufacturer's use of rebates, credits, or other consideration that has the
43 effect of causing a variance in the price of new motor vehicles offered to its
44 franchised dealers located in the State.

45 Notwithstanding the foregoing, nothing in this subdivision shall be
46 deemed to preclude a manufacturer from establishing sales contests or
47 promotions that provide or award dealers or consumers rebates or incentives;
48 provided, however, that the manufacturer complies with all of the following
49 conditions:

50 a. With respect to manufacturer to consumer rebates and incentives, the
51 manufacturer's criteria for determining eligibility shall:

- 1 1. Permit all of the manufacturer's franchised new motor vehicle
- 2 dealers in this State to offer the rebate or incentive; and
- 3 2. Be uniformly applied and administered to all eligible
- 4 consumers.
- 5 b. With respect to manufacturer to dealer rebates and incentives, the
- 6 rebate or incentive program shall:
 - 7 1. Be based solely on the dealer's actual or reasonably
 - 8 anticipated sales volume or on a uniform per vehicle sold or
 - 9 leased basis;
 - 10 2. Be uniformly available, applied, and administered to all of the
 - 11 manufacturer's franchised new motor vehicle dealers in this
 - 12 State; and
 - 13 3. Provide that any of the manufacturer's franchised new motor
 - 14 vehicle dealers in this State may, upon written request, obtain
 - 15 the method or formula used by the manufacturer in
 - 16 establishing the sales volumes for receiving the rebates or
 - 17 incentives and the specific calculations for determining the
 - 18 required sales volumes of the inquiring dealer and any of the
 - 19 manufacturer's other franchised new motor vehicle dealers
 - 20 located within 75 miles of the inquiring dealer.

21 Nothing contained in this subdivision shall prohibit a manufacturer from
22 providing assistance or encouragement to a franchised dealer to remodel,
23 renovate, recondition, or relocate the dealer's existing facilities, provided that
24 this assistance, encouragement, or rewards are not determined on a per
25 vehicle basis.

26 It is unlawful for any manufacturer to charge or include the cost of any
27 program or policy prohibited under this subdivision in the price of new
28 motor vehicles that the manufacturer sells to its franchised dealers or
29 purchasers located in this State.

30 In the event that as of October 1, 1999, a manufacturer was operating a
31 program that varied the price charged to its franchised dealers in this State in
32 a manner that would violate this subdivision, or had in effect a documented
33 policy that had been conveyed to its franchised dealers in this State and that
34 varied the price charged to its franchised dealers in this State in a manner
35 that would violate this subdivision, it shall be lawful for that program or
36 policy, including amendments to that program or policy that are consistent
37 with the purpose and provisions of the existing program or policy, or a
38 program or policy similar thereto implemented after October 1, 1999, to
39 continue in effect as to the manufacturer's franchised dealers located in this
40 State until June 30, ~~2014~~2018.

41 In the event that as of June 30, 2001, a manufacturer was operating a
42 program that varied the price charged to its franchised dealers in this State in
43 a manner that would violate this subdivision, or had in effect a documented
44 policy that had been conveyed to its franchised dealers in this State and that
45 varied the price charged to its franchised dealers in this State in a manner
46 that would violate this subdivision, and the program or policy was
47 implemented in this State subsequent to October 1, 1999, and prior to June
48 30, 2001, and provided that the program or policy is in compliance with this
49 subdivision as it existed as of June 30, 2001, it shall be lawful for that
50 program or policy, including amendments to that program or policy that
51 comply with this subdivision as it existed as of June 30, 2001, to continue in

1 effect as to the manufacturer's franchised dealers located in this State until
2 June 30, ~~2014~~2018.

3 Any manufacturer shall be required to pay or otherwise compensate any
4 franchise dealer who has earned the right to receive payment or other
5 compensation under a program in accordance with the manufacturer's
6 program or policy.

7 The provisions of this subdivision shall not be applicable to multiple or
8 repeated sales of new motor vehicles made by a new motor vehicle dealer to
9 a single purchaser under a bona fide fleet sales policy of a manufacturer,
10 factory branch, distributor, or distributor branch.

11 ...

12 (44) Notwithstanding the terms, provisions, or conditions of any agreement or
13 franchise, to require, coerce, or attempt to coerce any new motor vehicle
14 dealer located in this State to refrain from displaying in the dealer's
15 showroom or elsewhere within the dealership facility any sports-related
16 honors, awards, photographs, displays, or other artifacts or memorabilia;
17 provided, however, that such sports-related honors, awards, photographs,
18 displays, or other artifacts or memorabilia (i) pertain to an owner, investor,
19 or executive manager of the dealership; (ii) relate to professional sports; (iii)
20 do not reference or advertise a competing brand of motor vehicles; and (iv)
21 do not conceal or disparage any of the required branding elements which are
22 part of the dealership facility.

23 (45) Nothwithstanding the terms, provisions, or conditions of any agreement or
24 franchise, to discriminate against a new motor vehicle dealer located in this
25 State for selling or offering for sale a service contract, debt cancellation
26 agreement, maintenance agreement, or similar product not approved,
27 endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or
28 captive finance source. For purposes of this subdivision, discrimination
29 includes any of the following:

30 a. Requiring or coercing a dealer to exclusively sell or offer for sale
31 service contracts, debt cancellation agreements, or similar products
32 approved, endorsed, sponsored, or offered by the manufacturer,
33 distributor, affiliate, or captive finance source.

34 b. Taking or threatening to take any adverse action against a dealer (i)
35 because the dealer sells or offers for sale any service contracts, debt
36 cancellation agreements, maintenance agreements, or similar
37 products that have not been approved, endorsed, sponsored, or
38 offered by the manufacturer, distributor, affiliate, or captive finance
39 source or (ii) because the dealer fails to sell or offer for sale service
40 contracts, debt cancellation agreements, maintenance agreements, or
41 similar products approved, endorsed, sponsored, or offered by the
42 manufacturer, distributor, their affiliate, or captive finance source.

43 c. Measuring a dealer's performance under a franchise in any part based
44 upon the dealer's sale of service contracts, debt cancellation
45 agreements, or similar products approved, endorsed, sponsored, or
46 offered by the manufacturer, distributor, affiliate, or captive finance
47 source.

48 d. Requiring a dealer to promote the sale of service contracts, debt
49 cancellation agreements, or similar products approved, endorsed,
50 sponsored, or offered by the manufacturer, distributor, affiliate, or
51 captive finance source.

- 1 e. Considering the dealer's sale of service contracts, debt cancellation
2 agreements, or similar products approved, endorsed, sponsored, or
3 offered by the manufacturer, distributor, affiliate, or captive finance
4 source in determining any of the following:
- 5 1. The dealer's eligibility to purchase any vehicles, parts, or
6 other products or services from the manufacturer or
7 distributor.
 - 8 2. The volume of vehicles or other parts or services the dealer
9 shall be eligible to purchase from the manufacturer or
10 distributor.
 - 11 3. The price or prices of any vehicles, parts, or other products or
12 services that the dealer shall be eligible to purchase from the
13 manufacturer or distributor.
 - 14 4. The availability or amount of any vehicle discount, credit,
15 special pricing, rebate, or sales or service incentive the dealer
16 shall be eligible to receive from the manufacturer, distributor,
17 affiliate, or captive finance source in which the incentives are
18 calculated or paid on a per-vehicle basis or any vehicle
19 discount, credit, special pricing, or rebate that are calculated
20 or paid on a per-vehicle basis.

21 For purposes of this subdivision, discrimination does not include, and
22 nothing shall prohibit a manufacturer, distributor, affiliate, or captive finance
23 source from, offering discounts, rebates, or other incentives to dealers who
24 voluntarily sell or offer for sale service contracts, debt cancellation
25 agreements, or similar products approved, endorsed, sponsored, or offered
26 by the manufacturer, distributor, affiliate, or captive finance source;
27 provided, however, that such discounts, rebates, or other incentives are based
28 solely on the sales volume of the service contracts, debt cancellation
29 agreements, or similar products sold by the dealer and do not provide vehicle
30 sales or service incentives.

31 For purposes of this subdivision, a service contract provider or its
32 representative shall not complete any sale or transaction of an extended
33 service contract, extended maintenance plan, or similar product using
34 contract forms that do not disclose the identity of the service contract
35 provider.

- 36 (46) To require, coerce, or attempt to coerce a dealer located in this State to
37 purchase goods or services of any nature from a vendor selected, identified,
38 or designated by a manufacturer, distributor, affiliate, or captive finance
39 source when the dealer may obtain goods or services of substantially similar
40 quality and design from a vendor selected by the dealer, provided the dealer
41 obtains prior approval from the manufacturer, distributor, affiliate, or captive
42 finance source, for the use of the dealer's selected vendor. Such approval by
43 the manufacturer, distributor, affiliate, or captive finance source may not be
44 unreasonably withheld. For purposes of this subdivision, the term "goods"
45 does not include moveable displays, brochures, and promotional materials
46 containing material subject to the intellectual property rights of a
47 manufacturer or distributor, or special tools as reasonably required by the
48 manufacturer, or parts to be used in repairs under warranty obligations of a
49 manufacturer or distributor. If the manufacturer, distributor, affiliate, or
50 captive finance source claims that a vendor chosen by the dealer cannot
51 supply goods and services of substantially similar quality and design, the

1 dealer may file a protest with the Commissioner. When a protest is filed, the
2 Commissioner shall promptly inform the manufacturer, distributor, affiliate,
3 or captive finance source that a protest has been filed. The Commissioner
4 shall conduct a hearing on the merits of the protest within 90 days following
5 the filing of a response to the protest. The manufacturer, distributor, affiliate,
6 or captive finance source shall bear the burden of proving that the goods or
7 services chosen by the dealer are not of substantially similar quality and
8 design to those required by the manufacturer, distributor, affiliate, or captive
9 finance source.

10 (47) To fail to provide to a dealer, if the goods or services to be supplied to the
11 dealer by a vendor selected, identified, or designated by the manufacturer or
12 distributor are signs or other franchisor image elements to be purchased or
13 leased to the dealer, the right to purchase or lease the signs or other
14 franchisor image elements of similar quality and design from a vendor
15 selected by the dealer. This subdivision and subdivision (46) of this section
16 shall not be construed to allow a dealer or vendor to violate directly or
17 indirectly the intellectual property rights of the manufacturer or distributor,
18 including, but not limited to, the manufacturer's or distributor's intellectual
19 property rights in any trademarks or trade dress, or other intellectual
20 property interests owned or controlled by the manufacturer or distributor, or
21 to permit a dealer to erect or maintain signs that do not conform to the
22 reasonable intellectual property right or trademark and trade dress usage
23 guidelines of the manufacturer or distributor.

24 (48) To unreasonably interfere with a dealer's independence in staffing the
25 dealership by engaging in any of the following conduct: (i) requiring,
26 coercing, or attempting to coerce a dealer located in this State to employ,
27 appoint, or designate an individual to serve full-time or exclusively in any
28 specific capacity, role, or job function at the dealership, other than the
29 employment or appointment of a full-time general manager; (ii) requiring a
30 dealer to employ, appoint, or designate an individual to serve full-time or
31 exclusively in any specific capacity, role, or job function at the dealership,
32 other than the employment or appointment of a full-time general manager, in
33 order to participate in or qualify for any incentive program offered or
34 sponsored by the manufacturer or distributor or to otherwise receive any
35 discounts, credits, rebates, or incentives of any kind that are calculated or
36 paid on a per-vehicle basis; or (iii) requiring that the dealer obtain the
37 approval of the manufacturer or distributor prior to employing or appointing
38 any individual in any capacity, role, or job function at the dealership, other
39 than the employment or appointment of a full-time general manager. Except
40 as expressly provided above, nothing contained in this subdivision shall be
41 deemed to prevent or prohibit a manufacturer or distributor from requiring
42 that a dealer employ a reasonable number of trained employees to sell and
43 service the factory's vehicles."

44 **SECTION 4.** G.S. 20-305.2 is amended by adding a new subsection to read:

45 "(e) For purposes of this section, an unfair method of competition includes any physical
46 or mechanical warranty repair made or provided directly by a manufacturer or distributor to any
47 motor vehicle located within this State requiring the direct participation of a dealer franchised
48 by the manufacturer or distributor and without such dealer receiving reasonable compensation,
49 equal to an amount no less than the amount provided in G.S. 20-305.1.

50 (f) No claim or cause of action may be brought against a dealer in this State arising out
51 of any warranty repair, fix, repair, or update that was provided by the manufacturer or

1 distributor without the direct involvement and participation of the dealer. Any manufacturer or
2 distributor that provides or attempts to provide a warranty repair, fix, repair, update, or
3 adjustment directly to any motor vehicle located within this State without the direct
4 participation of a dealer franchised by the manufacturer or distributor shall fully indemnify and
5 hold harmless any dealer located in this State for all claims, demands, judgments, damages,
6 attorneys' fees, litigation expenses, and all other costs and expenses incurred by the dealer
7 arising out of the actual or attempted warranty repair, fix, repair, update, or adjustment."

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

9 **"§ 20-305.7. Protecting dealership data and consent to access dealership information.**

10 ...

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

- 12 (1) "Dealer management computer system" – A computer hardware and
13 software system that is owned or leased by the dealer, including a dealer's
14 use of Web applications, software, or hardware, whether located at the
15 dealership or provided at a remote location and that provides access to
16 customer records and transactions by a motor vehicle dealer located in this
17 State and that allows such motor vehicle dealer timely information in order
18 to sell vehicles, parts or services through such motor vehicle dealership.
- 19 (2) "Dealer management computer system vendor" – A seller or reseller of
20 dealer management computer systems ~~(but systems, a person that sells~~
21 computer software for use on dealer management computer systems, or a
22 person who services or maintains dealer management computer systems, but
23 only to the extent that such person is each of the sellers, resellers, or other
24 persons listed in this subdivision are engaged in such activities)-activities.
- 25 (3) "Security breach" – An incident of unauthorized access to and acquisition of
26 records or data containing dealership or dealership customer information
27 where unauthorized use of the dealership or dealership customer information
28 has occurred or is reasonably likely to occur or that creates a material risk of
29 harm to a dealership or a dealership's customer. Any incident of
30 unauthorized access to and acquisition of records or data containing
31 dealership or dealership customer information, or any incident of disclosure
32 of dealership customer information to one or more third parties which shall
33 not have been specifically authorized by the dealer or customer, shall
34 constitute a security breach.

35 (g1) Notwithstanding any of the terms or provisions contained in this section or in any
36 consent, authorization, release, novation, franchise, or other contract or agreement, whenever
37 any manufacturer, factory branch, distributor, distributor branch, dealer management computer
38 system vendor, or any third party acting on behalf of or ~~through~~ through, or approved, referred,
39 endorsed, authorized, certified, granted preferred status, or recommended by, any manufacturer,
40 factory branch, distributor, distributor branch, or dealer management computer system vendor
41 requires that a new motor vehicle dealer provide any dealer, consumer, or customer data or
42 information through direct access to a dealer's computer system, the dealer is not required to
43 provide, and may not be required to consent to provide in any written agreement, such direct
44 access to its computer system. The dealer may instead provide the same dealer, consumer, or
45 customer data or information specified by the requesting party by timely obtaining and pushing
46 or otherwise furnishing the requested data to the requesting party in a widely accepted file
47 format such as comma delimited; provided that, when a dealer would otherwise be required to
48 provide direct access to its computer system under the terms of a consent, authorization,
49 release, novation, franchise, or other contract or agreement, a dealer that elects to provide data
50 or information through other means may be charged a reasonable initial set-up fee and a
51 reasonable processing fee based on the actual incremental costs incurred by the party

1 requesting the data for establishing and implementing the process for the dealer. Any term or
2 provision contained in any consent, authorization, release, novation, franchise, or other contract
3 or agreement which is inconsistent with any term or provision contained in this subsection shall
4 be voidable at the option of the dealer.

5 (g2) Notwithstanding the terms or conditions of any consent, authorization, release,
6 novation, franchise, or other contract or agreement, every manufacturer, factory branch,
7 distributor, distributor branch, dealer management computer system vendor, or any third party
8 acting on behalf of or through any manufacturer, factory branch, distributor, distributor branch,
9 or dealer management computer system vendor, having electronic access to consumer or
10 customer data or other information in a computer system utilized by a new motor vehicle
11 dealer, or who has otherwise been provided consumer or customer data or information by the
12 dealer, shall fully indemnify and hold harmless any dealer from whom it has acquired such
13 consumer or customer data or other information from all damages, costs, and expenses incurred
14 by such ~~dealer, including, dealer.~~ Such indemnification by the manufacturer, factory branch,
15 distributor, distributor branch, dealer management computer system vendor, or third party
16 acting on behalf of these entities includes, but is not limited to, judgments, settlements, fines,
17 penalties, litigation costs, defense costs, court costs, costs related to the disclosure of security
18 breaches, and attorneys' fees arising out of complaints, claims, civil or administrative actions,
19 and, to the fullest extent allowable under the law, governmental investigations and prosecutions
20 to the extent caused by a security breach or the access, storage, maintenance, use, sharing,
21 disclosure, or retention of such dealer's consumer or customer data or other
22 information information, or maintenance or services provided to any computer system utilized
23 by a new motor vehicle dealer. by the manufacturer, factory branch, distributor, distributor
24 branch, dealer management computer system vendor, or third party acting on behalf of or
25 through such manufacturer, factory branch, distributor, distributor branch, or dealer
26 management computer system vendor.

27"

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

29 **"§ 20-305.1. Automobile dealer warranty obligations.**

30 (a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch,
31 shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's
32 obligations for preparation, delivery and warranty service on its products, the schedule of
33 compensation to be paid such dealers for parts, work, and service in connection with warranty
34 service, and the time allowances for the performance of such work and service. In no event
35 shall such schedule of compensation fail to include reasonable compensation for diagnostic
36 work and associated administrative requirements as well as repair service and labor. Time
37 allowances for the performance of warranty work and service shall be reasonable and adequate
38 for the work to be performed. The compensation which must be paid under this section must be
39 reasonable, provided, however, that under no circumstances may the reasonable compensation
40 under this section be in an amount less than the dealer's current retail labor rate and the amount
41 charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty
42 work of like kind, provided such amount is competitive with the retail rates charged for parts
43 and labor by other franchised dealers within the dealer's market.

44 (a1) The retail rate customarily charged by the dealer for parts and labor may be
45 established at the election of the dealer by the dealer submitting to the manufacturer or
46 distributor 100 sequential nonwarranty customer-paid service repair orders which contain
47 warranty-like parts, or 60 consecutive days of nonwarranty customer-paid service repair orders
48 which contain warranty-like parts, whichever is less, covering repairs made no more than 180
49 days before the submission and declaring the average percentage markup. The average of the
50 parts markup rate and the average labor rate shall both be presumed to be ~~fair and~~ reasonable,
51 however, a manufacturer or distributor may, not later than 30 days after submission, rebut that

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

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

- 29 (1) Repairs for manufacturer or distributor special events, specials, or
 30 promotional discounts for retail customer ~~repairs; repairs.~~
- 31 (2) Parts sold at wholesale or at reduced or specially negotiated rates for
 32 insurance ~~repairs; repairs.~~
- 33 (3) Engine ~~assemblies and transmission assemblies; assemblies.~~
- 34 (4) Routine maintenance not covered under warranty, such as fluids, filters, and
 35 belts not provided in the course of ~~repairs; repairs.~~
- 36 (5) Nuts, bolts, fasteners, and similar items that do not have an individual part
 37 ~~number; number.~~
- 38 (6) ~~Tires; and Tires.~~
- 39 (7) Vehicle reconditioning.
- 40 (8) Batteries and light bulbs.

41"

42 **SECTION 7.** The terms and provisions of this act shall be applicable to all current
 43 and future franchises and other agreements in existence between any new motor vehicle dealer
 44 located in this State and a manufacturer or distributor as of the effective date of this act.

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

49 **SECTION 9.** This act is effective when it becomes law.