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SENATE DRS25156-ML-109 (03/04)

Short Title: Clarify Motor Vehicle Dealer Laws.

(Public)

Sponsors: Senator Apodaca (Primary Sponsor).

Referred to:

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. 20-286(10) reads as rewritten:

6 "(10) Motor vehicle. – Any motor propelled vehicle, trailer or semitrailer, required
7 to be registered under the laws of this State.

8 a. "New motor vehicle" means a motor vehicle that has never been the
9 subject of a completed, successful, or conditional sale that was
10 subsequently approved other than between new motor vehicle
11 dealers, or between manufacturer and dealer of the same franchise.

12 b. "Used motor vehicle" means a motor vehicle other than a motor
13 vehicle described in ~~paragraph (10) a above~~ sub-subdivision a. of this
14 subdivision."

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

16 "(6) Notwithstanding the terms, provisions or conditions of any franchise or
17 notwithstanding the terms or provisions of any waiver, to terminate, cancel
18 or fail to renew any franchise with a licensed new motor vehicle dealer
19 unless the manufacturer has satisfied the notice requirements of
20 ~~subparagraph~~ sub-subdivision c. of this subdivision and the Commissioner
21 has determined, if requested in writing by the dealer within (i) the time
22 period specified in G.S. 20-305(6)c.1.II., III., or IV., as applicable, or (ii) the
23 effective date of the franchise termination specified or proposed by the
24 manufacturer in the notice of termination, whichever period of time is
25 longer, and after a hearing on the matter, that there is good cause for the
26 termination, cancellation, or nonrenewal of the franchise and that the
27 manufacturer has acted in good faith as defined in this act regarding the
28 termination, cancellation or nonrenewal. When such a petition is made to the
29 Commissioner by a dealer for determination as to the existence of good
30 cause and good faith for the termination, cancellation or nonrenewal of a
31 franchise, the Commissioner shall promptly inform the manufacturer that a
32 timely petition has been filed, and the franchise in question shall continue in
33 effect pending the Commissioner's decision. The Commissioner shall try to
34 conduct the hearing and render a final determination within 180 days after a
35 petition has been filed. If the termination, cancellation or nonrenewal is
36 pursuant to G.S. 20-305(6)c.1.III. then the Commissioner shall give the



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1 proceeding priority consideration and shall try to render his final
2 determination no later than 90 days after the petition has been filed. Any
3 parties to a hearing by the Commissioner under this section shall have a right
4 of review of the decision in a court of competent jurisdiction pursuant to
5 Chapter 150B of the General Statutes. Any determination of the
6 Commissioner under this section finding that good cause exists for the
7 nonrenewal, cancellation, or termination of any franchise shall automatically
8 be stayed during any period that the affected dealer shall have the right to
9 judicial review or appeal of the determination before the superior court or
10 any other appellate court and during the pendency of any appeal; provided,
11 however, that within 30 days of entry of the Commissioner's order, the
12 affected dealer provide such security as the reviewing court, in its discretion,
13 may deem appropriate for payment of such costs and damages as may be
14 incurred or sustained by the manufacturer by reason of and during the
15 pendency of the stay. Although the right of the affected dealer to such stay is
16 automatic, the procedure for providing such security and for the award of
17 damages, if any, to the manufacturer upon dissolution of the stay shall be in
18 accordance with G.S. 1A-1, Rule 65(d) and (e). No such security provided
19 by or on behalf of any affected dealer shall be forfeited or damages awarded
20 against a dealer who obtains a stay under this subdivision in the event the
21 ownership of the affected dealership is subsequently transferred, sold, or
22 assigned to a third party in accordance with this subdivision or subdivision
23 (4) of this section and the closing on such transfer, sale, or assignment
24 occurs no later than 180 days after the date of entry of the Commissioner's
25 order. Furthermore, unless and until the termination, cancellation, or
26 nonrenewal of a dealer's franchise shall finally become effective, in light of
27 any stay or any order of the Commissioner determining that good cause
28 exists for the termination, cancellation, or nonrenewal of a dealer's franchise
29 as provided in this ~~paragraph, subdivision~~, a dealer who receives a notice of
30 termination, cancellation, or nonrenewal from a manufacturer as provided in
31 this subdivision shall continue to have the same rights to assign, sell, or
32 transfer the franchise to a third party under the franchise and as permitted
33 under G.S. 20-305(4) as if notice of the termination had not been given by
34 the manufacturer. Any franchise under notice or threat of termination,
35 cancellation, or nonrenewal by the manufacturer which is duly transferred in
36 accordance with G.S. 20-305(4) shall not be subject to termination by reason
37 of failure of performance or breaches of the franchise on the part of the
38 transferor.

39 ...

40 c. Notification of Termination, Cancellation and Nonrenewal. –

- 41 1. Notwithstanding the terms, provisions or conditions of any
42 franchise prior to the termination, cancellation or nonrenewal
43 of any franchise, the manufacturer shall furnish notification
44 of termination, cancellation or nonrenewal to the new motor
45 vehicle dealer as follows:

46 ...

- 47 IV. Not less than 180 days prior to the effective date of
48 such termination, cancellation, or nonrenewal which
49 occurs as a result of any change in ownership,
50 operation, or control of all or any part of the business
51 of the manufacturer, factory branch, distributor, or

distributor branch whether by sale or transfer of assets, corporate stock or other equity interest, assignment, merger, consolidation, combination, joint venture, redemption, operation of law or otherwise; or the termination, suspension, or cessation of a part or all of the business operations of the manufacturers, factory branch, distributor, or distributor branch; or the phasing out, winding down, or discontinuance of the sale of the product ~~line~~, line-make, franchise, or brand, or a change in distribution system by the manufacturer whether through a change in distributors or the manufacturer's decision to cease conducting business through a distributor altogether.

d. Payments.

2. The compensation provided above shall be paid by the manufacturer or distributor not later than 90 days after the manufacturer or distributor has received notice in writing from or on behalf of the new motor vehicle dealer specifying the elements of compensation requested by the dealer; provided the new motor vehicle dealer has, or can obtain, clear title to the inventory and has conveyed, or can convey, title and possession of the same to the manufacturer or distributor. Within 15 days after receipt of the dealer's written request for compensation, the manufacturer or distributor shall send the dealer detailed written instructions and forms required by the manufacturer or distributor to effectuate the receipt of the compensation requested by the dealer. The manufacturer or distributor shall be obligated to pay or reimburse the dealer for any transportation charges associated with the repurchase obligations of the manufacturer or distributor under this ~~sub-paragraph~~sub-subdivision. The manufacturer or distributor shall also compensate the dealer for any handling, packing, or similar payments contemplated in the franchise. In no event may the manufacturer or distributor charge the dealer any handling, restocking, or other similar costs or fees associated with items repurchased by the manufacturer under this ~~sub-paragraph~~sub-subdivision.

3. In addition to the other payments set forth in this section, if a termination, cancellation, or nonrenewal is premised upon any of the occurrences set forth in G.S. 20-305(6)c.1.IV., then the manufacturer or distributor shall be liable to the dealer for an amount at least equivalent to the fair market value of the franchise on (i) the date the franchisor announces the action which results in termination, cancellation, or nonrenewal; or (ii) the date the action which results in termination, cancellation, or nonrenewal first became general knowledge; or (iii) the day 18 months prior to the date on which the notice of termination, cancellation, or nonrenewal is issued,

1 whichever amount is higher. Payment is due not later than 90
2 days after the manufacturer or distributor has received notice
3 in writing from, or on behalf of, the new motor vehicle dealer
4 specifying the elements of compensation requested by the
5 dealer. Any contract, agreement, or release entered into
6 between any manufacturer and any dealer in which the dealer
7 waives the dealer's right to receive monetary compensation in
8 any sum or amount less than the fair market of the franchise
9 as provided in this subdivision, including any contract,
10 agreement, or release in which the dealer would accept the
11 right to continue to offer and be compensated for service,
12 parts, or both service and parts, provided by the dealer in lieu
13 of receiving all or a portion of the fair market value of the
14 franchise, shall be insufficient to satisfy the manufacturer's
15 obligation to adequately compensate the dealer under this
16 subdivision and shall be voidable at any time at the election
17 of the dealer. If the termination, cancellation, or nonrenewal
18 is due to a manufacturer's change in distributors, but the
19 models and series of vehicles sold in this State would
20 continue through the new distributor, the manufacturer may
21 avoid paying fair market value to the dealer if the new
22 distributor or the manufacturer offers the dealer a franchise
23 agreement with terms acceptable to the dealer.

24 e. Dealership Facilities Assistance upon Termination, Cancellation or
25 Nonrenewal.

26 In the event of the occurrence of any of the events specified in
27 G.S. 20-305(6)d.1. above, except termination, cancellation or
28 nonrenewal for license revocation, conviction of a crime involving
29 moral turpitude, or fraud by a dealer-owner:

- 30 1. Subject to ~~paragraph 3,~~sub-sub-subdivision 3. of this
31 sub-subdivision, if the new motor vehicle dealer is leasing the
32 dealership facilities from a lessor other than the manufacturer
33 or distributor, the manufacturer or distributor shall pay the
34 new motor vehicle dealer a sum equivalent to the rent for the
35 unexpired term of the lease or three year's rent, whichever is
36 less, or such longer term as is provided in the franchise
37 agreement between the dealer and manufacturer; except that,
38 in the case of motorcycle dealerships, the manufacturer shall
39 pay the new motor vehicle dealer the sum equivalent to the
40 rent for the unexpired term of the lease or one year's rent,
41 whichever is less, or such longer term as provided in the
42 franchise agreement between the dealer and manufacturer; or
- 43 2. Subject to ~~paragraph 3,~~sub-sub-subdivision 3. of this
44 sub-subdivision, if the new motor vehicle dealer owns the
45 dealership facilities, the manufacturer or distributor shall pay
46 the new motor vehicle dealer a sum equivalent to the
47 reasonable rental value of the dealership facilities for three
48 years, or for one year in the case of motorcycle dealerships.
- 49 3. In order to be entitled to facilities assistance from the
50 manufacturer or distributor, as provided in this ~~paragraph~~
51 ~~e.,~~sub-subdivision, the dealer, owner, or lessee, as the case

1 may be, shall have the obligation to mitigate damages by
 2 listing the demised premises for lease or sublease with a
 3 licensed real estate agent within 30 days after the effective
 4 date of the termination of the franchise and thereafter by
 5 reasonably cooperating with said real estate agent in the
 6 performance of the agent's duties and responsibilities. In the
 7 event that the dealer, owner, or lessee is able to lease or
 8 sublease the demised premises, the dealer shall be obligated
 9 to pay the manufacturer the net revenue received from such
 10 mitigation up to the total amount of facilities assistance which
 11 the dealer has received from the manufacturer pursuant to
 12 sub-subdivisions 1. and 2. To the extent and for such uses and
 13 purposes as may be consistent with the terms of the lease, a
 14 manufacturer who pays facilities assistance to a dealer under
 15 this ~~paragraph e.sub-subdivision~~ shall be entitled to occupy
 16 and use the dealership facilities during the years for which the
 17 manufacturer shall have paid rent under sub-subdivisions 1.
 18 and 2.

19 ...
 20 5. The compensation required for facilities assistance under this
 21 ~~paragraph e.sub-subdivision~~ shall be paid by the manufacturer
 22 or distributor within 90 days after the manufacturer or
 23 distributor has received notice in writing from, or on behalf
 24 of, a new motor vehicle dealer specifying the elements of
 25 compensation requested by the dealer.

26"
 27 **SECTION 3.** G.S. 20-305(7)d. reads as rewritten:

28 "d. Within 60 days after the death or incapacity of the owner or principal
 29 operator, a designated successor appointed in substantial compliance
 30 with this section shall give the affected manufacturer or distributor
 31 written notice of his or her succession to the position of owner or
 32 principal operator of the new motor vehicle dealership; provided,
 33 however, that the failure of the designated successor to give the
 34 manufacturer or distributor written notice as provided above within
 35 60 days of the death or incapacity of the owner or principal operator
 36 shall not result in the waiver or termination of the designated
 37 successor's right to succeed to the ownership of the new motor
 38 vehicle dealership unless the manufacturer or distributor gives
 39 written notice of this provision to either the designated successor or
 40 the deceased or incapacitated owner's executor, administrator,
 41 guardian or other fiduciary by certified or registered mail, return
 42 receipt requested, and said written notice grants not less than 30 days
 43 time within which the designated successor may give the notice
 44 required hereunder, provided the designated successor or the
 45 deceased or incapacitated owner's executor, administrator, guardian
 46 or other fiduciary has given the manufacturer reasonable notice of
 47 death or incapacity. Within 30 days of receipt of the notice by the
 48 manufacturer or distributor from the designated successor provided
 49 in this ~~paragraph,sub-subdivision~~, the manufacturer or distributor
 50 may request that the designated successor complete the application
 51 forms generally utilized by the manufacturer or distributor to review

1 the designated successor's qualifications to establish a successor
2 dealership. Within 30 days of receipt of the completed forms, the
3 manufacturer or distributor shall send a letter by certified or
4 registered mail, return receipt requested, advising the designated
5 successor of facts and circumstances which have changed since the
6 manufacturer's or distributor's original approval of the designated
7 successor, and which have caused the manufacturer or distributor to
8 object to the designated successor. Upon receipt of such notice, the
9 designated successor may either designate an alternative successor or
10 may file a request for evidentiary hearing in accordance with the
11 procedures provided in sub-subdivisions b.2.-5. of this subdivision.
12 In any such hearing, the manufacturer or distributor shall be limited
13 to facts and circumstances which did not exist at the time the
14 designated successor was originally approved or evidence which was
15 originally requested to be produced by the designated successor at
16 the time of the original request and was fraudulent."

17 **SECTION 4.** G.S. 20-305(38) reads as rewritten:

18 "(38) Notwithstanding the terms, provisions, or conditions of any agreement,
19 franchise, novation, waiver, or other written instrument, to assign or change
20 a franchised new motor vehicle dealer's area of responsibility under the
21 franchise arbitrarily or without due regard to the present or projected future
22 pattern of motor vehicle sales and registrations within the dealer's market
23 and without having provided the affected dealer with written notice of the
24 change in the dealer's area of responsibility and a detailed description of the
25 change in writing by registered or certified mail, return receipt requested. A
26 franchised new motor vehicle dealer who believes that a manufacturer,
27 factory branch, distributor, or distributor branch with whom the dealer has
28 entered into a franchise has ~~violated this subdivision~~ assigned or changed the
29 dealer's area of responsibility, is proposing to assign or change the dealer's
30 area of responsibility arbitrarily or without due regard to the present or
31 projected future pattern of motor vehicle sales and registrations within the
32 dealer's market, or failed to provide the dealer with the notice required under
33 this subdivision may file a petition and have an evidentiary hearing before
34 the Commissioner as provided in G.S. 20-301(b) contesting the franchised
35 new motor vehicle dealer's assigned area of responsibility. In determining at
36 the evidentiary hearing whether a manufacturer, factory branch, distributor,
37 or distributor branch has assigned or changed the dealer's area of
38 responsibility or is proposing to assign or change the dealer's area of
39 responsibility arbitrarily or without due regard to the present or projected
40 future pattern of motor vehicle sales and registrations within the dealer's
41 market, the Commissioner shall take into consideration the existing
42 circumstances, including all of the following:

43 a. The dealer's investment of time and money in developing the market
44 for the vehicles and other products and services of the affected
45 manufacturer, factory branch, distributor, or distributor branch within
46 the area of responsibility.

47 b. The present and future projected traffic patterns and drive times
48 between consumers and the various franchised dealers of the affected
49 manufacturer, factory branch, distributor, or distributor branch who
50 are located within the market.

- 1 c. The historical and projected future pattern of new vehicle sales and
2 registrations of the affected manufacturer, factory branch, distributor,
3 or distributor branch within various portions of the area of
4 responsibility and within the market as a whole.
- 5 d. If the affected manufacturer, manufacturer branch, distributor, or
6 distributor branch has removed territory from a dealer's area of
7 responsibility or is proposing to remove territory from a dealer's area
8 of responsibility, the projected economic effects, if any, that these
9 changes in the dealer's area of responsibility will have on the
10 petitioning dealer.
- 11 e. The projected effects that the changes in the petitioning dealer's area
12 of responsibility that have been made or proposed by the affected
13 manufacturer, manufacturer branch, distributor, or distributor branch
14 will have on the consuming public within the market.
- 15 f. The presence or absence of natural geographical obstacles or
16 boundaries, such as mountains and rivers.
- 17 g. The proximity of census tracts or other geographic units used by the
18 affected manufacturer, factory branch, distributor, or distributor
19 branch in determining dealers' respective areas of responsibility.

20 At the evidentiary hearing before the Commissioner, the affected manufacturer,
21 factory branch, distributor, or distributor branch shall have the burden of proving
22 that all portions of its current or proposed area of responsibility for the petitioning
23 franchised new motor vehicle dealer are reasonable in light of the present or
24 projected future pattern of motor vehicle sales and registrations within the
25 franchised new motor vehicle dealer's market. A policy or protocol of a
26 manufacturer, factory branch, distributor, or distributor branch that determines a
27 dealer's area of responsibility based solely or primarily on the proximity of census
28 tracts or other geographic units to its franchised dealers fails to satisfy the burden of
29 proof on the affected manufacturer, factory branch, distributor, or distributor branch
30 under this subdivision. Upon the filing of a petition before the Commissioner under
31 this subdivision, any changes in the petitioning franchised new motor vehicle
32 dealer's area of responsibility that have been proposed by the affected manufacturer,
33 factory branch, distributor, or distributor branch shall be stayed during the pendency
34 of the determination by the Commissioner. If a protest is or has been filed under
35 G.S. 20-305(5) and the franchised new motor vehicle dealer's area of responsibility
36 is included in the relevant market area under the protest, any protest filed under this
37 subdivision shall be consolidated with that protest for hearing and joint disposition
38 of all of the protests.

39 **SECTION 5.** G.S. 20-305(46) reads as rewritten:

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

1 manufacturer, or parts to be used in repairs under warranty obligations of a
2 manufacturer or distributor. For any tool designated as special or essential,
3 the manufacturer, distributor, or affiliate may recover from the dealer only
4 the actual cost of such tool. In the event the special or essential tool is sold to
5 the dealer through the manufacturer, distributor, or affiliate, and was
6 manufactured or assembled by that manufacturer, distributor, or affiliate,
7 actual cost shall be defined as the cost the manufacturer, distributor, or
8 affiliate paid for the materials together with the cost of labor used in
9 manufacturing or assembling the special or essential tool. In the event the
10 special or essential tool is sold to the dealer through the manufacturer,
11 distributor, or affiliate, but was manufactured or assembled by an entity
12 other than that manufacturer, distributor, or affiliate, actual cost shall be
13 defined as the cost the manufacturer, distributor, or affiliate actually paid for
14 the special or essential tool. In the event the special or essential tool is sold
15 to the dealer by a third party designated, endorsed, or recommended by the
16 manufacturer, distributor, or affiliate, and the price at which the special or
17 essential tool is being offered to the dealer exceeds the cost of the same or
18 similar tool available for purchase by the dealer through another source that
19 will perform substantially all of the functions required by the dealer, the
20 manufacturer, distributor, or affiliate may not prohibit the dealer from
21 purchasing the special or essential tool from the other source. If the
22 manufacturer, distributor, affiliate, or captive finance source claims that a
23 vendor chosen by the dealer cannot supply goods and services of
24 substantially similar quality and design, the dealer may file a protest with the
25 Commissioner. When a protest is filed, the Commissioner shall promptly
26 inform the manufacturer, distributor, affiliate, or captive finance source that
27 a protest has been filed. The Commissioner shall conduct a hearing on the
28 merits of the protest within 90 days following the filing of a response to the
29 protest. The manufacturer, distributor, affiliate, or captive finance source
30 shall bear the burden of proving that the goods or services chosen by the
31 dealer are not of substantially similar quality and design to those required by
32 the manufacturer, distributor, affiliate, or captive finance source."

33 **SECTION 6.** G.S. 20-305.1(a) reads as rewritten:

34 "(a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch,
35 shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's
36 obligations for preparation, delivery and warranty service on its products, the schedule of
37 compensation to be paid such dealers for parts, work, and service in connection with warranty
38 service, and the time allowances for the performance of such work and service. In no event
39 shall such schedule of compensation fail to include reasonable compensation for diagnostic
40 work and associated administrative requirements as well as repair service and labor. Time
41 allowances for the performance of warranty work and service shall be reasonable and adequate
42 for the work to be performed. The compensation which must be paid under this section must be
43 reasonable, provided, however, that under no circumstances may the reasonable compensation
44 under this section be in an amount less than the dealer's current retail labor rate and the amount
45 charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty
46 work of like kind, provided such amount is competitive with the retail rates charged for parts
47 and labor by other franchised dealers within the dealer's market. For the purposes of this
48 section, the term "warranty service" includes (i) work to maintain or repair a motor vehicle
49 under a warranty or maintenance plan, extended warranty, certified pre-owned warranty, or a
50 service contract issued, supplied, recommended, or endorsed by a manufacturer, factory branch,
51 distributor, or distributor branch and (ii) delivery or preparation procedures and repairs to a

1 motor vehicle as a result of a recall, campaign service, authorized goodwill, directive, or
2 bulletin of a manufacturer, factory branch, distributor, or distributor branch."

3 **SECTION 7.** G.S. 20-305.1(a2) reads as rewritten:

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

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

19 **SECTION 8.** G.S. 20-305.1(a3) reads as rewritten:

20 "(a3) If a manufacturer or distributor furnishes a part or component to a dealer, at no cost,
21 to use in performing repairs under a recall, campaign service action, or warranty repair, the
22 manufacturer or distributor shall compensate the dealer for the part or component in the same
23 manner as warranty parts compensation under this section by compensating the dealer the
24 average markup on the cost for the part or component as listed in the manufacturer's or
25 distributor's price schedule less the cost for the part or component. If a manufacturer or
26 distributor requires a dealer to retain, store, or to otherwise not dispose of any part or
27 component removed or replaced by a dealer in the performance of repairs under a recall,
28 campaign service action, or warranty repair, the manufacturer or distributor shall provide
29 reasonable compensation to the dealer for the storage costs of the removed or replaced part or
30 component from the date of the repair up to and including the earlier of the date the
31 manufacturer or distributor permits the dealer to dispose of the part or component or the date
32 the dealer returns the part or component to the manufacturer or distributor at the request of the
33 manufacturer or distributor. For purposes of this subsection, reasonable compensation for
34 storage and handling costs shall be determined by the dealer in accordance with generally
35 accepted accounting principles and shall include (i) the costs for the use of the dealer's facilities
36 for storage and handling of any part or component calculated on a fair market value per square
37 foot basis; (ii) any additional direct and indirect costs incurred by the dealer for storage of the
38 part or component, including the costs of any additional storage facilities incurred by the dealer
39 for storage of the part or component; and (iii) direct and indirect transportation costs related to
40 shipping parts or components to the dealer's storage facilities."

41 **SECTION 9.** G.S. 20-305.1(b3) reads as rewritten:

42 "(b3) Notwithstanding the terms of any franchise or other agreement, or the terms of any
43 program, policy, or procedure of any manufacturer, it shall be unlawful for a manufacturer to
44 take or threaten to take any adverse action against a dealer located in this State, or to otherwise
45 discriminate against any dealer located in this State, on the basis that the dealer sold or leased a
46 motor vehicle to a customer who either exported the vehicle to a foreign country or who resold
47 the vehicle to a third party, unless ~~the dealer knew or reasonably should have known that the~~
48 ~~customer intended to export or resell the motor vehicle prior to the customer's purchase of the~~
49 ~~vehicle from the dealer on the date of the sale or lease either the name of the purchaser or lessee~~
50 appeared on a list of known or suspected exporters or brokers published by the manufacturer
51 and readily accessible to employees of the dealer, or the dealer possessed actual knowledge that

1 the purchaser or lessee intended, at the time of the sale or lease, to export or broker the vehicle.
2 It shall be unlawful for any manufacturer to take any adverse action against a dealer located in
3 this State or to otherwise discriminate against any dealer located in this State on the basis that
4 the dealer failed to ensure that the purchaser or lessee paid personal property tax on the vehicle
5 purchased or leased from the dealer, the dealer failed to ensure that the vehicle being purchased
6 or leased had been permanently registered in this State or in any other state in which the dealer
7 was not required to ensure that the vehicle's permanent registration was processed or submitted
8 at the time of the vehicle's purchase or lease, that a certain number or percentage of the vehicles
9 sold or leased by a dealer over a specified period of time were exported or brokered, or that a
10 vehicle sold or leased by the dealer was exported to a foreign country more than 90 days after
11 the date of sale or lease by the dealer. The conduct and discrimination prohibited
12 under this subsection includes, but is not limited to, includes a manufacturer's actual or
13 ~~threatened;~~ threatened (i) failure or refusal to allocate, sell, or deliver motor vehicles to the
14 dealer; ~~or~~ (ii) discrimination against any dealer in the allocation of vehicles; ~~or~~ (iii) charging
15 back or withholding payments or other compensation or consideration for which a dealer is
16 otherwise eligible for warranty reimbursement or under a sales promotion, incentive program,
17 ~~or contest;~~ ~~or contest,~~ or other program or policy that would provide any compensation or
18 support for the dealer; (iv) disqualification of a dealer from participating in or discrimination
19 against any dealer relating to any sales promotion, incentive program, ~~or contest;~~ ~~or contest,~~ or
20 other program or policy that would provide any compensation or support for the dealer; (v)
21 termination of a franchise; franchise; or (vi) the imposition of any fine, penalty, chargeback, or
22 other disciplinary or punitive measure. In any proceeding brought pursuant to this subsection,
23 there shall be a rebuttable presumption that the dealer, prior to the customer's purchase of the
24 vehicle, did not know nor should have reasonably known have actual knowledge that the
25 customer intended to export or resell the motor vehicle, if (i) following the sale, the vehicle is
26 titled, registered, and, where applicable, taxes paid either temporarily or permanently registered
27 in any state or territory within the United States in the name of a customer who was physically
28 present at the dealership at or prior to the time of sale, and (ii) the dealer did not know, prior to
29 the consummation of the sale, that the vehicle would be shipped to a foreign country. sale or in
30 the name of the leasing company that is leasing the vehicle to the customer. Any audit for sales
31 or leases made to exporters or brokers shall only be for the 12-month period immediately
32 preceding the audit."

33 **SECTION 10.** G.S. 20-305.1(c) reads as rewritten:

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

48 **SECTION 11.** If any provision of this act or its application is held invalid, the
49 invalidity does not affect other provisions or applications of this act that can be given effect
50 without the invalid provisions or application, and to this end the provisions of this act are
51 severable.

1 **SECTION 12.** Section 4 of this act is effective when this act becomes law, but
2 shall not apply to any pending matter that has been the subject of a judicial review hearing
3 pursuant to Chapter 150B of the General Statutes as of the effective date of this act. The
4 remainder of this act is effective when it becomes law and applies to all current and future
5 franchises and other agreements in existence between any new motor vehicle dealer located in
6 this State and a manufacturer or distributor as of the effective date of this act.