

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 800
Committee Substitute Favorable 4/28/15
PROPOSED SENATE COMMITTEE SUBSTITUTE H800-PCS20387-SU-32

Short Title: Clarify Motor Vehicle Dealer Laws.

(Public)

Sponsors:

Referred to:

April 15, 2015

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



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

40 ...

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

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

47 ...

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

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 discontinuance of the sale of the ~~product line~~ line-make 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-division~~. 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-division~~.

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

18 ...

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

25"

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

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

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

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

17 "(38) Notwithstanding the terms, provisions, or conditions of any agreement,
18 franchise, novation, waiver, or other written instrument, to assign or change
19 a franchised new motor vehicle dealer's area of responsibility under the
20 franchise arbitrarily or without due regard to the present or projected future
21 pattern of motor vehicle sales and registrations within the dealer's market
22 and without having provided the affected dealer with written notice of the
23 change in the dealer's area of responsibility and a detailed description of the
24 change in writing by registered or certified mail, return receipt requested. A
25 franchised new motor vehicle dealer who believes that a manufacturer,
26 factory branch, distributor, or distributor branch with whom the dealer has
27 entered into a franchise ~~has violated this subdivision~~ assigned or changed the
28 dealer's area of responsibility, is proposing to assign or change the dealer's
29 area of responsibility arbitrarily or without due regard to the present or
30 projected future pattern of motor vehicle sales and registrations within the
31 dealer's market, or failed to provide the dealer with the notice required under
32 this subdivision may file a petition within 60 days of receiving notice of a
33 manufacturer, factory branch, distributor, or distributor branch's proposed
34 assignment or change to the dealer's area of responsibility and have an
35 evidentiary hearing before the Commissioner as provided in G.S. 20-301(b)
36 contesting the franchised new motor vehicle dealer's assigned area of
37 responsibility. In determining at the evidentiary hearing whether a
38 manufacturer, factory branch, distributor, or distributor branch has assigned
39 or changed the dealer's area of responsibility or is proposing to assign or
40 change the dealer's area of responsibility arbitrarily or without due regard to
41 the present or projected future pattern of motor vehicle sales and
42 registrations within the dealer's market, the Commissioner may take into
43 consideration the relevant circumstances, including, but not limited to:
44 a. The investment of time, money, or other resources made for the
45 purpose of developing the market for the vehicles of the same
46 line-make in the existing or proposed area of responsibility by the
47 petitioning dealer, other same line-make dealers who would be
48 affected by the change in the area of responsibility, or by the
49 manufacturer, factory branch, distributor, distributor branch, or any
50 dealer or regional advertising association.

- 1 b. The present and future projected traffic patterns and drive times
2 between consumers and the same line-make franchised dealers of the
3 affected manufacturer, factory branch, distributor, or distributor
4 branch who are located within the market.
- 5 c. The historical and projected future pattern of new vehicle sales and
6 registrations of the affected manufacturer, factory branch, distributor,
7 or distributor branch within various portions of the area of
8 responsibility and within the market as a whole.
- 9 d. The growth or decline in population, density of population, and new
10 car registrations in the market.
- 11 e. If the affected manufacturer, factory branch, distributor, or
12 distributor branch has removed territory from a dealer's area of
13 responsibility or is proposing to remove territory from a dealer's area
14 of responsibility, the projected economic effects, if any, that these
15 changes in the dealer's area of responsibility will have on the
16 petitioning dealer, other same line-make dealers, the public, and the
17 manufacturer, factory branch, distributor, or distributor branch.
- 18 f. The projected effects that the changes in the petitioning dealer's area
19 of responsibility that have been made or proposed by the affected
20 manufacturer, manufacturer branch, distributor, or distributor branch
21 will have on the consuming public within the market.
- 22 g. The presence or absence of natural geographical obstacles or
23 boundaries, such as mountains and rivers.
- 24 h. The proximity of census tracts or other geographic units used by the
25 affected manufacturer, factory branch, distributor, or distributor
26 branch in determining same line-make dealers' respective areas of
27 responsibility.
- 28 i. The public interest, consumer welfare, and customer convenience.
- 29 j. The reasonableness of the change or proposed change to the dealer's
30 area of responsibility considering the benefits and harm to the
31 petitioning dealer, other same line-make dealers, and the
32 manufacturer, factory branch, distributor, or distributor branch.

33 At the evidentiary hearing before the Commissioner, the affected manufacturer,
34 factory branch, distributor, or distributor branch shall have the burden of proving
35 that all portions of its current or proposed area of responsibility for the petitioning
36 franchised new motor vehicle dealer are reasonable in light of the present or
37 projected future pattern of motor vehicle sales and registrations within the
38 franchised new motor vehicle dealer's market. A policy or protocol of a
39 manufacturer, factory branch, distributor, or distributor branch that determines a
40 dealer's area of responsibility based solely on the proximity of census tracts or other
41 geographic units to its franchised dealers and the existence of natural boundaries
42 fails to satisfy the burden of proof on the affected manufacturer, factory branch,
43 distributor, or distributor branch under this subdivision. Upon the filing of a petition
44 before the Commissioner under this subdivision, any changes in the petitioning
45 franchised new motor vehicle dealer's area of responsibility that have been proposed
46 by the affected manufacturer, factory branch, distributor, or distributor branch shall
47 be stayed during the pendency of the determination by the Commissioner. If a
48 protest is or has been filed under G.S. 20-305(5) and the franchised new motor
49 vehicle dealer's area of responsibility is included in the relevant market area under
50 the protest, any protest filed under this subdivision shall be consolidated with that
51 protest for hearing and joint disposition of all of the protests. Nothing in this

1 subdivision shall apply to the determination of whether good cause exists for the
2 establishment by a manufacturer, factory branch, distributor, or distributor branch of
3 an additional new motor vehicle dealer or relocation of an existing new motor
4 vehicle dealer, which shall be governed in accordance with the requirements and
5 criteria contained in G.S. 20-305(5) and not this subdivision."

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

7 "(49) A manufacturer or distributor may not charge a dealer more than a
8 reasonable cost for any tool that the manufacturer or distributor sells to a
9 dealer and designates as a special or essential tool. A manufacturer or
10 distributor that collects tool fees as a convenience for the dealer and passes
11 the payment through to a tool manufacturer or supplier which is not owned,
12 operated, or controlled by the manufacturer, distributor, or affiliate shall not
13 be considered to be selling the tool provided that the manufacturer or
14 distributor's involvement does not increase the cost of the special tool or
15 essential tool. Nothing in this subdivision shall prohibit a manufacturer or
16 distributor from charging a reasonable nominal fee in addition to the cost of
17 the special or essential tool that includes manufacturer or distributor
18 handling costs. For any special or essential tool that the manufacturer or
19 distributor sells to the dealer at a price exceeding two hundred fifty dollars
20 (\$250.00), the manufacturer or distributor shall disclose on an invoice or
21 similar billing statement submitted to the dealer for the tool, the actual cost
22 of the special or essential tool paid by the manufacturer or distributor."

23 **SECTION 6.** G.S. 20-305.1(a2) reads as rewritten:

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

- 26 (1) Repairs for manufacturer or distributor special events, specials, coupons, or
27 other promotional discounts for retail customer repairs.
- 28 (2) Parts sold at wholesale or at reduced or specially negotiated rates for
29 insurance repairs.
- 30 (3) Engine assemblies.
- 31 (4) Routine ~~maintenance not covered under warranty, such as maintenance,~~
32 including fluids, filters, alignments, flushes, oil changes, and belts-belts, and
33 brake drums/rotors and shoes/pads not provided in the course of repairs.
- 34 (5) Nuts, bolts, fasteners, and similar items that do not have an individual part
35 number.
- 36 (6) ~~Tires.~~ Tires and vehicle alignments.
- 37 (7) Vehicle reconditioning.
- 38 (8) Batteries and light bulbs."

39 **SECTION 7.** G.S. 20-305.1(b3) reads as rewritten:

40 "~~(b3) Notwithstanding the terms of any franchise or other agreement, or the terms of any~~
41 ~~program, policy, or procedure of any manufacturer, it shall be unlawful for a manufacturer to~~
42 ~~take or threaten to take any adverse action against a dealer located in this State, or to otherwise~~
43 ~~discriminate against any dealer located in this State, on the basis that the dealer sold or leased a~~
44 ~~motor vehicle to a customer who either exported the vehicle to a foreign country or who resold~~
45 ~~the vehicle to a third party, unless the dealer knew or reasonably should have known that the~~
46 ~~customer intended to export or resell the motor vehicle prior to the customer's purchase of the~~
47 ~~vehicle from the dealer. The conduct prohibited under this subsection includes, but is not~~
48 ~~limited to, a manufacturer's actual or threatened: (i) failure or refusal to allocate, sell, or deliver~~
49 ~~motor vehicles to the dealer; or (ii) discrimination against any dealer in the allocation of~~
50 ~~vehicles; or (iii) charging back or withholding payments or other compensation or~~
51 ~~consideration for which a dealer is otherwise eligible for warranty reimbursement or under a~~

1 ~~sales promotion, incentive program, or contest; or (iv) disqualification of a dealer from~~
2 ~~participating in or discrimination against any dealer relating to any sales promotion, incentive~~
3 ~~program, or contest; or (v) termination of a franchise. In any proceeding brought pursuant to~~
4 ~~this subsection, there shall be a rebuttable presumption that the dealer, prior to the customer's~~
5 ~~purchase of the vehicle, did not know nor should have reasonably known that the customer~~
6 ~~intended to export or resell the motor vehicle, if (i) following the sale, the vehicle is titled,~~
7 ~~registered, and, where applicable, taxes paid in any state or territory within the United States in~~
8 ~~the name of a customer who was physically present at the dealership at or prior to the time of~~
9 ~~sale, and (ii) the dealer did not know, prior to the consummation of the sale, that the vehicle~~
10 ~~would be shipped to a foreign country. For purposes of this subsection, the term "manufacturer"~~
11 ~~shall include the terms "manufacturer," "manufacturer branch," "distributor," and "distributor~~
12 ~~branch," as those terms are defined in G.S. 20-286.~~

13 (1) Notwithstanding the terms of any franchise or other agreement, or the terms
14 of any program, policy, or procedure of any manufacturer, it shall be
15 unlawful for any manufacturer to take or threaten to take any adverse action
16 against a dealer located in this State, or to otherwise discriminate against any
17 dealer located in this State when:

18 a. The dealer failed to ensure that the purchaser or lessee paid personal
19 property tax on the vehicle purchased or leased from the dealer;

20 b. The dealer failed to ensure that the vehicle being purchased or leased
21 had been permanently registered in this State or in any other state in
22 which the dealer was not required to ensure that the vehicle's
23 permanent registration was processed or submitted at the time of the
24 vehicle's purchase or lease;

25 c. The manufacturer extrapolated the imposition of any adverse action
26 based on a certain number or percentage of the vehicles sold or
27 leased by a dealer over a specified period of time having been
28 exported or brokered; or

29 d. The dealer sold or leased a motor vehicle to a customer who either
30 exported the vehicle to a foreign country or who resold the vehicle to
31 a third party, unless:

32 1. The dealer reasonably should have known that the customer
33 intended to export or resell the motor vehicle prior to the
34 customer's purchase or lease of the vehicle from the dealer;

35 2. The vehicle sold or leased by the dealer was exported to a
36 foreign country within 180 days after the date of sale or lease
37 by the dealer; and

38 3. The affected manufacturer provided written notification to the
39 affected motor vehicle dealer of the resale or export within 12
40 months from the date of sale or lease.

41 Notwithstanding the provisions of sub-subdivision d. of this
42 subdivision, a manufacturer may take adverse action against a dealer
43 located in this State if the dealer sold or leased a motor vehicle to a
44 customer who either exported the vehicle to a foreign country or who
45 resold the vehicle to a third party and the dealer, prior to the
46 customer's purchase or lease of the vehicle from the dealer, had
47 actual knowledge that the customer intended to export or resell the
48 motor vehicle.

49 (2) The adverse action and discrimination prohibited under this subsection
50 includes, but is not limited to, a manufacturer's actual or threatened:

- 1 a. Failure or refusal to allocate, sell, or deliver motor vehicles to the
2 dealer;
- 3 b. Discrimination against any dealer in the allocation of vehicles;
- 4 c. Charging back or withholding payments or other compensation or
5 consideration that a dealer is otherwise entitled to receive and that is
6 not otherwise the subject of a dispute for warranty reimbursement or
7 under a sales promotion, incentive program, contest, or other
8 program or policy that would provide any compensation or support
9 for the dealer;
- 10 d. Disqualification of a dealer from participating in, or discrimination
11 against any dealer relating to, any sales promotion, incentive
12 program, contest, or other program or policy that would provide any
13 compensation or support for the dealer;
- 14 e. Termination of a franchise; or
- 15 f. The imposition of any fine, penalty, chargeback, or other disciplinary
16 or punitive measure.
- 17 (3) In any proceeding brought pursuant to this subsection, the affected
18 manufacturer shall have the burden of proving that the dealer knew or
19 reasonably should have known that the customer intended to export or resell
20 the motor vehicle prior to the customer's purchase or lease of the vehicle
21 from the dealer, subject to the following provisions:
- 22 a. There shall be a rebuttable presumption that the dealer, prior to the
23 customer's purchase or lease of the vehicle, did not know nor should
24 have reasonably known that the customer intended to export or resell
25 the motor vehicle, if:
- 26 1. Following the sale or lease, the dealer submitted the requisite
27 documentation to the appropriate governmental entity to
28 enable the vehicle to be titled, registered and, where
29 applicable, sales or highway use tax paid in any state or
30 territory within the United States in the name of a customer
31 who was physically present at the dealership at or prior to the
32 time of sale or lease; and
- 33 2. The customer's identifying information was not included on a
34 list of known or suspected exporters or resellers identified
35 and made readily accessible to the dealer by the applicable
36 manufacturer at the time of the sale or lease.
- 37 b. There shall be a rebuttable presumption that the dealer, prior to the
38 customer's purchase or lease of the vehicle, knew or reasonably
39 should have known that the customer intended to export or resell the
40 motor vehicle if the customer's identifying information was included
41 on a list of known or suspected exporters or resellers identified and
42 made readily accessible to the dealer by the applicable manufacturer
43 at the time of the sale or lease.
- 44 c. Nothing contained in subdivision (1) of this subsection shall be
45 deemed to prevent or prohibit the Commissioner or the affected
46 manufacturer from considering one or more of the factors delineated
47 in sub-subdivisions a. through c. of subdivision (1) of this subsection
48 in determining whether the dealer knew or reasonably should have
49 known that the customer intended to export or resell the motor
50 vehicle prior to the customer's purchase or lease of the vehicle from
51 the dealer.

1 (4) Any audit of a dealer by a manufacturer for sales or leases made to exporters
2 or brokers shall only be for the 12-month period immediately preceding the
3 audit."

4 **SECTION 8.** G.S. 20-305.1(c) reads as rewritten:

5 "(c) In the event there is a dispute between the manufacturer, factory branch, distributor,
6 or distributor branch, and the dealer with respect to any matter referred to in subsection (a), (b),
7 (b1), (b2), (b3), or (d) of this section, either party may petition the Commissioner in writing,
8 within 30 days after either party has given written notice of the dispute to the other, for a
9 hearing on the subject and the decision of the Commissioner shall be binding on the parties,
10 subject to rights of judicial review and appeal as provided in Chapter 150B of the General
11 Statutes; provided, however, that nothing contained herein shall give the Commissioner any
12 authority as to the content of any manufacturer's or distributor's warranty. Upon the filing of a
13 petition before the Commissioner under this subsection, any chargeback to or any payment
14 required of a dealer by a manufacturer relating to warranty parts or service compensation, or to
15 sales incentives, service incentives, rebates, ~~or~~ other forms of incentive compensation, or the
16 withholding or chargeback of other compensation or support that a dealer would otherwise be
17 eligible to receive shall be stayed during the pendency of the determination by the
18 Commissioner."

19 **SECTION 9.** G.S. 20-305.1(g) reads as rewritten:

20 "(g) Truck Dealer Cost Reimbursement. – Every manufacturer, manufacturer branch,
21 distributor, or distributor branch of new motor vehicles, or any affiliate or subsidiary thereof,
22 which manufactures or distributes new motor vehicles with a gross vehicle weight rating of
23 16,000 pounds or more shall compensate its new motor vehicle dealers located in this State for
24 the cost of special tools, equipment, and training for which its dealers are liable when the
25 applicable manufacturer, manufacturer branch, distributor, or distributor branch sells a portion
26 of its vehicle inventory to converters and other nondealer retailers. The purpose of this
27 reimbursement is to compensate truck dealers for special additional costs these dealers are
28 required to pay for servicing these vehicles when the dealers are excluded from compensation
29 for these expenses at the point of sale. The compensation which shall be paid pursuant to this
30 subsection shall be applicable only with respect to new motor vehicles with a gross vehicle
31 weight rating of 16,000 pounds or more which are registered to end users within this State and
32 that are sold by a manufacturer, manufacturer branch, distributor, or distributor branch to
33 ~~either~~either of the following:

- 34 (1) Persons or entities other than new motor vehicle dealers with whom the
35 manufacturer, manufacturer branch, distributor, or distributor branch has
36 entered into ~~franchises; or~~franchises.
37 (2) Persons or entities that install custom bodies on truck chassis, including, but
38 not limited to, mounted equipment or specialized bodies for concrete
39 distribution, firefighting equipment, waste disposal, recycling, garbage
40 disposal, buses, utility service, street sweepers, wreckers, and rollback
41 bodies for vehicle recovery; provided, however, that no compensation shall
42 be required to be paid pursuant to this subdivision with respect to vehicles
43 sold for purposes of manufacturing or assembling school buses.
44 Additionally, no compensation shall be required to be paid pursuant to this
45 subdivision with respect to any vehicles that were sold to the end user by a
46 franchised new motor vehicle dealer.

47 The amount of compensation ~~which that~~ shall be payable by the applicable manufacturer,
48 manufacturer branch, distributor, or distributor branch shall be ~~six~~nine hundred dollars
49 ~~(\$600.00)~~(\$900.00) per new motor vehicle registered in this State whose chassis has a gross
50 vehicle weight rating of 16,000 pounds or more. The compensation required pursuant to this
51 subsection shall be paid by the applicable manufacturer, manufacturer branch, distributor, or

1 distributor branch to its franchised new motor vehicle dealer in closest proximity to the
2 registered address of the end user to whom the motor vehicle has been registered within 30
3 days after ~~such registration~~ registration of the vehicle. Upon receiving a request in writing from
4 one of its franchised dealers located in this State, a manufacturer, manufacturer branch,
5 distributor, or distributor branch shall promptly make available to ~~such the~~ the dealer its records
6 relating to the registered addresses of its new motor vehicles registered in this State for the
7 previous 12 months and its payment of compensation to dealers as provided in this subsection."

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

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