

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

FILED SENATE
Mar 28, 2017
S.B. 413
PRINCIPAL CLERK

S

D

SENATE BILL DRS15089-ML-132 (03/13)

Short Title: Clarify Motor Vehicle Dealer Laws. (Public)

Sponsors: Senator B. Jackson (Primary Sponsor).

Referred to:

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

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 20-288(a1)(2) reads as rewritten:

6 "(2) Proof that the applicant, within the last 12 months, has completed a 12-hour
7 licensing course approved by the Division if the applicant is seeking an
8 initial license and a six-hour course approved by the Division if the applicant
9 is seeking a renewal license. The requirements of this subdivision do not
10 apply to a used motor vehicle dealer the primary business of which is the
11 sale of salvage vehicles on behalf of insurers or to a manufactured home
12 dealer licensed under G.S. 143-143.11 who complies with the continuing
13 education requirements of G.S. 143-143.11B. The requirement of this
14 subdivision does not apply to persons age 62 or older as of July 1, 2002, who
15 are seeking a renewal license. This subdivision also does not apply to an
16 applicant who holds a license as a new motor vehicle dealer as defined in
17 G.S. 20-286(13) and operates from an established showroom ~~20 miles or less~~
18 ~~from~~ located in an area within a radius of 30 miles around the location of the
19 established showroom for which the applicant seeks a used motor vehicle
20 dealer license. An applicant who also holds a license as a new motor vehicle
21 dealer may designate a representative to complete the licensing course
22 required by this subdivision."

23 **SECTION 2.** G.S. 20-305 is amended by adding a new subdivision to read:

24 "(50) To require, coerce, or attempt to coerce, any new motor vehicle dealer
25 located in this State to change the location of its dealership, or to make any
26 substantial alterations to its dealership premises or facilities, if the dealer (i)
27 has changed the location of its dealership or made substantial alterations to
28 its dealership premises or facilities within the preceding 10 years at a cost of
29 more than one hundred thousand dollars (\$100,000) over this 10-year period
30 and (ii) the change in location or alteration was made at the request of, or
31 with the knowledge, acquiescence, or approval of, the manufacturer, factory
32 branch, distributor, or distributor branch. For any dealer that did not change
33 the location of its dealership or make substantial alterations to its dealership
34 premises or facilities within the preceding 10 years at a cost of more than
35 one hundred thousand dollars (\$100,000), the dealer's obligation to change
36 location of its dealership, or to make any substantial alteration to its



dealership premises or facilities, at the request of a manufacturer, factory branch, distributor, or distributor branch, or to satisfy a requirement or condition of an incentive program sponsored by a manufacturer, factory branch, distributor, or distributor branch, shall be governed by the applicable provisions of subdivisions (4), (11), (12), (25), (30), (32), and (42) of this section."

SECTION 3. G.S. 20-305.1 reads as rewritten:

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

(a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch, shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's obligations for preparation, ~~delivery and warranty~~ delivery, warranty, and recall service on its products, including any service performed under a maintenance plan, extended warranty, certified pre-owned warranty, or service contract issued by or through the manufacturer, factory branch, distributor, distributor branch, or any person or entity contracted or otherwise affiliated with the manufacturer, factory branch, distributor, or distributor branch. The disclosure required under this subsection shall include the schedule of compensation to be paid such the dealers for parts, work, and service in connection with ~~warranty~~ preparation, delivery, warranty, and recall service, and any services performed by the dealers under any warranty, maintenance plan, extended warranty, certified pre-owned warranty, or service contract issued by or through the manufacturer, factory branch, distributor, distributor branch, or any person or entity contracted or otherwise affiliated with the manufacturer, factory branch, distributor, or distributor branch, and the time allowances for the performance of such the work and service. In no event shall ~~such the~~ schedule of compensation fail to include reasonable compensation for diagnostic work and associated administrative requirements as well as repair service and labor. Time allowances for the performance of ~~warranty~~ preparation, delivery, warranty, and recall work and services service, and any services performed by the dealers under any warranty, maintenance plan, extended warranty, certified pre-owned warranty, or service contract issued by or through the manufacturer, factory branch, distributor, distributor branch, or any person or entity contracted or otherwise affiliated with the manufacturer, factory branch, distributor, or distributor branch, shall be reasonable and adequate for the work to be performed. The compensation which must be paid under this section must shall be reasonable, provided, however, that under no circumstances ~~may shall~~ the reasonable compensation under this section be in an amount less than the dealer's current retail labor rate and the amount charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty work of like kind, provided ~~such the~~ amount is competitive with the retail rates charged for parts and labor by other franchised dealers within the dealer's market.

...

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

...

(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of its warranty or recall obligations with respect to a motor vehicle, to fail to fully compensate its motor vehicle dealers licensed in this State for a qualifying used motor vehicle or warranty and recall parts other than parts used to repair the living facilities of recreational vehicles, at the prevailing retail rate according to the factors in subsection (a) of this section, or, in service in accordance with the schedule of compensation provided the dealer pursuant to subsection (a)

1 ~~above, of this section,~~ or to otherwise recover all or any portion of its costs for compensating its
2 motor vehicle dealers licensed in this State for warranty or recall parts and service either by
3 reduction in the amount due to the dealer, or by separate charge, surcharge, or other imposition,
4 and to fail to indemnify and hold harmless its franchised dealers licensed in this State against
5 any judgment for damages or settlements agreed to by the manufacturer, including, but not
6 limited to, court costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of
7 complaints, claims or lawsuits including, but not limited to, strict liability, negligence,
8 misrepresentation, express or implied warranty, or rescission or revocation of acceptance of the
9 sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that the judgment or
10 settlement relates to the alleged defective negligent manufacture, assembly or design of new
11 motor vehicles, parts or accessories or other functions by the manufacturer, factory branch,
12 distributor or distributor branch, beyond the control of the dealer. It is unlawful for any
13 manufacturer, factory branch, distributor, or distributor branch that manufactures or distributes
14 recreational vehicles to fail to fully compensate its dealers located in this State in accordance
15 with this section for warranty work performed by the dealers related to all parts of the vehicle,
16 including labor and parts used to repair the living facilities of the vehicle and any equipment,
17 appliances, and other options included by the manufacturer, factory branch, distributor, or
18 distributor branch in the purchase price paid by the dealer. Any audit for warranty or recall
19 parts or service ~~compensation~~ compensation, including compensation for any service performed
20 under any warranty, maintenance plan, extended warranty, certified pre-owned warranty, or
21 service contract issued by or through the manufacturer, factory branch, distributor, distributor
22 branch, or any person or entity contracted or otherwise affiliated with the manufacturer, factory
23 branch, distributor, or distributor branch, shall only be for the 12-month period immediately
24 following the date of the payment of the claim by the manufacturer, factory branch, distributor,
25 or distributor branch. Any audit for sales incentives, service incentives, rebates, or other forms
26 of incentive compensation shall only be for the 12-month period immediately following the
27 date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor
28 branch pursuant to a sales incentives program, service incentives program, rebate program, or
29 other form of incentive compensation program. Provided, however, these limitations shall not
30 be effective in the case of fraudulent claims.

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

44 ...

45 (c) In the event there is a dispute between the manufacturer, factory branch, distributor,
46 or distributor branch, and the dealer with respect to any matter referred to in subsection (a), (b),
47 (b1), (b2), (b3), ~~or (d)~~(d), or (i) of this section, either party may petition the Commissioner in
48 writing, within 30 days after either party has given written notice of the dispute to the other, for
49 a hearing on the subject and the decision of the Commissioner shall be binding on the parties,
50 subject to rights of judicial review and appeal as provided in Chapter 150B of the General
51 Statutes; provided, however, that nothing contained herein shall give the Commissioner any

1 authority as to the content of any manufacturer's or distributor's warranty. Upon the filing of a
2 petition before the Commissioner under this subsection, any chargeback to or any payment
3 required of a dealer by a manufacturer relating to warranty or recall parts or service
4 compensation, including compensation paid to a dealer for any services performed under any
5 warranty, maintenance plan, extended warranty, certified pre-owned warranty, or service
6 contract issued by or through the manufacturer, factory branch, distributor, distributor branch,
7 or any person or entity contracted or otherwise affiliated with the manufacturer, factory branch,
8 distributor, or distributor branch, to compensation for a qualifying used motor vehicle, or to
9 sales incentives, service incentives, rebates, other forms of incentive compensation, or the
10 withholding or chargeback of other compensation or support that a dealer would otherwise be
11 eligible to ~~receive~~receive, shall be stayed during the pendency of the determination by the
12 Commissioner.

13 ...

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

28 (i) Compensation for Used Motor Vehicle Recall. – Notwithstanding the terms of any
29 franchise or other agreement, it is unlawful for any motor vehicle manufacturer, factory branch,
30 distributor, or distributor branch to fail to compensate a franchised motor vehicle dealer for any
31 qualifying used motor vehicle in the inventory of a dealer authorized to sell new motor vehicles
32 of the same line-make or by a dealer authorized to perform recall repairs on vehicles of the
33 same line-make in the manner specified in this subsection. The manufacturer, factory branch,
34 distributor, or distributor branch shall compensate the dealer for any qualifying used motor
35 vehicle in the inventory of the dealer at the rate of at least one and three-quarters percent
36 (1.75%) per month, or any pro-rata portion of the month, of the value of the qualifying used
37 motor vehicle. The value of a qualifying used motor vehicle is the average trade-in value for
38 the motor vehicle, as determined by the latest edition of the National Automobile Dealers
39 Association Pricing Guide Book or any other publications approved by the Commissioner. Any
40 claim by a dealer for compensation owed under this subsection may be submitted by the dealer
41 on a monthly basis, and the manufacturer, factory branch, distributor, or distributor branch shall
42 process and pay the claim within 30 days after the dealer's submission of a claim. Every
43 manufacturer, manufacturer branch, distributor, and distributor branch licensed by the
44 Commissioner under this Article shall establish a simple, convenient, and efficient process for
45 its franchised dealers to submit claims online for compensation under this subsection on a
46 monthly basis. Nothing in this subsection shall prohibit a manufacturer, factory branch,
47 distributor, distributor branch from compensating a dealer for a qualifying used motor vehicle
48 under a national recall compensation program instead of the basis established in this section,
49 provided that the compensation paid to dealers under the program is equal to or exceeds the
50 level of compensation required by this subsection on a monthly basis and the compensation
51 payments are made within the time periods required by this section.

(j) Definition. – For purposes of this section, the term "qualifying used motor vehicle" is a motor vehicle (i) subject to a notice of recall and stop-sale or do-not-drive order issued by the manufacturer of the motor vehicle or the National Highway Traffic Safety Administration, and (ii) whose parts or other remedy sufficient to fully repair the underlying defect that resulted in the recall of the motor vehicle were not received by the dealer within 15 days of the earlier of the date of the notice of recall by the manufacturer or the date of notice of recall by the National Highway Traffic Safety Administration. Nothing in this subsection shall be construed as excluding from this definition motor vehicles on which a previously issued notice of recall or a stop-sale or do-not-drive order remains in effect as of the effective date of this subsection, or motor vehicles that become subject to a notice of recall or a stop-sale or do-not drive order on or after the effective date of this subsection."

SECTION 4. G.S. 20-305.5 reads as rewritten:

"§ ~~20-305.5~~. **Sections 20-305, subdivisions (4) through (28), and ~~20-305.1~~20-305.2 to 20-305.4 not applicable to certain manufacturers and dealers.**

The provisions of G.S. 20-305(4) through G.S. 20-305(28) and ~~20-305.1~~20-305.2 to 20-305.4 shall not apply to manufacturers of, or dealers in, mobile or manufactured type housing or recreational trailers."

SECTION 5. G.S. 20-305.2 reads as rewritten:

"§ ~~20-305.2~~. **Unfair methods of competition.**

...

(b) Subsection (a) of this section does not apply to manufacturers or distributors of trailers or semitrailers that are not recreational vehicles as defined in G.S. 20-4.01.

(b1) It is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch that has any franchised motor vehicle dealers in this State to, directly or indirectly, or through any parent, subsidiary, affiliate, or other related entity, own any ownership interest in, operate, or control any entity in this State that leases or rents motor vehicles to the general public in competition with any of its franchised dealers located in this State.

...."

SECTION 6. G.S. 20-305.7(b) reads as rewritten:

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

(1) A customer that requests a reference to another ~~dealership;~~dealership.

(2) A customer that moves more than 60 miles away from the dealer whose data was ~~accessed;~~accessed.

(3) Customer or prospect information that was provided to the dealer by the manufacturer, factory branch, distributor, or distributor ~~branch;~~branch.

...

No manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor, may provide access to customer or dealership information maintained in a dealer management computer system utilized by a motor vehicle dealer located in this State, without first obtaining the dealer's prior express written consent, revocable by the dealer upon five business days written notice, to provide such access. Prior to obtaining said consent and prior to entering into an initial contract or renewal of a contract with a dealer located in this State, the manufacturer,

1 factory branch, distributor, distributor branch, dealer management computer system vendor, or
2 any third party acting on behalf of, or through any manufacturer, factory branch, distributor,
3 distributor branch, or dealer management computer system vendor shall provide to the dealer a
4 written list of all specific third parties to whom any data obtained from the dealer has actually
5 been provided within the 12-month period ending November 1 of the prior year. The list shall
6 further describe the scope and specific fields of the data provided. In addition to the initial list,
7 a dealer management computer system vendor or any third party acting on behalf of, or through
8 a dealer management computer system vendor shall provide to the dealer an annual list of each
9 and every third party to whom said data is actually being provided on November 1 of
10 each year and each and every third party to whom said data ~~has~~ was actually ~~been~~ provided in
11 the preceding 12 months ~~and describe~~ and, for each and every third party identified, the list shall
12 detail the scope and specific fields of the data provided to the third party during the
13 12-month period. Such list shall be provided to the dealer by January 1 of each year. The lists
14 required under this subsection of the third parties to whom any data obtained from the dealer
15 has actually been provided shall be specific to each affected dealer, and it shall be insufficient
16 and unlawful for the provider of this information to furnish any dealer a list of third parties who
17 could or may have received any of the affected dealer's data, as the information required to be
18 provided under this subsection requires the provider of this information to state the identity and
19 other specified information of each and every third party to whom the data was actually
20 provided during the relevant period of time. It shall be unlawful for any third party to whom
21 any of the dealer's data has been provided to pass on to or charge the dealer any fee, cost, or
22 surcharge, any part of which is intended to reimburse the third party for charges or fees paid by
23 the third party to access the dealer's data. Any dealer management computer system vendor's
24 contract that directly relates to the transfer or accessing of dealer or dealer customer
25 information must conspicuously state, "NOTICE TO DEALER: THIS AGREEMENT
26 RELATES TO THE TRANSFER AND ACCESSING OF CONFIDENTIAL INFORMATION
27 AND CONSUMER RELATED DATA". Such consent does not change any such person's
28 obligations to comply with the terms of this section and any additional State or federal laws
29 (and any rules or regulations promulgated thereunder) applicable to them with respect to such
30 access. In addition, no dealer management computer system vendor may refuse to provide a
31 dealer management computer system to a motor vehicle dealer located in this State if the dealer
32 refuses to provide any consent under this subsection. The rights conferred under this subsection
33 on a motor vehicle dealer are not waivable and may not be modified by any contract or
34 agreement."

35 **SECTION 7.** Article 3 of Chapter 20 of the General Statutes is amended by adding
36 a new section to read:

37 **§ 20-101.3. Conspicuous disclosure of dealer shop and other service-related fees.**

38 (a) Requirement. – A motor vehicle dealer shall not charge shop fees in conjunction
39 with service work performed by the dealer, or other discretionary fees relating to environmental
40 or regulatory compliance, record retention, or other costs incurred by the dealer in conjunction
41 with service work performed by the dealer, whether or not the fees are attributable to or include
42 the dealer's internal overhead or profit, unless the dealer complies with both of the following
43 requirements:

- 44 (1) The dealer shall post a conspicuous notice in the service area of the
45 dealership measuring at least 24 inches on each side informing customers
46 that fees regulated by this section may or will be charged and that customers
47 should inquire of dealership personnel if they would like to know the type
48 and amount or basis of the fees charged by the dealer.
49 (2) The total amount of all fees regulated by this section shall be disclosed on
50 the customer's repair order or repair invoice. Nothing in this subdivision

1 shall be construed as requiring a dealer to list separately each fee charged by
2 the dealer.

3 (b) Discretion. – Notwithstanding any provision of law to the contrary, a dealer is not
4 required to charge a shop or other service-related fee regulated under this section, and may
5 reduce the amount of any or all fees charged."

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

10 **SECTION 9.** Sections 1 through 6 of this act are effective when it becomes law
11 and apply to all current and future franchises and other agreements in existence between any
12 new motor vehicle dealer located in this State and a manufacturer or distributor as of the
13 effective date of this act. Section 7 of this act becomes effective January 1, 2018, and applies to
14 fees charged on or after that date. The remainder of this act is effective when it becomes law.