**GENERAL ASSEMBLY OF NORTH CAROLINA**
**SESSION 2021**

**H** **D**

# HOUSE BILL 403
# PROPOSED COMMITTEE SUBSTITUTE H403-PCS30390-SU-11

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

Sponsors:

Referred to:

March 25, 2021

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CLARIFY THE LAWS GOVERNING NEW MOTOR VEHICLE DEALER FRANCHISES.

The General Assembly of North Carolina enacts:

**DEALERSHIP TRANSFERS/RIGHT OF FIRST REFUSAL CLARIFICATION**

**SECTION 1.(a)** G.S. 20-305(4) reads as rewritten:

"(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, change in use of an existing facility to provide for the sales or service of one or more additional line-makes of new motor vehicles, or relocation of the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed transfer, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor the transfer, sale, assignment, relocation, or change is unreasonable under the circumstances.

a. No franchise may be transferred, sold, assigned, relocated, or the executive management or principal operators changed, or the use of an existing facility changed, unless the franchisor has been given at least 30 days' prior written notice ~~as to the~~ of all of the following:

1. The proposed transferee's name and address, financial ability, and qualifications of the proposed transferee, a copy of the purchase agreement between the dealership and the proposed ~~transferee, the~~ transferee.
2. The identity and qualifications of the persons proposed to be involved in executive management or as principal ~~operators, and the~~ operators.
3. The location and site plans of any proposed relocation or change in use of a dealership facility.

b. ~~The~~ If the franchisor objects to the proposed transfer, sale, assignment, relocation, or change, the franchisor shall send the dealership and the proposed transferee notice of objection, by registered or certified mail, return receipt requested, to the proposed transfer, sale, assignment,

relocation, or change within 30 days after receipt of notice from the dealer, as provided in this section. The notice of objection shall state in detail all factual and legal bases for the objection on the part of the franchisor to the proposed transfer, sale, assignment, relocation, or change that is specifically referenced in this subdivision. An objection to a proposed transfer, sale, assignment, relocation, or change in the executive management or principal operator of the dealership or change in the use of the facility may only be premised upon the factual and legal bases specifically referenced in this subdivision or G.S. 20-305(11), as it relates to change in the use of a facility. A manufacturer's notice of objection which is based upon factual or legal issues that are not specifically referenced in this subdivision or G.S. 20-305(11) with respect to a change in the use of an existing facility as being issues upon which the Commissioner shall base his determination shall not be effective to preserve the franchisor's right to object to the proposed transfer sale, assignment, relocation, or change, provided the dealership or proposed transferee has submitted written notice, as required above, as to the proposed transferee's name and address, financial ability, and qualifications of the proposed transferee, a copy of the purchase agreement between the dealership and the proposed transferee, the identity and qualifications of the persons proposed to be involved in the executive management or as principal operators, and the location and site plans of any proposed relocation or change in the use of an existing facility.

c. Failure by the franchisor to send notice of objection within 30 days shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. If the franchisor requires additional information to complete its review, the franchisor shall notify the dealership within 15 days after receipt of the ~~proposed transferee's name and address, financial ability, and qualifications, a copy of the purchase agreement between the dealership and the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed relocation or change in use of the dealership facility.~~ notice to franchisor under sub-subdivision a. of this subdivision. If the franchisor fails to request additional information from the dealer or proposed transferee within 15 days of receipt of this initial information, the 30-day time period within which the franchisor may provide notice of objection shall be deemed to run from the initial receipt date. Otherwise, the 30-day time period within which the franchisor may provide notice of objection shall run from the date the franchisor has received the supplemental information requested from the dealer or proposed transferee; provided, however, that failure by the franchisor to send notice of objection within 60 days of the franchisor's receipt of the initial information from the dealer shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change.

d. With respect to a proposed transfer of ownership, sale, or assignment, the sole issue for determination by the Commissioner and the sole issue upon which the Commissioner shall hear or consider evidence is

whether, by reason of lack of good moral character, lack of general business experience, or lack of financial ability, the proposed transferee is unfit to own the dealership. For purposes of this subdivision, the refusal by the manufacturer to accept a proposed transferee who is of good moral character and who otherwise meets the written, reasonable, and uniformly applied business experience and financial requirements, if any, required by the manufacturer of owners of its franchised automobile dealerships is presumed to demonstrate the manufacturer's failure to prove that the proposed transferee is unfit to own the dealership.

e. With respect to a proposed change in the executive management or principal operator of the dealership, the sole issue for determination by the Commissioner and the sole issue on which the Commissioner shall hear or consider evidence shall be whether, by reason of lack of training, lack of prior experience, poor past performance, or poor character, the proposed candidate for a position within the executive management or as principal operator of the dealership is unfit for the position. For purposes of this subdivision, the refusal by the manufacturer to accept a proposed candidate for executive management or as principal operator who is of good moral character and who otherwise meets the written, reasonable, and uniformly applied standards or qualifications, if any, of the manufacturer relating to the business experience and prior performance of executive management required by the manufacturers of its dealers is presumed to demonstrate the manufacturer's failure to prove the proposed candidate for executive management or as principal operator is unfit to serve the capacity.

f. With respect to a proposed change in use of a dealership facility to provide for the sales or service of one or more additional line-makes of new motor vehicles, the sole issue for determination by the Commissioner is whether the new motor vehicle dealer has a reasonable line of credit for each make or line of motor vehicle and remains in compliance with any reasonable capital standards and facilities requirements of the manufacturer or distributor. The reasonable facilities requirements of the manufacturer or distributor shall not include any requirement that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space.

g. With respect to a proposed relocation or other proposed change, the issue for determination by the Commissioner is whether the proposed relocation or other change is unreasonable under the circumstances. For purposes of this subdivision, the refusal by the manufacturer to agree to a proposed relocation which meets the written, reasonable, and uniformly applied standards or criteria, if any, of the manufacturer relating to dealer relocations is presumed to demonstrate that the manufacturer's failure to prove the proposed relocation is unreasonable under the circumstances.

h. The manufacturer shall have the burden of proof before the Commissioner under this subdivision.

i. It is unlawful for a manufacturer to, in any way, ~~condition its~~ do any of the following:

1. Condition its approval of a proposed transfer, sale, assignment, change in the dealer's executive management, principal operator, or appointment of a designated successor, on the existing or proposed dealer's willingness to construct a new facility, renovate the existing facility, acquire or refrain from acquiring one or more line-makes of vehicles, separate or divest one or more line-makes of vehicle, or establish or maintain exclusive facilities, personnel, or display space.

2. ~~It is unlawful for a manufacturer to, in any way, condition~~ Condition its approval of a proposed relocation on the existing or proposed dealer's willingness to acquire or refrain from acquiring one or more line-makes of vehicles, separate or divest one or more line-makes of vehicle, or establish or maintain exclusive facilities, personnel, or display space. The opinion or determination of a franchisor that the continued existence of one of its franchised dealers situated in this State is not viable, or that the dealer holds or fails to hold licensing rights for the sale of other line-makes of vehicles in a manner consistent with the franchisor's existing or future distribution or marketing plans, shall not constitute a lawful basis for the franchisor to fail or refuse to approve a dealer's proposed change in use of a dealership facility or relocation: provided, however, that nothing contained in this subdivision shall be deemed to prevent or prohibit a franchisor from failing to approve a dealer's proposed relocation on grounds that the specific site or facility proposed by the dealer is otherwise unreasonable under the circumstances. Approval of a relocation pursuant to this subdivision shall not in itself constitute the franchisor's representation or assurance of the dealer's viability at that location.

3. Condition, directly or indirectly, the approval of the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale, succession, or assignment of a dealer's franchise, or a change in the executive management or principal operator of the dealership upon the existing or proposed dealer's willingness to renovate, construct, or relocate the dealership facility, or to enroll in a facility program; provided, however, that this provision shall not apply to or affect the validity of an ownership transfer or change in executive management or principal operator of the dealership that occurred prior to July 1, 2021.

4. Condition, directly or indirectly, the approval of the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale, succession, or assignment of a dealer's franchise, or a change in the executive management or principal operator of the dealership, or a dealer's proposed relocation of the dealership facility, or a dealer's satisfaction of the terms of any incentive program or contest, upon the existing or proposed dealer's

willingness to enter into a right of first refusal in favor of the manufacturer."

**SECTION 1.(b)** G.S. 20-305(7) reads as rewritten:

"(7) Notwithstanding the terms of any contract or agreement, to prevent or refuse to honor the succession to a dealership, including the franchise, by a motor vehicle dealer's designated successor as provided for under this subsection.

…

b. Any objections by a manufacturer or distributor to an owner's appointment of a designated successor shall be asserted in accordance with the following procedure:

…

3. The Commissioner shall endeavor to hold the evidentiary hearing required under this sub-subdivision and render a determination within 180 days after receipt of the written request from the owner or designated successor. In determining whether good cause exists for rejection of the owner's appointed designated successor, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the franchisor's existing written and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market ~~area.~~area for the proposed day-to-day principal operator of the dealership.

…

d. Within 60 days after the death or incapacity of the owner or principal operator, a designated successor appointed in substantial compliance with this section shall give the affected manufacturer or distributor written notice of his or her succession to the position of owner or principal operator of the new motor vehicle dealership; provided, however, that the failure of the designated successor to give the manufacturer or distributor written notice as provided above within 60 days of the death or incapacity of the owner or principal operator shall not result in the waiver or termination of the designated successor's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 ~~days time~~ days within which the designated successor may give the notice required hereunder, provided the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity. Within 30 days of receipt of the notice by the manufacturer or distributor from the designated successor provided in this sub-subdivision, the manufacturer or distributor may request that the designated successor complete the application forms generally utilized by the manufacturer or distributor to review the designated successor's qualifications to establish a successor dealership. Within 30 days of receipt of the completed forms, the manufacturer or distributor shall send a letter by

certified or registered mail, return receipt requested, advising the designated successor of facts and circumstances which have changed since the manufacturer's or distributor's original approval of the designated successor, and which have caused the manufacturer or distributor to object to the designated successor. Upon receipt of such notice, the designated successor may either designate an alternative successor or may file a request for evidentiary hearing in accordance with the procedures provided in sub-subdivisions b.2. –5. of this subdivision. In any such hearing, the manufacturer or distributor shall be limited to facts and circumstances which did not exist at the time the designated successor was originally approved or evidence which was originally requested to be produced by the designated successor at the time of the original request and was fraudulent.

…."

**SECTION 1.(c)** G.S. 20-305(18) reads as rewritten:

"(18) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business transferred in accordance with G.S. 20-305(4) above, or to prevent or attempt to prevent, through the exercise of any contractual right of first ~~refusal~~ refusal, option to purchase, or otherwise, a dealer located in this State from transferring the franchised business to such persons or other entities as the dealer shall designate in accordance with G.S. 20-305(4). The opinion or determination of a manufacturer that the existence or location of one of its franchised dealers situated in this State is not viable or is not consistent with the manufacturer's distribution or marketing forecast or plans shall not constitute a lawful basis for the manufacturer to fail or refuse to approve a dealer's proposed transfer of ownership submitted in accordance with G.S. 20-305(4), or "good cause" for the termination, cancellation, or nonrenewal of the franchise under G.S. 20-305(6) or grounds for the objection to an owner's designated successor appointed pursuant to G.S. 20-305(7)."

**ELECTRIC VEHICLES/FACILITATE SALES OF ELECTRIC VEHICLES**

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

"g. A franchise shall continue in full force and operation notwithstanding a change, in whole or in part, of an established plan or system of distribution of the motor vehicles offered for sale under the franchise. The appointment of a new manufacturer, factory branch, distributor, or distributor branch for motor vehicles offered for sale under the franchise agreement or the establishment of a separate franchise that sells or distributes exclusively or primarily electric vehicles shall be deemed to be a change of an established plan or system of distribution.

Upon the occurrence of the change, the Division shall deny an application of a manufacturer, factory branch, distributor, or distributor branch for a license or license renewal unless the applicant for a license as a manufacturer, factory branch, distributor, or distributor branch offers to each motor vehicle dealer who is a party to a franchise for that ~~line make~~ line make, without any separate or additional fee or charge, a new franchise agreement containing substantially the same provisions which were contained in the previous franchise agreement or files an affidavit with the Division acknowledging its undertaking to assume and ~~fulfill~~ fulfill, without

any separate or additional fee or charge to its dealers, the rights, duties, and obligations of its predecessor under the previous franchise agreement. Should the Division fail to deny an application following the change, as required by this subsection, the Division shall then deny any subsequent renewal of such license until such time as the manufacturer, factory branch, distributor, or distributor branch offers to each motor vehicle dealer who is a party to a franchise for that line make a new franchise agreement on substantially the same provisions which were contained in the previous franchise agreement."

**SECTION 2.(b)** G.S. 20-305(9) reads as rewritten:

"(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to purchase or lease a specific dealer management computer system for communication with the manufacturer, factory branch, distributor, or distributor branch or any computer hardware or software used for any purpose other than the maintenance or repair of motor vehicles, to participate monetarily in an advertising campaign or contest, or to purchase unnecessary or unreasonable quantities of any promotional materials, training materials, training programs, showroom or other display decorations, materials, computer equipment or programs, charging stations, or special tools at the expense of the new motor vehicle dealer, provided that nothing in this subsection shall preclude a manufacturer or distributor from including an unitemized uniform charge in the base price of the new motor vehicle charged to the dealer where such charge is attributable to advertising costs incurred or to be incurred by the manufacturer or distributor in the ordinary courses of its business.

Notwithstanding the terms or conditions of any franchise or other agreement, policy, or incentive program, it is unlawful for any manufacturer or distributor to require, coerce, or attempt to coerce any of its franchised dealers in this State to (i) purchase or lease any electric vehicle charging stations at the dealer's expense unless the dealer has indicated to the manufacturer or distributor the dealer's intention to begin offering for sale to the public or providing warranty service on electric vehicles manufactured or distributed by that manufacturer or distributor; or, (ii) if the dealer is offering for sale to the public or providing warranty service on electric vehicles manufactured or distributed by that manufacturer or distributor, purchase or lease, at the dealer's expense, either (a) more than the number of electric vehicle charging stations for use by service technicians and customer education than would reasonably be necessary for the dealer to have for these purposes during the following three-year period; or (b) any electric vehicle charging stations for use anywhere other than the dealer's service area.

Notwithstanding the terms or conditions of any franchise or other agreement, policy, or incentive program, it is unlawful for any manufacturer or distributor to require that any of its franchised dealers in this State purchase or lease any diagnostic equipment or tool for the maintenance, servicing, or repair of electric vehicles if the dealer has other diagnostic equipment or tools available for servicing another brand or line make of vehicle manufactured or distributed by that manufacturer or distributor that can perform the work to the standards required by the applicable manufacturer or distributor.

Notwithstanding the terms or conditions of any franchise or other agreement, a franchised dealer that sells fewer than 250 new motor vehicles per year may request approval from the manufacturer to enter into a tool loaner

agreement with another dealer, in lieu of purchasing or leasing any special tools required by any manufacturer, factory branch, distributor, or distributor branch, provided, however, that all of the following conditions are satisfied:
…."

**SECTION 2.(c)** G.S. 20-286(10) reads as rewritten:

"(10) Motor vehicle. – Any motor propelled vehicle, regardless of the size and type of motor or source of power, trailer or semitrailer, required to be registered under the laws of this State. This term does not include mopeds, as that term is defined in G.S. 20-4.01.
…."

**REQUIREMENT TO PURCHASE PRE-OWNED VEHICLES**

**SECTION 3.(a)** G.S. 20-305(9) reads as rewritten:

"(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to purchase or lease a specific dealer management computer system for communication with the manufacturer, factory branch, distributor, or distributor branch or any computer hardware or software used for any purpose other than the maintenance or repair of motor vehicles, to participate monetarily in an advertising campaign or contest, to purchase off-lease or other pre-owned vehicles, or to purchase unnecessary or unreasonable quantities of any promotional materials, training materials, training programs, showroom or other display decorations, materials, computer equipment or programs, or special tools at the expense of the new motor vehicle dealer, provided that nothing in this subsection shall preclude a manufacturer or distributor from including an unitemized uniform charge in the base price of the new motor vehicle charged to the dealer where such charge is attributable to advertising costs incurred or to be incurred by the manufacturer or distributor in the ordinary courses of its business.

Notwithstanding the terms or conditions of any franchise or other agreement, policy, or incentive program, it is unlawful for any manufacturer or distributor to require, coerce, or attempt to coerce any of its franchised dealers in this State to either (i) purchase or lease any electric vehicle charging stations at the dealer's expense unless the dealer is actually offering for sale to the public or providing warranty service on electric vehicles manufactured or distributed by that manufacturer or distributor or (ii) purchase or lease, at the dealer's expense, more than one electric vehicle charging station per dealership location owned by the dealer.

Notwithstanding the terms or conditions of any franchise or other agreement, policy, or incentive program, it is unlawful for any manufacturer or distributor to require that any of its franchised dealers in this State purchase or lease any diagnostic equipment or tool for the maintenance, servicing or repair of electric vehicles if the dealer has other diagnostic equipment or tools available that can perform the work to the standards required by the applicable manufacturer or distributor. To the extent practicable, manufacturers and distributors having franchised dealers in this State that sell or service multiple brands of electric vehicles manufactured or distributed by the same manufacturer or distributor are required to design, manufacture and distribute diagnostic equipment, tools and parts that can be used interchangeably with all brands of electric vehicles sold or distributed to their dealers in this State.

Notwithstanding the terms or conditions of any franchise or other agreement, a franchised dealer that sells fewer than 250 new motor vehicles

per year may request approval from the manufacturer to enter into a tool loaner agreement with another dealer, in lieu of purchasing or leasing any special tools required by any manufacturer, factory branch, distributor, or distributor branch, provided, however, that all of the following conditions are satisfied: …."

**SECTION 3.(b)** G.S. 20-305(28) reads as rewritten:

"(28) To require, coerce, or attempt to coerce any new motor vehicle dealer to ~~purchase or order any~~ purchase, order, or accept any pre-owned or new motor vehicle as a precondition to purchasing, ordering, or receiving any other new motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line of current model year new motor vehicles which are covered by the franchise agreement, provided that such inventory representation requirements are not unreasonable under the circumstances."

**CLARIFICATION OF DEALER'S RIGHT TO CONTROL LOCATION**

**SECTION 4.** G.S. 20-305(12) reads as rewritten:

"(12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change location of the dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles so as to justify such an expansion, in light of the current market and economic conditions. If a dealer is required by the manufacturer to change the location of the dealership and has not sold its existing dealership facility and real estate within 90 days of listing the property for sale, then, upon the written request of the dealer, the manufacturer shall purchase the dealer's existing dealership facility and real estate at its fair market value as determined by an independent appraiser agreed upon by the dealer and manufacturer. If a manufacturer or distributor purchases a dealership facility and real estate, then it shall be entitled to sole ownership, possession, use, and control of any items, buildings, or property that were included in the contract to purchase."

**GRANDFATHER EXTENSION**

**SECTION 5.** G.S. 20-305(30) reads as rewritten:

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

motor vehicle inspection or certification programs sponsored or endorsed by the manufacturer.

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

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

a. With respect to manufacturer to consumer rebates and incentives, the manufacturer's criteria for determining eligibility shall:
    1. Permit all of the manufacturer's franchised new motor vehicle dealers in this State to offer the rebate or incentive; and
    2. Be uniformly applied and administered to all eligible consumers.

b. With respect to manufacturer to dealer rebates and incentives, the rebate or incentive program shall:
    1. Be based solely on the dealer's actual or reasonably anticipated sales volume or on a uniform per vehicle sold or leased basis;
    2. Be uniformly available, applied, and administered to all of the manufacturer's franchised new motor vehicle dealers in this State; and
    3. Provide that any of the manufacturer's franchised new motor vehicle dealers in this State may, upon written request, obtain the method or formula used by the manufacturer in establishing the sales volumes for receiving the rebates or incentives and the specific calculations for determining the required sales volumes of the inquiring dealer and any of the manufacturer's other franchised new motor vehicle dealers located within 75 miles of the inquiring dealer.

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

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

In the event that as of October 1, 1999, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, it shall be lawful for that program or policy, including amendments to that program or policy that are consistent with the purpose and provisions of the existing program or policy, or a program or policy similar thereto implemented after October 1, 1999, to continue in effect

as to the manufacturer's franchised dealers located in this State until June 30, ~~2022.~~2024.

In the event that as of June 30, 2001, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, and the program or policy was implemented in this State subsequent to October 1, 1999, and prior to June 30, 2001, and provided that the program or policy is in compliance with this subdivision as it existed as of June 30, 2001, it shall be lawful for that program or policy, including amendments to that program or policy that comply with this subdivision as it existed as of June 30, 2001, to continue in effect as to the manufacturer's franchised dealers located in this State until June 30, ~~2022.~~2024.

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

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

**MINIMUM VEHICLE ALLOCATION**

**SECTION 6.** G.S. 20-305(14) reads as rewritten:

"(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's market area as determined in accordance with reasonably applied economic principles, or within a reasonable time, after receipt of an order from a dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts or accessories to new vehicles as are covered by such franchise, and such vehicles, parts or accessories as are publicly advertised as being available or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who has placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within a reasonable time, without cause. Additionally, except as may be required by any consent decree of the Commissioner or other order of the Commissioner or court of competent jurisdiction, any sales objectives which a manufacturer, factory branch, distributor, or distributor branch establishes for any of its franchised dealers in this State must be reasonable, and every manufacturer, factory branch, distributor, or distributor branch must allocate its products within this State in a manner that does all of the following:

a. Provides each of its franchised dealers in this State an adequate supply of vehicles by series, product line, and model in a fair, reasonable, and equitable manner based on each dealer's historical selling pattern and

~~reasonable sales standards as compared to other same line-make dealers in the State.~~planning potential.

…

f. If, during the immediately preceding 12 calendar months, a new motor vehicle dealer located in this State sold a total of 225 or fewer of any brand of new motor vehicles manufactured or distributed by a particular manufacturer or distributor, that manufacturer or distributor shall be required to allocate and deliver to the dealer within the following 60 days and on a model by model or series basis, no fewer than the number of new motor vehicles of each such model or series that dealer sold at retail during the immediately previous calendar month; provided, however, that nothing contained in this subdivision or in any franchise shall prevent or prohibit any dealer from refusing to accept all or any portion of any allocation of vehicles made available to the dealer by the manufacturer or distributor pursuant to this subdivision to the extent that accepting additional inventory would cause the dealer to exceed the dealer's floor plan allowance.

g. Provides each of its franchised dealers in this State a process that allows a dealer to appeal the dealer's vehicle allocation if the dealer believes it was not allocated or did not receive vehicle inventory in a manner that complies with both this section and the manufacturer's or distributor's allocation formula. In order to comply with this section, the appeal process established by a manufacturer or distributor must include both manufacturer representatives and dealer representatives.

h. Provides in writing to each of its franchised dealers in this State the manufacturer's formula used for allocating motor vehicles as well as a monthly summary of the number of motor vehicles allocated to each of its franchised dealers in this State by series, product line, and model.

This subsection is not violated, however, if such failure is caused solely by the occurrence of temporary international, national, or regional product shortages resulting from natural disasters, unavailability of parts, labor strikes, product recalls, and other factors and events beyond the control of the manufacturer that temporarily reduce a manufacturer's product supply. The willful or malicious maintenance, creation, or alteration of a vehicle allocation process or formula by a manufacturer, factory branch, distributor, or distributor branch that is in any part designed or intended to force or coerce a dealer in this State to close or sell the dealer's franchise, cause the dealer financial distress, or to relocate, update, or renovate the dealer's existing dealership facility shall constitute an unfair and deceptive trade practice under G.S. 75-1.1."

**LOANER/RENTAL CAR REIMBURSEMENT**

**SECTION 7.** G.S. 20-305(33) reads as rewritten:

"(33) To fail to reimburse a dealer located in this State in full for the actual ~~cost~~ cost, including applicable taxes and third-party fees, of providing a loaner or rental vehicle to any customer who is having a vehicle serviced at the dealership if the provision of such a loaner or rental vehicle is required by the manufacturer. It is unlawful for a manufacturer to fail to reimburse the dealer in full as provided above (i) whether or not the dealer provides the customer with a model vehicle similar to the vehicle the customer brought in for service, in the event the dealer does not have a similar model loaner or rental vehicle available, or (ii) in the event that all or any portion of the time the dealer has

provided the customer with a loaner or rental vehicle is due to the unavailability of one or more parts sold or distributed by the manufacturer or through a supplier designated or approved by the manufacturer."

**FACILITY EXPENDITURES**

**SECTION 8.** G.S. 20-305(50) reads as rewritten:

"(50) To require, coerce, or attempt to coerce any new motor vehicle dealer located in this State to change location of its dealership, or to make any substantial alterations to its dealership premises or facilities, if the dealer (i) has changed the location of its dealership or made substantial alterations to its dealership premises or facilities within the preceding 10 years at a cost of more than two hundred fifty thousand dollars ($250,000), indexed to the Consumer Price Index, over this 10-year period, and (ii) the change in location or alteration was made toward compliance with a facility initiative or facility program that was sponsored or supported by the manufacturer, factory branch, distributor, or distributor branch, with the approval of the manufacturer, factory branch, distributor, or distributor branch. If a manufacturer, factory branch, distributor, or distributor branch offers incentives, or other payments under a program that are in any part conditioned on a dealer's construction of a new facility, facility improvements, or installation of signs or other image elements, a dealer that constructed a new facility, made facility improvements, or installed signs or other image elements required by or approved by the manufacturer that were completed at a cost of more than two hundred fifty thousand dollars ($250,000), indexed to the Consumer Price Index, within the preceding 10 years shall be deemed to be in compliance with any applicable facility requirements included in the manufacturer's program, and the dealer shall be entitled to receive all such incentives or other payments awardable under the program. If, during the 10-year period, the manufacturer revises or discontinues an existing program, standard, or policy or establishes a new program, standard, or policy or other benefit relating to construction or substantial alteration of a dealership, a motor vehicle dealer that completed construction or alteration of a dealership at a cost of more than two hundred fifty thousand dollars ($250,000) as part of a prior program, standard, or policy and elects not to participate in the new or revised program, standard, or policy shall not be entitled to the facility bonus incentive portion of the new or revised program but shall remain entitled to all facility benefits under the prior program, standard, or policy according to the terms of the prior program, standard, or policy. If the prior program, standard, or policy under which the dealer completed a construction or alteration does not contain a specific period of time during which the manufacturer or distributor must provide payments or benefits to a dealer, then the manufacturer or distributor may not deny the dealer payment or benefits under the terms of that prior program, as it existed when the dealer began to perform under the prior program, for the balance of the 10-year term, regardless of whether the manufacturer's or distributor's program, standard, or policy has been revised or discontinued. For any dealer that did not change the location of its dealership or make substantial alterations to its dealership premises or facilities within the preceding 10 years at a cost of more than two hundred fifty thousand dollars ($250,000), indexed to the Consumer Price Index, the dealer's obligation ~~to change 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. This section shall not apply to any facility or premises improvement or alteration that is voluntarily agreed to by the new motor vehicle dealer and for which the dealer receives facilities-related compensation from the manufacturer or distributor for the facility improvement or alteration equivalent to at least a majority of the cost incurred by the dealer for the facility improvement or alteration."

**WARRANTY REQUIREMENTS**

**SECTION 9.** 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, warranty, manufacturer-sponsored maintenance programs, manufacturer extended warranty, parts exchange programs, and recall service on its products. The disclosure required under this subsection shall include the schedule of compensation to be paid the dealers for parts, work, and service in connection with preparation, delivery, warranty, and recall service, and the time allowances for the performance of the work and service. In no event shall the schedule of compensation fail to include reasonable compensation for diagnostic ~~work~~ work, shipping, if required by the manufacturer or distributor, and for battery disposal or other disposal charges and all other associated fees that were actually incurred by the dealer, and associated administrative requirements as well as repair service and labor. Time allowances for the performance of preparation, delivery, warranty, and recall work and service shall be reasonable and adequate for the work to be performed. The compensation paid under this section shall be reasonable, provided, however, that under no circumstances shall the reasonable compensation under this section for warranty and recall service 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 the amount is competitive with the retail rates charged for parts and labor by other franchised dealers of the same line-make located within the dealer's market. If there is no other same line-make dealer located in the dealer's market or if all other same line-make dealers in the dealer's market are owned or operated by the same entities or individuals as the dealership being compared, the retail rates charged for parts and labor by other franchised dealers located in the dealer's market that sell competing line-make motor vehicles as the dealer may be considered when determining whether the dealer's rates are competitive.

(a1) The retail rate customarily charged by the dealer for parts and labor may be established at the election of the dealer by the dealer submitting to the manufacturer or distributor 100 sequential nonwarranty customer-paid service repair orders which contain warranty-like parts, or 60 consecutive days of nonwarranty customer-paid service repair orders which contain warranty-like parts, whichever is less, covering repairs made no more than 180 days before the submission and declaring the average percentage markup. The average of the parts markup rate and the average labor rate shall both be presumed to be reasonable, however, a manufacturer or distributor may, not later than 30 days after submission, rebut that presumption by reasonably substantiating that the rate is unfair and unreasonable in light of the retail rates charged for parts and labor by all other franchised motor vehicle dealers located in the dealer's ~~market~~ relevant market area offering the same line-make vehicles. In the event there are no other franchised dealers offering the same line-make of vehicle in the dealer's ~~market,~~ relevant market area, the manufacturer or distributor may compare the dealer's retail rate for parts and labor with the retail

rates charged for parts and labor by other same segment franchised dealers who are selling competing line-makes of vehicles within the dealer's ~~market.~~ relevant market area. The retail rate and the average labor rate shall go into effect 30 days following the manufacturer's approval, but in no event later than 60 days following the declaration, subject to audit of the submitted repair orders by the manufacturer or distributor and a rebuttal of the declared rate as described above. If the declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the average percentage markup based on that rebuttal not later than 30 days after such audit, but in no event later than 60 days after submission. If the dealer does not agree with the proposed average percentage markup, the dealer may file a protest with the Commissioner not later than 30 days after receipt of that proposal by the manufacturer or distributor. If such a protest is filed, the Commissioner shall inform the manufacturer or distributor that a timely protest has been filed and that a hearing will be held on such protest. In any hearing held pursuant to this subsection, the manufacturer or distributor shall have the burden of proving by a preponderance of the evidence that the rate declared by the dealer was unreasonable as described in this subsection and that the proposed adjustment of the average percentage markup is reasonable pursuant to the provisions of this subsection. If the dealer prevails at a protest hearing, the dealer's proposed rate, affirmed at the hearing, shall be effective as of 60 days after the date of the dealer's initial submission of the customer-paid service orders to the manufacturer or distributor. If the manufacturer or distributor prevails at a protest hearing, the rate proposed by the manufacturer or distributor, that was affirmed at the hearing, shall be effective beginning 30 days following issuance of the final order.

…

(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 pursuant to subsections (i) and (j) of this section or warranty and recall parts other than parts used to repair the living facilities of recreational vehicles, including motor homes, travel trailers, fifth-wheel trailers, camping trailers, and truck campers as defined in G.S. 20-4.01(32b), 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) of this section, or to otherwise recover all or any portion of its costs for compensating its motor vehicle dealers licensed in this State for warranty or recall parts and service or for payments for a qualifying used motor vehicle pursuant to subsections (i) and (j) of this section either by reduction in the amount due to the dealer, or by separate charge, surcharge, or other imposition, and to fail to indemnify and hold harmless its franchised dealers licensed in this State against any judgment for damages or settlements agreed to by the manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or recision or revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective or negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer. Any audit, other than an audit conducted for cause, for warranty or recall parts or service compensation, or compensation for a qualifying used motor vehicle in accordance with subsections (i) and (j) of this section may only be conducted one time within any ~~12-month period~~ 24-month period and shall only be for the 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Any audit, other than an audit conducted for cause, for sales incentives, service incentives, rebates, or other forms of incentive compensation may only be conducted one time within any ~~12-month period~~ 24-month period and shall only be for the 12-month period

immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch pursuant to a sales incentives program, service incentives program, rebate program, or other form of incentive compensation program. Provided, however, these limitations shall not be effective in the case of fraudulent claims. For purposes of this subsection, the term "audit conducted for cause" is defined as an audit based on any of the following: (i) statistical evidence that the dealer's claims are unreasonably high in comparison to other dealers similarly situated or the dealer's claim history, (ii) that the ~~dealer's claims submissions violate reasonable claims documentation or other requirements of the applicable manufacturer, factory branch, distributor, or distributor branch,~~ dealer cannot reasonably substantiate the claim either in accordance with the manufacturer's reasonable written procedures or by other reasonable means, (iii) a follow up to an earlier audit in which the dealer was notified of a claim documentation procedure violation that occurred within the prior 12-month period, provided the audit and any chargeback are in compliance with subdivision (b1) or (b2) of this section and are limited in scope to just the specific violation determined previously, or (iv) reasonable evidence of malfeasance or fraud. In the event a manufacturer, factory branch, distributor, or distributor branch elects to perform an audit conducted for cause, the manufacturer, factory branch, distributor, or distributor branch, simultaneously with providing the affected dealer with written notice of the audit, shall further be required to explain in detail in the notice the data or other foundation upon which the cause is based.

…

(c) In the event there is a dispute between the manufacturer, factory branch, distributor, or distributor branch, and the dealer with respect to any matter referred to in subsection (a), (b), (b1), (b2), (b3), (b4), (d), or (i) of this section, either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing on the subject and the decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Chapter 150B of the General Statutes; provided, however, that nothing contained herein shall give the Commissioner any authority as to the content of any manufacturer's or distributor's warranty. Upon the filing of a petition before the Commissioner under this subsection, any chargeback to or any payment required of a dealer by a manufacturer relating to warranty or recall parts or service compensation, or to sales incentives, service incentives, rebates, other forms of incentive compensation, or the withholding or chargeback of other compensation or support that a dealer would otherwise be eligible to receive, shall be stayed during the pendency of the determination by the Commissioner.

…."

**CLARIFY DEFINITION OF MOTOR VEHICLE DEALER**

**SECTION 10.** G.S. 20-286(11)a. reads as rewritten:

"a. A person who does any of the following:

1. For commission, money, or other thing of value, buys, sells, leases at retail, offers for subscription, or exchanges, whether outright or on conditional sale, bailment lease, chattel mortgage, or otherwise, five or more motor vehicles within any 12 consecutive months, regardless of who owns the motor vehicles.
2. On behalf of another and for commission, money, or other thing of value, arranges, offers, attempts to solicit, or attempts to negotiate the sale, purchase, or exchange of an interest in five or more motor vehicles within any 12 consecutive months, regardless of who owns the motor vehicles.

3. Engages, wholly or in part, in the business of ~~selling~~ selling, leasing at retail, or offering for subscription new motor vehicles or new or used motor vehicles, or used motor vehicles only, whether or not the motor vehicles are owned by that person, and sells five or more motor vehicles within any 12 consecutive months.
4. Offers to sell, displays, or permits the display for sale for any form of compensation five or more motor vehicles within any 12 consecutive months.
5. Primarily engages in the leasing or renting of motor vehicles to others and sells or offers to sell those vehicles at retail."

**DEALERSHIP FINANCIAL STATEMENTS**

**SECTION 11.** G.S. 20-305(20) reads as rewritten:

"(20) To release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or new motor vehicle dealer, any confidential business, financial, or personal information which may be from time to time provided by the new motor vehicle dealer to the manufacturer, without the express written consent of the new motor vehicle dealer. A manufacturer shall not require, or include in any incentive program, a requirement that any of its motor vehicle dealers in this State provide an exclusive financial statement for a franchise or line make when the dealer company operates more than one franchise or sells more than one line make."

**SEVERABILITY CLAUSE**

**SECTION 12.** If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

**EFFECTIVE DATE**

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