

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 342
PROPOSED COMMITTEE SUBSTITUTE S342-PCS45416-SU-12

Short Title: Clarify Motor Vehicle Franchise Laws.

(Public)

Sponsors:

Referred to:

March 25, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE AND CLARIFY THE LAWS GOVERNING NEW MOTOR VEHICLE
3 DEALER FRANCHISES.

4 The General Assembly of North Carolina enacts:

5
6 **DEALERSHIP TRANSFERS/RIGHT OF FIRST REFUSAL CLARIFICATION**

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

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

20 a. No franchise may be transferred, sold, assigned, relocated, or the
21 executive management or principal operators changed, or the use of an
22 existing facility changed, unless the franchisor has been given at least
23 30 days' prior written notice ~~as to the~~ of all of the following:

24 1. The proposed transferee's name and address, financial ability,
25 and qualifications of the proposed transferee, a copy of the
26 purchase agreement between the dealership and the proposed
27 transferee, ~~the transferee.~~

28 2. The identity and qualifications of the persons proposed to be
29 involved in executive management or as principal ~~operators,~~
30 and ~~the operators.~~

31 3. The location and site plans of any proposed relocation or
32 change in use of a dealership facility.

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



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

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

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

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

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

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

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

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

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

- 1 1. Condition its approval of a proposed transfer, sale, assignment,
2 change in the dealer's executive management, principal
3 operator, or appointment of a designated successor, on the
4 existing or proposed dealer's willingness to construct a new
5 facility, renovate the existing facility, acquire or refrain from
6 acquiring one or more line-makes of vehicles, separate or
7 divest one or more line-makes of vehicle, or establish or
8 maintain exclusive facilities, personnel, or display space.
- 9 2. ~~It is unlawful for a manufacturer to, in any way, condition~~
10 Condition its approval of a proposed relocation on the existing
11 or proposed dealer's willingness to acquire or refrain from
12 acquiring one or more line-makes of vehicles, separate or
13 divest one or more line-makes of vehicle, or establish or
14 maintain exclusive facilities, personnel, or display space. The
15 opinion or determination of a franchisor that the continued
16 existence of one of its franchised dealers situated in this State
17 is not viable, or that the dealer holds or fails to hold licensing
18 rights for the sale of other line-makes of vehicles in a manner
19 consistent with the franchisor's existing or future distribution
20 or marketing plans, shall not constitute a lawful basis for the
21 franchisor to fail or refuse to approve a dealer's proposed
22 change in use of a dealership facility or relocation: provided,
23 however, that nothing contained in this subdivision shall be
24 deemed to prevent or prohibit a franchisor from failing to
25 approve a dealer's proposed relocation on grounds that the
26 specific site or facility proposed by the dealer is otherwise
27 unreasonable under the circumstances. Approval of a
28 relocation pursuant to this subdivision shall not in itself
29 constitute the franchisor's representation or assurance of the
30 dealer's viability at that location.
- 31 3. Condition, directly or indirectly, the approval of the sale or
32 transfer of the ownership of a dealership by the sale of the
33 business, stock transfer, or otherwise, or the transfer, sale,
34 succession, or assignment of a dealer's franchise, or a change
35 in the executive management or principal operator of the
36 dealership upon the existing or proposed dealer's willingness
37 to renovate, construct, or relocate the dealership facility, or to
38 enroll in a facility program; provided, however, that this
39 provision shall not apply to or affect the validity of an
40 ownership transfer or change in executive management or
41 principal operator of the dealership that occurred prior to July
42 1, 2021.
- 43 4. Condition, directly or indirectly, the approval of the sale or
44 transfer of the ownership of a dealership by the sale of the
45 business, stock transfer, or otherwise, or the transfer, sale,
46 succession, or assignment of a dealer's franchise, or a change
47 in the executive management or principal operator of the
48 dealership, or a dealer's proposed relocation of the dealership
49 facility, or a dealer's satisfaction of the terms of any incentive
50 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

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

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

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

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

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

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

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

4"

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

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

10"

11 12 **REQUIREMENT TO PURCHASE PRE-OWNED VEHICLES**

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

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

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

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

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

1 per year may request approval from the manufacturer to enter into a tool loaner
2 agreement with another dealer, in lieu of purchasing or leasing any special
3 tools required by any manufacturer, factory branch, distributor, or distributor
4 branch, provided, however, that all of the following conditions are satisfied:
5"

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

7 "(28) To require, coerce, or attempt to coerce any new motor vehicle dealer to
8 ~~purchase or order any purchase, order, or accept any pre-owned or new~~ motor
9 vehicle as a precondition to purchasing, ordering, or receiving any other new
10 motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from
11 requiring that a new motor vehicle dealer fairly represent and inventory the
12 full line of current model year new motor vehicles which are covered by the
13 franchise agreement, provided that such inventory representation
14 requirements are not unreasonable under the circumstances."
15

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

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

18 "(12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this
19 State to change location of the dealership, or to make any substantial
20 alterations to the dealership premises or facilities, when to do so would be
21 unreasonable, or without written assurance of a sufficient supply of new motor
22 vehicles so as to justify such an expansion, in light of the current market and
23 economic conditions. If a dealer is required by the manufacturer to change the
24 location of the dealership and has not sold its existing dealership facility and
25 real estate within 90 days of listing the property for sale, then, upon the written
26 request of the dealer, the manufacturer shall purchase the dealer's existing
27 dealership facility and real estate at its fair market value as determined by an
28 independent appraiser agreed upon by the dealer and manufacturer. If a
29 manufacturer or distributor purchases a dealership facility and real estate, then
30 it shall be entitled to sole ownership, possession, use, and control of any items,
31 buildings, or property that were included in the contract to purchase."
32

33 **GRANDFATHER EXTENSION**

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

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

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

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

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

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

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

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

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

1 as to the manufacturer's franchised dealers located in this State until June 30,
2 ~~2022-2024.~~

3 In the event that as of June 30, 2001, a manufacturer was operating a
4 program that varied the price charged to its franchised dealers in this State in
5 a manner that would violate this subdivision, or had in effect a documented
6 policy that had been conveyed to its franchised dealers in this State and that
7 varied the price charged to its franchised dealers in this State in a manner that
8 would violate this subdivision, and the program or policy was implemented in
9 this State subsequent to October 1, 1999, and prior to June 30, 2001, and
10 provided that the program or policy is in compliance with this subdivision as
11 it existed as of June 30, 2001, it shall be lawful for that program or policy,
12 including amendments to that program or policy that comply with this
13 subdivision as it existed as of June 30, 2001, to continue in effect as to the
14 manufacturer's franchised dealers located in this State until June 30,
15 ~~2022-2024.~~

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

20 The provisions of this subdivision shall not be applicable to multiple or
21 repeated sales of new motor vehicles made by a new motor vehicle dealer to
22 a single purchaser under a bona fide fleet sales policy of a manufacturer,
23 factory branch, distributor, or distributor branch."
24

25 MINIMUM VEHICLE ALLOCATION

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

27 "(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or
28 accessories in reasonable quantities relative to the new motor vehicle dealer's
29 facilities and sales potential in the new motor vehicle dealer's market area as
30 determined in accordance with reasonably applied economic principles, or
31 within a reasonable time, after receipt of an order from a dealer having a
32 franchise for the retail sale of any new motor vehicle sold or distributed by the
33 manufacturer or distributor, any new vehicle, parts or accessories to new
34 vehicles as are covered by such franchise, and such vehicles, parts or
35 accessories as are publicly advertised as being available or actually being
36 delivered. The delivery to another dealer of a motor vehicle of the same model
37 and similarly equipped as the vehicle ordered by a motor vehicle dealer who
38 has not received delivery thereof, but who has placed his written order for the
39 vehicle prior to the order of the dealer receiving the vehicle, shall be evidence
40 of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor
41 vehicle dealer within a reasonable time, without cause. Additionally, except
42 as may be required by any consent decree of the Commissioner or other order
43 of the Commissioner or court of competent jurisdiction, any sales objectives
44 which a manufacturer, factory branch, distributor, or distributor branch
45 establishes for any of its franchised dealers in this State must be reasonable,
46 and every manufacturer, factory branch, distributor, or distributor branch must
47 allocate its products within this State in a manner that does all of the following:
48 a. Provides each of its franchised dealers in this State an adequate supply
49 of vehicles by series, product line, and model in a fair, reasonable, and
50 equitable manner based on each dealer's historical selling pattern and

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

3 ...
 4 f. If, during the immediately preceding 12 calendar months, a new motor
 5 vehicle dealer located in this State sold a total of 225 or fewer of any
 6 brand of new motor vehicles manufactured or distributed by a
 7 particular manufacturer or distributor, that manufacturer or distributor
 8 shall be required to allocate and deliver to the dealer within the
 9 following 60 days and on a model by model or series basis, no fewer
 10 than the number of new motor vehicles of each such model or series
 11 that dealer sold at retail during the immediately previous calendar
 12 month; provided, however, that nothing contained in this subdivision
 13 or in any franchise shall prevent or prohibit any dealer from refusing
 14 to accept all or any portion of any allocation of vehicles made available
 15 to the dealer by the manufacturer or distributor pursuant to this
 16 subdivision to the extent that accepting additional inventory would
 17 cause the dealer to exceed the dealer's floor plan allowance.

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

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

29 This subsection is not violated, however, if such failure is caused solely by the
 30 occurrence of temporary international, national, or regional product shortages
 31 resulting from natural disasters, unavailability of parts, labor strikes, product
 32 recalls, and other factors and events beyond the control of the manufacturer
 33 that temporarily reduce a manufacturer's product supply. The willful or
 34 malicious maintenance, creation, or alteration of a vehicle allocation process
 35 or formula by a manufacturer, factory branch, distributor, or distributor branch
 36 that is in any part designed or intended to force or coerce a dealer in this State
 37 to close or sell the dealer's franchise, cause the dealer financial distress, or to
 38 relocate, update, or renovate the dealer's existing dealership facility shall
 39 constitute an unfair and deceptive trade practice under G.S. 75-1.1."
 40

41 **LOANER/RENTAL CAR REIMBURSEMENT**

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

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

1 provided the customer with a loaner or rental vehicle is due to the
2 unavailability of one or more parts sold or distributed by the manufacturer or
3 through a supplier designated or approved by the manufacturer."
4

5 FACILITY EXPENDITURES

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

7 "(50) To require, coerce, or attempt to coerce any new motor vehicle dealer located
8 in this State to change location of its dealership, or to make any substantial
9 alterations to its dealership premises or facilities, if the dealer (i) has changed
10 the location of its dealership or made substantial alterations to its dealership
11 premises or facilities within the preceding 10 years at a cost of more than two
12 hundred fifty thousand dollars (\$250,000), indexed to the Consumer Price
13 Index, over this 10-year period, and (ii) the change in location or alteration
14 was made toward compliance with a facility initiative or facility program that
15 was sponsored or supported by the manufacturer, factory branch, distributor,
16 or distributor branch, with the approval of the manufacturer, factory branch,
17 distributor, or distributor branch. If a manufacturer, factory branch,
18 distributor, or distributor branch offers incentives, or other payments under a
19 program that are in any part conditioned on a dealer's construction of a new
20 facility, facility improvements, or installation of signs or other image
21 elements, a dealer that constructed a new facility, made facility improvements,
22 or installed signs or other image elements required by or approved by the
23 manufacturer that were completed at a cost of more than two hundred fifty
24 thousand dollars (\$250,000), indexed to the Consumer Price Index, within the
25 preceding 10 years shall be deemed to be in compliance with any applicable
26 facility requirements included in the manufacturer's program, and the dealer
27 shall be entitled to receive all such incentives or other payments awardable
28 under the program. If, during the 10-year period, the manufacturer revises or
29 discontinues an existing program, standard, or policy or establishes a new
30 program, standard, or policy or other benefit relating to construction or
31 substantial alteration of a dealership, a motor vehicle dealer that completed
32 construction or alteration of a dealership at a cost of more than two hundred
33 fifty thousand dollars (\$250,000) as part of a prior program, standard, or
34 policy and elects not to participate in the new or revised program, standard, or
35 policy shall not be entitled to the facility bonus incentive portion of the new
36 or revised program but shall remain entitled to all facility benefits under the
37 prior program, standard, or policy according to the terms of the prior program,
38 standard, or policy. If the prior program, standard, or policy under which the
39 dealer completed a construction or alteration does not contain a specific period
40 of time during which the manufacturer or distributor must provide payments
41 or benefits to a dealer, then the manufacturer or distributor may not deny the
42 dealer payment or benefits under the terms of that prior program, as it existed
43 when the dealer began to perform under the prior program, for the balance of
44 the 10-year term, regardless of whether the manufacturer's or distributor's
45 program, standard, or policy has been revised or discontinued. For any dealer
46 that did not change the location of its dealership or make substantial
47 alterations to its dealership premises or facilities within the preceding 10 years
48 at a cost of more than two hundred fifty thousand dollars (\$250,000), indexed
49 to the Consumer Price Index, the dealer's obligation to change location of its
50 dealership, or to make any substantial alteration to its dealership premises or
51 facilities, at the request of a manufacturer, factory branch, distributor, or

1 distributor branch, or to satisfy a requirement or condition of an incentive
2 program sponsored by a manufacturer, factory branch, distributor, or
3 distributor branch, shall be governed by the applicable provisions of
4 subdivisions (4), (11), (12), (25), (30), (32), and (42) of this section. This
5 section shall not apply to any facility or premises improvement or alteration
6 that is voluntarily agreed to by the new motor vehicle dealer and for which the
7 dealer receives facilities-related compensation from the manufacturer or
8 distributor for the facility improvement or alteration equivalent to at least a
9 majority of the cost incurred by the dealer for the facility improvement or
10 alteration."
11

12 WARRANTY REQUIREMENTS

13 SECTION 9. G.S. 20-305.1 reads as rewritten:

14 "§ 20-305.1. Automobile dealer warranty and recall obligations.

15 (a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch,
16 shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's
17 obligations for preparation, delivery, warranty, manufacturer-sponsored maintenance programs,
18 manufacturer extended warranty, parts exchange programs, and recall service on its products.
19 The disclosure required under this subsection shall include the schedule of compensation to be
20 paid the dealers for parts, work, and service in connection with preparation, delivery, warranty,
21 and recall service, and the time allowances for the performance of the work and service. In no
22 event shall the schedule of compensation fail to include reasonable compensation for diagnostic
23 ~~work-work, shipping, if required by the manufacturer or distributor, and for battery disposal or~~
24 ~~other disposal charges and all other associated fees that were actually incurred by the dealer,~~ and
25 associated administrative requirements as well as repair service and labor. Time allowances for
26 the performance of preparation, delivery, warranty, and recall work and service shall be
27 reasonable and adequate for the work to be performed. The compensation paid under this section
28 shall be reasonable, provided, however, that under no circumstances shall the reasonable
29 compensation under this section for warranty and recall service be in an amount less than the
30 dealer's current retail labor rate and the amount charged to retail customers for the manufacturer's
31 or distributor's original parts for nonwarranty work of like kind, provided the amount is
32 competitive with the retail rates charged for parts and labor by other franchised dealers of the
33 same line-make located within the dealer's market. If there is no other same line-make dealer
34 located in the dealer's market or if all other same line-make dealers in the dealer's market are
35 owned or operated by the same entities or individuals as the dealership being compared, the retail
36 rates charged for parts and labor by other franchised dealers located in the dealer's market that
37 sell competing line-make motor vehicles as the dealer may be considered when determining
38 whether the dealer's rates are competitive.

39 (a1) The retail rate customarily charged by the dealer for parts and labor may be
40 established at the election of the dealer by the dealer submitting to the manufacturer or distributor
41 100 sequential nonwarranty customer-paid service repair orders which contain warranty-like
42 parts, or 60 consecutive days of nonwarranty customer-paid service repair orders which contain
43 warranty-like parts, whichever is less, covering repairs made no more than 180 days before the
44 submission and declaring the average percentage markup. The average of the parts markup rate
45 and the average labor rate shall both be presumed to be reasonable, however, a manufacturer or
46 distributor may, not later than 30 days after submission, rebut that presumption by reasonably
47 substantiating that the rate is unfair and unreasonable in light of the retail rates charged for parts
48 and labor by all other franchised motor vehicle dealers located in the dealer's market-relevant
49 market area offering the same line-make vehicles. In the event there are no other franchised
50 dealers offering the same line-make of vehicle in the dealer's ~~market, relevant market area,~~ the
51 manufacturer or distributor may compare the dealer's retail rate for parts and labor with the retail

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

22 ...

23 (b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor
24 vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of
25 its warranty or recall obligations with respect to a motor vehicle, to fail to fully compensate its
26 motor vehicle dealers licensed in this State for a qualifying used motor vehicle pursuant to
27 subsections (i) and (j) of this section or warranty and recall parts other than parts used to repair
28 the living facilities of recreational vehicles, including motor homes, travel trailers, fifth-wheel
29 trailers, camping trailers, and truck campers as defined in G.S. 20-4.01(32b), at the prevailing
30 retail rate according to the factors in subsection (a) of this section, or, in service in accordance
31 with the schedule of compensation provided the dealer pursuant to subsection (a) of this section,
32 or to otherwise recover all or any portion of its costs for compensating its motor vehicle dealers
33 licensed in this State for warranty or recall parts and service or for payments for a qualifying
34 used motor vehicle pursuant to subsections (i) and (j) of this section either by reduction in the
35 amount due to the dealer, or by separate charge, surcharge, or other imposition, and to fail to
36 indemnify and hold harmless its franchised dealers licensed in this State against any judgment
37 for damages or settlements agreed to by the manufacturer, including, but not limited to, court
38 costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims
39 or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or
40 implied warranty, or rescission or revocation of acceptance of the sale of a motor vehicle as defined
41 in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective or
42 negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other
43 functions by the manufacturer, factory branch, distributor or distributor branch, beyond the
44 control of the dealer. Any audit, other than an audit conducted for cause, for warranty or recall
45 parts or service compensation, or compensation for a qualifying used motor vehicle in accordance
46 with subsections (i) and (j) of this section may only be conducted one time within any ~~12-month~~
47 period-24-month period and shall only be for the 12-month period immediately following the
48 date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor
49 branch. Any audit, other than an audit conducted for cause, for sales incentives, service
50 incentives, rebates, or other forms of incentive compensation may only be conducted one time
51 within any ~~12-month period~~ 24-month period and shall only be for the 12-month period

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

20 ...

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

35"

37 CLARIFY DEFINITION OF MOTOR VEHICLE DEALER

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

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

- 40 1. For commission, money, or other thing of value, buys, sells,
 41 leases at retail, offers for subscription, or exchanges, whether
 42 outright or on conditional sale, bailment lease, chattel
 43 mortgage, or otherwise, five or more motor vehicles within any
 44 12 consecutive months, regardless of who owns the motor
 45 vehicles.
- 46 2. On behalf of another and for commission, money, or other
 47 thing of value, arranges, offers, attempts to solicit, or attempts
 48 to negotiate the sale, purchase, or exchange of an interest in
 49 five or more motor vehicles within any 12 consecutive months,
 50 regardless of who owns the motor vehicles.

