

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H

D

HOUSE BILL 403
Committee Substitute Favorable 5/5/21
PROPOSED SENATE COMMITTEE SUBSTITUTE H403-PCS10529-BB-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,



* H 4 0 3 - P C S 1 0 5 2 9 - B B - 1 2 *

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

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

50 d. With respect to a proposed transfer of ownership, sale, or assignment,
51 the sole issue for determination by the Commissioner and the sole

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

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

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

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

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

50 i. It is unlawful for a manufacturer to, in any way, ~~condition its~~ do any
51 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. This sub-sub-subdivision shall not be construed to
43 annul or impair an existing agreement regarding the
44 renovation, construction, or relocation of a dealership facility
45 that existed prior to the transfer, sale, succession, assignment
46 of the dealer's franchise, change in executive management or
47 change in principal operator. This sub-sub-subdivision does
48 not prevent a manufacturer or distributor from requiring
49 changes to a facility that are necessary in order to sell or service
50 a motor vehicle.

1 4. Condition, directly or indirectly, the approval of the sale or
 2 transfer of the ownership of a dealership by the sale of the
 3 business, stock transfer, or otherwise, or the transfer, sale,
 4 succession, or assignment of a dealer's franchise, or a change
 5 in the executive management or principal operator of the
 6 dealership, or a dealer's proposed relocation of the dealership
 7 facility, or a dealer's satisfaction of the terms of any incentive
 8 program or contest, upon the existing or proposed dealer's
 9 willingness to enter into a right of first refusal in favor of the
 10 manufacturer."

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

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

15 ...

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

19 ...

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

33 ...

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

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

22"

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

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

39
 40 **ELECTRIC VEHICLES/FACILITATE SALES OF ELECTRIC VEHICLES**

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

42 "g. A franchise shall continue in full force and operation notwithstanding
 43 a change, in whole or in part, of an established plan or system of
 44 distribution of the motor vehicles offered for sale under the franchise.
 45 The appointment of a new manufacturer, factory branch, distributor,
 46 or distributor branch for motor vehicles offered for sale under the
 47 franchise agreement shall be deemed to be a change of an established
 48 plan or system of distribution.

49 Upon the occurrence of the change, the Division shall deny an
 50 application of a manufacturer, factory branch, distributor, or
 51 distributor branch for a license or license renewal unless the applicant

1 for a license as a manufacturer, factory branch, distributor, or
2 distributor branch offers to each motor vehicle dealer who is a party to
3 a franchise for that ~~line make~~ line make, without any separate or
4 additional fee or charge, a new franchise agreement containing
5 substantially the same provisions which were contained in the
6 previous franchise agreement or files an affidavit with the Division
7 acknowledging its undertaking to assume and ~~fulfill~~ fulfill, without
8 any separate or additional fee or charge to its dealers, the rights, duties,
9 and obligations of its predecessor under the previous franchise
10 agreement. Should the Division fail to deny an application following
11 the change, as required by this subsection, the Division shall then deny
12 any subsequent renewal of such license until such time as the
13 manufacturer, factory branch, distributor, or distributor branch offers
14 to each motor vehicle dealer who is a party to a franchise for that line
15 make a new franchise agreement on substantially the same provisions
16 which were contained in the previous franchise agreement."

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

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

33 Notwithstanding the terms or conditions of any franchise or other
34 agreement, policy, or incentive program, it is unlawful for any manufacturer
35 or distributor to require, coerce, or attempt to coerce any of its franchised
36 dealers in this State to purchase or lease any electric vehicle charging stations
37 at the dealer's expense unless the dealer has notified the manufacturer or
38 distributor of the dealer's intention to begin selling and servicing electric
39 vehicles manufactured or distributed by that manufacturer or distributor. If the
40 dealer is actually offering for sale to the public or providing warranty service
41 on electric vehicles manufactured or distributed by that manufacturer or
42 distributor, the dealer may not be required to purchase or lease, at the dealer's
43 expense, (a) more than the number of electric vehicle charging stations for use
44 by service technicians and customer education than would reasonably be
45 necessary for the dealer to perform these functions based on the dealer's
46 estimated sales and service volume during the following three-year period or
47 (b) to make electric vehicle charging stations located at the dealership
48 available for use by the general public. Nothing in this subdivision shall
49 prohibit a manufacturer or distributor from establishing an incentive program
50 for its dealers within this State that provides financial assistance to dealers that
51 purchase or install electric charging stations; provided, however, that the

1 incentive compensation paid to the dealer for the dealer's purchase or lease
2 and installation of all charging stations is reasonable and the amount paid
3 separately reflects incentive compensation related to the charging stations.

4 Notwithstanding the terms or conditions of any franchise or other
5 agreement, policy, or incentive program, it is unlawful for any manufacturer
6 or distributor to require that any of its franchised dealers in this State purchase
7 or lease any diagnostic equipment or tool for the maintenance, servicing, or
8 repair of electric vehicles if the dealer has other diagnostic equipment or tools
9 available for servicing another brand or line make of vehicle manufactured or
10 distributed by that manufacturer or distributor that can perform the work to
11 the standards required by and which have been approved by the applicable
12 manufacturer or distributor; provided that approval by the manufacturer or
13 distributor shall not be unreasonably withheld.

14 Notwithstanding the terms or conditions of any franchise or other
15 agreement, a franchised dealer that sells fewer than 250 new motor vehicles
16 per year may request approval from the manufacturer to enter into a tool loaner
17 agreement with another dealer, in lieu of purchasing or leasing any special
18 tools required by any manufacturer, factory branch, distributor, or distributor
19 branch, provided, however, that all of the following conditions are satisfied:

20"

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

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

26"

27 **REQUIREMENT TO PURCHASE PRE-OWNED VEHICLES**

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

29 "(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this
30 State to purchase or lease a specific dealer management computer system for
31 communication with the manufacturer, factory branch, distributor, or
32 distributor branch or any computer hardware or software used for any purpose
33 other than the maintenance or repair of motor vehicles, to participate
34 monetarily in an advertising campaign or contest, to purchase off-lease or
35 other pre-owned vehicles, or to purchase unnecessary or unreasonable
36 quantities of any promotional materials, training materials, training programs,
37 showroom or other display decorations, materials, computer equipment or
38 programs, or special tools at the expense of the new motor vehicle dealer,
39 provided that nothing in this subsection shall preclude a manufacturer or
40 distributor from including an unitemized uniform charge in the base price of
41 the new motor vehicle charged to the dealer where such charge is attributable
42 to advertising costs incurred or to be incurred by the manufacturer or
43 distributor in the ordinary courses of its business. Notwithstanding the terms
44 or conditions of any franchise or other agreement, a franchised dealer that sells
45 fewer than 250 new motor vehicles per year may request approval from the
46 manufacturer to enter into a tool loaner agreement with another dealer, in lieu
47 of purchasing or leasing any special tools required by any manufacturer,
48 factory branch, distributor, or distributor branch, provided, however, that all
49 of the following conditions are satisfied:

50"

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

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

10
11 **CLARIFICATION OF DEALER'S RIGHT TO CONTROL LOCATION**

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

13 "(12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this
14 State to change location of the dealership, or to make any substantial
15 alterations to the dealership premises or facilities, when to do so would be
16 unreasonable, or without written assurance of a sufficient supply of new motor
17 vehicles so as to justify such ~~an expansion, expense,~~ in light of the current
18 market and economic conditions. If a dealer is required by the manufacturer
19 or distributor to change the location of the dealership and has not sold its
20 existing dealership facility and real estate within the later of 180 days of listing
21 the property for sale or 90 days after the facility relocation, then, upon the
22 written request of the dealer, the manufacturer or distributor shall purchase
23 the dealer's existing dealership facility and real estate at its fair market value
24 as determined by an independent appraiser agreed upon by the dealer and the
25 manufacturer or distributor. If a manufacturer or distributor purchases a
26 dealership facility and real estate, then it shall be entitled to sole ownership,
27 possession, use, and control of any items, buildings, or property that were
28 included in the contract to purchase."

29
30 **GRANDFATHER EXTENSION**

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

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

50 The price of the vehicle, for purposes of this subdivision shall include the
51 manufacturer's use of rebates, credits, or other consideration that has the effect

1 of causing a variance in the price of new motor vehicles offered to its
2 franchised dealers located in the State.

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

8 a. With respect to manufacturer to consumer rebates and incentives, the
9 manufacturer's criteria for determining eligibility shall:

- 10 1. Permit all of the manufacturer's franchised new motor vehicle
11 dealers in this State to offer the rebate or incentive; and
- 12 2. Be uniformly applied and administered to all eligible
13 consumers.

14 b. With respect to manufacturer to dealer rebates and incentives, the
15 rebate or incentive program shall:

- 16 1. Be based solely on the dealer's actual or reasonably anticipated
17 sales volume or on a uniform per vehicle sold or leased basis;
- 18 2. Be uniformly available, applied, and administered to all of the
19 manufacturer's franchised new motor vehicle dealers in this
20 State; and
- 21 3. Provide that any of the manufacturer's franchised new motor
22 vehicle dealers in this State may, upon written request, obtain
23 the method or formula used by the manufacturer in establishing
24 the sales volumes for receiving the rebates or incentives and
25 the specific calculations for determining the required sales
26 volumes of the inquiring dealer and any of the manufacturer's
27 other franchised new motor vehicle dealers located within 75
28 miles of the inquiring dealer.

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

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

38 In the event that as of October 1, 1999, a manufacturer was operating a
39 program that varied the price charged to its franchised dealers in this State in
40 a manner that would violate this subdivision, or had in effect a documented
41 policy that had been conveyed to its franchised dealers in this State and that
42 varied the price charged to its franchised dealers in this State in a manner that
43 would violate this subdivision, it shall be lawful for that program or policy,
44 including amendments to that program or policy that are consistent with the
45 purpose and provisions of the existing program or policy, or a program or
46 policy similar thereto implemented after October 1, 1999, to continue in effect
47 as to the manufacturer's franchised dealers located in this State until June 30,
48 ~~2022-2025~~.

49 In the event that as of June 30, 2001, a manufacturer was operating a
50 program that varied the price charged to its franchised dealers in this State in
51 a manner that would violate this subdivision, or had in effect a documented

1 policy that had been conveyed to its franchised dealers in this State and that
2 varied the price charged to its franchised dealers in this State in a manner that
3 would violate this subdivision, and the program or policy was implemented in
4 this State subsequent to October 1, 1999, and prior to June 30, 2001, and
5 provided that the program or policy is in compliance with this subdivision as
6 it existed as of June 30, 2001, it shall be lawful for that program or policy,
7 including amendments to that program or policy that comply with this
8 subdivision as it existed as of June 30, 2001, to continue in effect as to the
9 manufacturer's franchised dealers located in this State until June 30,
10 ~~2022-2025~~.

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

15 The provisions of this subdivision shall not be applicable to multiple or
16 repeated sales of new motor vehicles made by a new motor vehicle dealer to
17 a single purchaser under a bona fide fleet sales policy of a manufacturer,
18 factory branch, distributor, or distributor branch."
19

20 VEHICLE ALLOCATION/APEAL PROCESS

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

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

48 ...

49 f. Provides each of its franchised dealers in this State a process for a
50 dealer to appeal the dealer's vehicle allocation should the dealer
51 believe it was not allocated or did not receive vehicle inventory in a

1 manner that complies with both this subdivision and the
2 manufacturer's or distributor's uniformly applied allocation formula.
3 Participation in the appeal process does not waive or impair any rights,
4 claims, or defenses available to the dealer, manufacturer, or distributor
5 under applicable law. All in-person meetings, mediations, or other
6 proceedings related to the appeal process shall be conducted in this
7 State unless otherwise agreed to by the parties.

8 This ~~subsection~~ subdivision is not violated, however, if such failure is caused
9 solely by the occurrence of temporary international, national, or regional
10 product shortages resulting from natural disasters, unavailability of parts,
11 labor strikes, product recalls, and other factors and events beyond the control
12 of the manufacturer that temporarily reduce a manufacturer's product supply.
13 The willful or malicious maintenance, creation, or alteration of a vehicle
14 allocation process or formula by a manufacturer, factory branch, distributor,
15 or distributor branch that is in any part designed or intended to force or coerce
16 a dealer in this State to close or sell the dealer's franchise, cause the dealer
17 financial distress, or to relocate, update, or renovate the dealer's existing
18 dealership facility shall constitute an unfair and deceptive trade practice under
19 G.S. 75-1.1."
20

21 LOANER/RENTAL CAR REIMBURSEMENT

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

23 "(33) To fail to reimburse a dealer located in this State in full for the actual ~~cost~~ cost,
24 including applicable taxes and third-party fees, of providing a loaner or rental
25 vehicle to any customer who is having a vehicle serviced at the dealership if
26 the provision of such a loaner or rental vehicle is required by the manufacturer.
27 It is unlawful for a manufacturer to fail to reimburse the dealer in full as
28 provided above (i) whether or not the dealer provides the customer with a
29 model vehicle similar to the vehicle the customer brought in for service, in the
30 event the dealer does not have a similar model loaner or rental vehicle
31 available, or (ii) if the provision of a rental or loaner vehicle to a customer is
32 required or approved by the manufacturer or distributor and further provided
33 that all or any portion of the time the dealer has provided the customer with a
34 loaner or rental vehicle is due to the unavailability of one or more parts sold
35 or distributed by the manufacturer or through a supplier designated or
36 approved by the manufacturer."
37

38 FACILITY EXPENDITURES

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

40 "(50) To require, coerce, or attempt to coerce any new motor vehicle dealer located
41 in this State to change location of its dealership, or to make any substantial
42 alterations to its dealership premises or facilities, if the dealer (i) has changed
43 the location of its dealership or made substantial alterations to its dealership
44 premises or facilities within the preceding 10 years at a cost of more than two
45 hundred fifty thousand dollars (\$250,000), indexed to the Consumer Price
46 Index, over this 10-year period, and (ii) the change in location or alteration
47 was made toward compliance with a facility initiative or facility program that
48 was sponsored or supported by the manufacturer, factory branch, distributor,
49 or distributor branch, with the approval of the manufacturer, factory branch,
50 distributor, or distributor branch. If a manufacturer, factory branch,
51 distributor, or distributor branch offers incentives, or other payments under a

1 program that are in any part conditioned on a dealer's construction of a new
2 facility, facility improvements, or installation of signs or other image
3 elements, a dealer that constructed a new facility, made facility improvements,
4 or installed signs or other image elements required by or approved by the
5 manufacturer that were completed at a cost of more than two hundred fifty
6 thousand dollars (\$250,000), indexed to the Consumer Price Index, within the
7 preceding 10 years shall be deemed to be in compliance with any applicable
8 facility requirements included in the manufacturer's program, and the dealer
9 shall be entitled to receive all such incentives or other payments awardable
10 under the program. If, during the 10-year period, the manufacturer revises or
11 discontinues an existing program, standard, or policy or establishes a new
12 program, standard, or policy or other benefit relating to construction or
13 substantial alteration of a dealership, a motor vehicle dealer that completed
14 construction or alteration of a dealership at a cost of more than two hundred
15 fifty thousand dollars (\$250,000) as part of a prior program, standard, or
16 policy and elects not to participate in the new or revised program, standard, or
17 policy shall not be entitled to the benefits under the new or revised program
18 but shall remain entitled to all benefits under the prior program, standard, or
19 policy according to the terms of the prior program, standard, or policy. If the
20 prior program, standard, or policy under which the dealer completed a
21 construction or alteration does not contain a specific period of time during
22 which the manufacturer or distributor must provide payments or benefits to a
23 dealer, then the manufacturer or distributor may not deny the dealer payment
24 or benefits under the terms of that prior program, as it existed when the dealer
25 began to perform under the prior program, for the balance of the 10-year term,
26 regardless of whether the manufacturer's or distributor's program, standard, or
27 policy has been revised or discontinued. For any dealer that did not change
28 the location of its dealership or make substantial alterations to its dealership
29 premises or facilities within the preceding 10 years at a cost of more than two
30 hundred fifty thousand dollars (\$250,000), indexed to the Consumer Price
31 Index, the dealer's obligation to ~~change location of its dealership, or to make~~
32 any substantial alteration to its dealership premises or facilities, at the request
33 of a manufacturer, factory branch, distributor, or distributor branch, or to
34 satisfy a requirement or condition of an incentive program sponsored by a
35 manufacturer, factory branch, distributor, or distributor branch, shall be
36 governed by the applicable provisions of subdivisions (4), (11), (12), (25),
37 (30), (32), and (42) of this section. This section shall not apply to any facility
38 or premises improvement or alteration that is voluntarily agreed to by the new
39 motor vehicle dealer and for which the dealer receives facilities-related
40 compensation from the manufacturer or distributor for the facility
41 improvement or alteration equivalent to at least a majority of the cost incurred
42 by the dealer for the facility improvement or alteration."
43

44 **WARRANTY REQUIREMENTS**

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

46 **"§ 20-305.1. Automobile dealer warranty and recall obligations.**

47 (a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch,
48 shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's
49 obligations for preparation, delivery, warranty, manufacturer-sponsored maintenance programs,
50 manufacturer extended warranty, parts exchange programs, and recall service on its products.
51 The disclosure required under this subsection shall include the schedule of compensation to be

1 paid the dealers for parts, work, and service in connection with preparation, delivery, warranty,
2 and recall service, and the time allowances for the performance of the work and service. In no
3 event shall the schedule of compensation fail to include reasonable compensation for diagnostic
4 ~~work~~ work, shipping, if required by the manufacturer or distributor, and for battery disposal or
5 other disposal charges and all other associated fees that were actually incurred by the dealer, and
6 associated administrative requirements as well as repair service and labor. Time allowances for
7 the performance of preparation, delivery, warranty, and recall work and service shall be
8 reasonable and adequate for the work to be performed. The compensation paid under this section
9 shall be reasonable, provided, however, that under no circumstances shall the reasonable
10 compensation under this section for warranty and recall service be in an amount less than the
11 dealer's current retail labor rate and the amount charged to retail customers for the manufacturer's
12 or distributor's original parts for nonwarranty work of like kind, provided the amount is
13 competitive with the retail rates charged for parts and labor by other franchised dealers of the
14 same line-make located within the dealer's market. If there is no other same line-make dealer
15 located in the dealer's market or if all other same line-make dealers in the dealer's market are
16 owned or operated by the same entities or individuals as the dealership being compared, the retail
17 rates charged for parts and labor by other franchised dealers located in the dealer's market that
18 sell competing line-make motor vehicles as the dealer may be considered when determining
19 whether the dealer's rates are competitive.

20 (a1) The retail rate customarily charged by the dealer for parts and labor may be
21 established at the election of the dealer by the dealer submitting to the manufacturer or distributor
22 100 sequential nonwarranty customer-paid service repair orders which contain warranty-like
23 parts, or 60 consecutive days of nonwarranty customer-paid service repair orders which contain
24 warranty-like parts, whichever is less, covering repairs made no more than 180 days before the
25 submission and declaring the average percentage markup. The average of the parts markup rate
26 and the average labor rate shall both be presumed to be reasonable, however, a manufacturer or
27 distributor may, not later than 30 days after submission, rebut that presumption by reasonably
28 substantiating that the rate is unfair and unreasonable in light of the retail rates charged for parts
29 and labor by all other franchised motor vehicle dealers located in the dealer's ~~market-relevant~~
30 market area offering the same line-make vehicles. In the event there are no other franchised
31 dealers offering the same line-make of vehicle in the dealer's ~~market-relevant market area,~~ the
32 manufacturer or distributor may compare the dealer's retail rate for parts and labor with the retail
33 rates charged for parts and labor by other same segment franchised dealers who are selling
34 competing line-makes of vehicles within the dealer's ~~market-relevant market area.~~ In the event
35 there is also no other same segment franchised dealer who is selling a competing line-make of
36 vehicle within the dealer's relevant market area, the manufacturer or distributor may then
37 compare the dealer's retail rate for parts and labor with the retail rates charged for parts and labor
38 by other same line-make dealers or same segment franchised dealers who are selling competing
39 line-makes of vehicles that are located within the relevant market area of the franchised dealer
40 who is located in closest proximity, measured by straight-line distance, to the dealer, provided
41 they are not all owned, operated, or controlled by the subject dealer. For the purposes of this
42 section, the term "relevant market area" shall have the same meaning as set forth in
43 G.S. 20-286(13b). The retail rate and the average labor rate shall go into effect 30 days following
44 the manufacturer's approval, but in no event later than 60 days following the declaration, subject
45 to audit of the submitted repair orders by the manufacturer or distributor and a rebuttal of the
46 declared rate as described above. If the declared rate is rebutted, the manufacturer or distributor
47 shall propose an adjustment of the average percentage markup based on that rebuttal not later
48 than 30 days after such audit, but in no event later than 60 days after submission. If the dealer
49 does not agree with the proposed average percentage markup, the dealer may file a protest with
50 the Commissioner not later than 30 days after receipt of that proposal by the manufacturer or
51 distributor. If such a protest is filed, the Commissioner shall inform the manufacturer or

1 distributor that a timely protest has been filed and that a hearing will be held on such protest. In
2 any hearing held pursuant to this subsection, the manufacturer or distributor shall have the burden
3 of proving by a preponderance of the evidence that the rate declared by the dealer was
4 unreasonable as described in this subsection and that the proposed adjustment of the average
5 percentage markup is reasonable pursuant to the provisions of this subsection. If the dealer
6 prevails at a protest hearing, the dealer's proposed rate, affirmed at the hearing, shall be effective
7 as of 60 days after the date of the dealer's initial submission of the customer-paid service orders
8 to the manufacturer or distributor. If the manufacturer or distributor prevails at a protest hearing,
9 the rate proposed by the manufacturer or distributor, that was affirmed at the hearing, shall be
10 effective beginning 30 days following issuance of the final order.

11 ...

12 (b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor
13 vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of
14 its warranty or recall obligations with respect to a motor vehicle, to fail to fully compensate its
15 motor vehicle dealers licensed in this State for a qualifying used motor vehicle pursuant to
16 subsections (i) and (j) of this section or warranty and recall parts other than parts used to repair
17 the living facilities of recreational vehicles, including motor homes, travel trailers, fifth-wheel
18 trailers, camping trailers, and truck campers as defined in G.S. 20-4.01(32b), at the prevailing
19 retail rate according to the factors in subsection (a) of this section, or, in service in accordance
20 with the schedule of compensation provided the dealer pursuant to subsection (a) of this section,
21 or to otherwise recover all or any portion of its costs for compensating its motor vehicle dealers
22 licensed in this State for warranty or recall parts and service or for payments for a qualifying
23 used motor vehicle pursuant to subsections (i) and (j) of this section either by reduction in the
24 amount due to the dealer, or by separate charge, surcharge, or other imposition, and to fail to
25 indemnify and hold harmless its franchised dealers licensed in this State against any judgment
26 for damages or settlements agreed to by the manufacturer, including, but not limited to, court
27 costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims
28 or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or
29 implied warranty, or rescission or revocation of acceptance of the sale of a motor vehicle as defined
30 in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective or
31 negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other
32 functions by the manufacturer, factory branch, distributor or distributor branch, beyond the
33 control of the dealer. Any audit, other than an audit conducted for cause, for warranty or recall
34 parts or service compensation, or compensation for a qualifying used motor vehicle in accordance
35 with subsections (i) and (j) of this section may only be conducted one time within any 12-month
36 period and shall only be for the 12-month period immediately following the date of the payment
37 of the claim by the manufacturer, factory branch, distributor, or distributor branch. Any audit,
38 other than an audit conducted for cause, for sales incentives, service incentives, rebates, or other
39 forms of incentive compensation may only be conducted one time within any 12-month period
40 and shall only be for the 12-month period immediately following the date of the payment of the
41 claim by the manufacturer, factory branch, distributor, or distributor branch pursuant to a sales
42 incentives program, service incentives program, rebate program, or other form of incentive
43 compensation program. Provided, however, these limitations shall not be effective in the case of
44 fraudulent claims. For purposes of this subsection, the term "audit conducted for cause" is defined
45 as an audit based on any of the following: (i) statistical evidence that the dealer's claims are
46 unreasonably high in comparison to other dealers similarly situated or the dealer's claim history,
47 (ii) that the dealer's claims submissions violate reasonable claims documentation or other
48 requirements of the applicable manufacturer, factory branch, distributor, or distributor branch,
49 (iii) a follow up to an earlier audit in which the dealer was notified of a claim documentation
50 procedure violation that occurred within the prior 12-month period, provided the audit and any
51 chargeback are in compliance with subdivision (b1) or (b2) of this section and are limited in

1 scope to just the specific violation determined previously, or (iv) reasonable evidence of
2 malfeasance or fraud. In the event a manufacturer, factory branch, distributor, or distributor
3 branch elects to perform an audit conducted for cause, the manufacturer, factory branch,
4 distributor, or distributor branch, simultaneously with providing the affected dealer with written
5 notice of the audit, shall further be required to explain in detail in the notice the data or other
6 foundation upon which the cause is based.

7 ...

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

22"

23 24 **CLARIFY DEFINITION OF MOTOR VEHICLE DEALER**

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

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

- 27 1. For commission, money, or other thing of value, buys, sells,
28 leases at retail, or exchanges, whether outright or on
29 conditional sale, bailment lease, chattel mortgage, or
30 otherwise, five or more motor vehicles within any 12
31 consecutive months, regardless of who owns the motor
32 vehicles.
- 33 2. On behalf of another and for commission, money, or other
34 thing of value, arranges, offers, attempts to solicit, or attempts
35 to negotiate the sale, purchase, or exchange of an interest in
36 five or more motor vehicles within any 12 consecutive months,
37 regardless of who owns the motor vehicles.
- 38 3. Engages, wholly or in part, in the business of ~~selling~~ selling,
39 leasing at retail, new motor vehicles or new or used motor
40 vehicles, or used motor vehicles only, whether or not the motor
41 vehicles are owned by that person, and sells five or more motor
42 vehicles within any 12 consecutive months.
- 43 4. Offers to sell, displays, or permits the display for sale for any
44 form of compensation five or more motor vehicles within any
45 12 consecutive months.
- 46 5. Primarily engages in the leasing or renting of motor vehicles
47 to others and sells or offers to sell those vehicles at retail.
- 48 6. For commission, money, or other thing of value, or on behalf
49 of another person sharing ten percent (10%) or more common
50 ownership, offers new vehicles as part of a subscription
51 program. This sub-sub-subdivision shall not apply to any

1 person providing a vehicle subscription or monthly rental
2 program on or after January 1, 2025."
3

4 **DEALERSHIP FINANCIAL STATEMENTS**

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

6 "(20) To release to any outside party, except under subpoena or as otherwise
7 required by law or in an administrative, judicial or arbitration proceeding
8 involving the manufacturer or new motor vehicle dealer, any confidential
9 business, financial, or personal information which may be from time to time
10 provided by the new motor vehicle dealer to the manufacturer, without the
11 express written consent of the new motor vehicle dealer. A manufacturer shall
12 not require, or include in any incentive program, a requirement that any of its
13 motor vehicle dealers in this State provide an exclusive financial statement for
14 a franchise or line make when the dealer company operates more than one
15 franchise or sells more than one line make."
16

17 **DEALER MANUFACTURER PARTNERSHIP FOR ONLINE SALES**

18 **SECTION 12.** G.S. 20-305 is amended by adding a new subdivision to read:

19 "(53) Notwithstanding the terms of any franchise or agreement, or the terms of any
20 program or policy, to do any of the following if it has any franchised dealers
21 in this State and if it permits retail customers the option of reserving or
22 requesting to purchase or lease a vehicle directly from such manufacturer or
23 distributor:

24 a. Fail to assign any retail vehicle reservation or request to purchase or
25 lease received by the manufacturer or distributor from a resident of
26 this State to the franchised dealer authorized to sell that make and
27 model which is designated by the customer, or if none is designated,
28 to its franchised dealer authorized to sell that make and model located
29 in closest proximity to the customer's location, provided that if the
30 customer does not purchase or lease the vehicle from that dealer within
31 10 days of the vehicle being assigned to the dealer, or if the customer
32 requests that the transaction be assigned to another dealer, then the
33 manufacturer or distributor may assign the transaction to another
34 franchised dealer authorized to sell that make and model.

35 b. Prohibit a retail customer that has reserved or requested to purchase or
36 lease a vehicle directly from the manufacturer or distributor from
37 negotiating the final purchase price of the vehicle directly with the
38 dealer if the dealer is authorized to sell that make and model and to
39 agree on a final price for a new motor vehicle which varies from the
40 MSRP established by the manufacturer or distributor.

41 c. Prohibit a retail customer that has reserved or requested to purchase or
42 lease a vehicle directly from the manufacturer or distributor from using
43 any vehicle financing or leasing source available from or through the
44 dealer to whom the customer's vehicle reservation or request to
45 purchase or lease has been assigned or to prohibit a franchised dealer
46 in this State from offering and negotiating directly with the customer
47 the terms of vehicle financing or leasing through all sources available
48 to the dealer.

49 d. Prohibit a retail customer that has reserved or requested to purchase or
50 lease a vehicle directly from the manufacturer or distributor from
51 purchasing on terms negotiated or agreed to directly between the

1 customer and the dealer to whom the customer's reservation or request
 2 to purchase or lease has been assigned, any service contract, extended
 3 warranty, vehicle maintenance contract, or guaranteed asset protection
 4 (GAP) agreement, or any other vehicle-related products and services
 5 offered by the dealer, provided that a manufacturer, distributor, or
 6 captive finance source shall not be required to finance any such
 7 product or service that is not offered or supported by the manufacturer
 8 or distributor.

9 e. Prohibit a retail customer that has reserved or requested to purchase or
 10 lease a vehicle directly from the manufacturer or distributor and the
 11 dealer to whom the customer's reservation or request to purchase or
 12 lease has been assigned from directly negotiating the trade-in value the
 13 customer will receive, or to prohibit the dealer from conducting an
 14 on-site inspection of the condition of a trade-in vehicle before the
 15 dealer becomes contractually obligated to accept the trade-in value
 16 negotiated.

17 f. Use a third party to accomplish what would otherwise be prohibited
 18 by this subdivision.

19 Nothing contained in this subdivision shall (i) require that a manufacturer or
 20 distributor allocate or supply additional or supplemental inventory to a franchised
 21 dealer located in this State in order to satisfy a retail customer's vehicle reservation or
 22 request submitted directly to the manufacturer or distributor as provided in this
 23 section, (ii) apply to the generation of sales leads; provided, however, that for
 24 purposes of this subdivision the term "sales leads" shall not include any reservation
 25 or request to purchase or lease a vehicle submitted directly by a customer or potential
 26 customer to a manufacturer or distributor, or (iii) apply to a reservation or request to
 27 purchase or lease a vehicle directly from the manufacturer or distributor received from
 28 customer that is a resident of this State if the customer designates a dealer outside of
 29 this State to be assigned the reservation or request to purchase or lease, or if the dealer
 30 located in closest proximity to the customer's location is in another state and the
 31 manufacturer or distributor assigns the reservation or request to purchase or lease to
 32 that dealer."

33 ELECTRONIC SIGNATURES

34 **SECTION 13.** G.S. 20-305 is amended by adding a new subdivision to read:

35 "(54) To prohibit or to in any way unreasonably limit or restrict a dealer from using
 36 electronic signature technology that conforms to Article 40 of Chapter 66 of
 37 the General Statutes to facilitate or execute loaner, demonstrator, rental, and
 38 test drive agreements and forms."

39 CLARIFY VEHICLE INSPECTION REQUIREMENT FOR AFFILIATE DEALER

40 **SECTION 14.** G.S. 20-183.4C reads as rewritten:

41 "**§ 20-183.4C. When a vehicle must be inspected; 10-day temporary license plate.**

42 (a) Inspection. – A vehicle that is subject to a safety inspection, an emissions inspection,
 43 or both must be inspected as follows:

44 (1) ~~A~~ Except as otherwise provided in this subdivision, a new vehicle must be
 45 inspected before it is delivered to a purchaser at retail in this State. Upon
 46 purchase, a receipt approved by the Division must be provided to the new
 47 owner certifying compliance. An inspection is not required if the vehicle was
 48 previously inspected by an affiliated dealership, or between dealerships
 49 having common or interrelated ownership, and the inspection occurred either
 50 previously inspected by an affiliated dealership, or between dealerships
 51 having common or interrelated ownership, and the inspection occurred either

1 within 180 days from the date of sale or within 300 miles from the mileage
 2 recorded at the date of sale.

3 ...

4 (2) A-Except as otherwise provided in this subdivision, a used vehicle must be
 5 inspected before it is offered for sale at retail in this State by a dealer. Upon
 6 purchase, a receipt approved by the Division must be provided to the new
 7 owner certifying compliance. An inspection is not required if the vehicle was
 8 previously inspected by an affiliated dealership, or between dealerships
 9 having common or interrelated ownership, and the inspection occurred either
 10 within 180 days from the date of sale or within 300 miles from the mileage
 11 recorded at the date of sale.

12"

13
 14 **PERMIT LIMITED OFF-PREMISES SALES ACTIVITIES**

15 **SECTION 15.** G.S. 20-292 reads as rewritten:

16 **"§ 20-292. Dealers may display motor vehicles for sale at retail only at established**
 17 **salesrooms.**

18 (a) A new or used motor vehicle dealer may display a motor vehicle for sale at retail only
 19 at the dealer's established salesroom, unless the display is of a motor vehicle that meets any of
 20 the following descriptions:

- 21 (1) Contains the dealer's name or other sales information and is used by the dealer
 22 as a "demonstrator" for transportation purposes.
- 23 (2) Is displayed at a trade show or exhibit at which no selling activities relating to
 24 the vehicle take place ~~place~~ and contains the dealer's name and business
 25 location.
- 26 (3) Is displayed at the home or place of business of a customer at the request or
 27 with the permission or consent of the customer.

28 (b) Nothing contained in this section or in any other provision contained in Article 12 of
 29 this Chapter shall be deemed to prohibit or restrict a new or used motor vehicle dealer or an
 30 employee, agent, or contractee of a new or used motor vehicle dealer from doing any of the
 31 following:

- 32 (1) Delivering a motor vehicle purchased or leased by a customer to the
 33 customer's home or place of business or having a customer execute forms and
 34 other documents relating to vehicle purchase, lease, titling, registration,
 35 financing, insurance, and other products and services provided to the customer
 36 by or through the dealer that are presented to a customer at the customer's
 37 home or place of business by any employee or authorized agent of the dealer;
 38 provided, however, that all such forms and other documents have been fully
 39 agreed to and were fully completed in advance of their presentation to the
 40 customer, no additional negotiations or modifications related to the content of
 41 any of these forms or other documents take place, and no modifications are
 42 made to the content of any of these forms and other documents other than the
 43 correction of clerical or typographical errors.
- 44 (2) Having any employee or authorized agent of the dealer explain vehicle
 45 operation, features, care, and warranties to the customer at the time the
 46 customer's vehicle is delivered.
- 47 (3) Retrieving from the customer's home or place of business a motor vehicle that
 48 has been sold by the customer to the dealer.

49 (c) This section does not apply to recreational vehicles, house trailers, or boat, animal,
 50 camping, or other utility trailers."
 51

1 **SEVERABILITY CLAUSE**

2 **SECTION 16.** If any section or provision of this act is declared unconstitutional or
3 invalid by the courts, it does not affect the validity of this act as a whole or any part other than
4 the part so declared to be unconstitutional or invalid.

5
6 **EFFECTIVE DATE**

7 **SECTION 17.** Sections 1 through 11 and Sections 13 through 16 of this act are
8 effective when they become law and apply to all current and future franchises and other
9 agreements in existence between any new motor vehicle dealer located in this State and a
10 manufacturer or distributor as of the effective date of this act. Section 12 of this act becomes
11 effective January 1, 2022, and applies as of that date to all existing and future programs and
12 policies of all manufacturers and distributors having any franchised dealers in this State. Except
13 as otherwise provided, the remainder of this act is effective when it becomes law.