A BILL TO BE ENTITLED
AN ACT TO CLARIFY VARIOUS MOTOR VEHICLE DEALER LAWS.
The General Assembly of North Carolina enacts:

DEALER INDEPENDENCE AND INCREASING THE AVAILABILITY OF ELECTRIC VEHICLES FOR RURAL CONSUMERS

SECTION 1. (a) G.S. 20-305(53) reads as rewritten:
"(53) Notwithstanding the terms of any franchise or agreement, or the terms of any program or policy, to do any of the following if it has any franchised dealers in this State and if State:

  a. If it permits retail customers the option of reserving or requesting to purchase or lease a vehicle directly from such manufacturer or distributor, to do any of the following:

  a-1. Fail to assign any retail vehicle reservation or request to purchase or lease received by the manufacturer or distributor from a resident of this State to the franchised dealer authorized to sell that make and model which is designated by the customer, or if none is designated, to its franchised dealer authorized to sell that make and model located in closest proximity to the customer's location, provided that if the customer does not purchase or lease the vehicle from that dealer within 10 days of the vehicle being assigned to the dealer, or if the customer requests that the transaction be assigned to another dealer, then the manufacturer or distributor may assign the transaction to another franchised dealer authorized to sell that make and model.

  b-2. Prohibit a retail customer that has reserved or requested to purchase or lease a vehicle directly from the manufacturer or distributor from negotiating the final purchase price of the vehicle directly with the dealer if the dealer is authorized to sell that make and model and to agree on a final price for a new motor vehicle which varies from the MSRP established by the manufacturer or distributor.

  e-3. Prohibit a retail customer that has reserved or requested to purchase or lease a vehicle directly from the manufacturer or distributor from using any vehicle financing or leasing source
available from or through the dealer to whom the customer's vehicle reservation or request to purchase or lease has been assigned or to prohibit a franchised dealer in this State from offering and negotiating directly with the customer the terms of vehicle financing or leasing through all sources available to the dealer.

d-4. Prohibit a retail customer that has reserved or requested to purchase or lease a vehicle directly from the manufacturer or distributor from purchasing on terms negotiated or agreed to directly between the customer and the dealer to whom the customer's reservation or request to purchase or lease has been assigned, any service contract, extended warranty, vehicle maintenance contract, or guaranteed asset protection (GAP) agreement, or any other vehicle-related products and services offered by the dealer, provided that a manufacturer, distributor, or captive finance source shall not be required to finance any such product or service that is not offered or supported by the manufacturer or distributor.

e-5. Prohibit a retail customer that has reserved or requested to purchase or lease a vehicle directly from the manufacturer or distributor and the dealer to whom the customer's reservation or request to purchase or lease has been assigned from directly negotiating the trade-in value the customer will receive, or to prohibit the dealer from conducting an on-site inspection of the condition of a trade-in vehicle before the dealer becomes contractually obligated to accept the trade-in value negotiated.

f-6. Use a third party to accomplish what would otherwise be prohibited by this subdivision.

b. Fail or refuse to do any of the following:

1. Allow consumers located in this State the ability to directly purchase from any of its franchised dealers in this State, either at the dealer's dealership or through one or more websites owned, operated, and controlled by the dealer, all makes and models of new vehicles the dealer is authorized to sell.

2. Give equal reference and prominence on any website owned, operated, or controlled by the manufacturer or distributor on which consumers are permitted to order, purchase, or lease vehicles, to all of the manufacturer's or distributor's franchised dealers that are located in this State.

3. Require that all of the new vehicles manufactured or distributed by the manufacturer or distributor that are sold or leased to purchasers or lessees located in this State be physically delivered to the ultimate purchaser or lessee by the same line-make franchised dealer selected by the purchaser or lessee, or in the absence of such selection, by the same line-make dealer from whom the vehicle was purchased or leased, or by the same line-make dealer that is located in closest proximity to the purchaser or lessee.

c. Fail or refuse to allow all of its franchised dealers located in this State to do any of the following:
1. Have the ability to maintain on the ground and in the dealer's stock a reasonable supply of all makes and models of new vehicles the dealer is authorized to sell; provided, however, that this sub-subdivision is not violated if the inability of the manufacturer to provide a reasonable on-the-ground supply of new vehicles to dealers is based on Acts of God, labor strikes, or material shortages beyond the control of the manufacturer or distributor.

2. Have the right to store new and used batteries at a safe and secure location selected by the dealer that is separate from the dealership premises, fail or refuse to compensate dealers for the full cost of storing used batteries more than 30 days after the manufacturer or distributor has been notified by the dealer of their availability to be picked up, or fail or refuse to compensate and indemnify dealers for all loss and damage caused by vehicle batteries supplied by or through the manufacturer or distributor.

3. Have the same opportunity to purchase used vehicle inventory distributed or made available by that manufacturer or distributor without imposing any additional conditions or requirements on their dealers.

4. Have the opportunity to order from or through the manufacturer or distributor, receive, and maintain in stock a reasonable supply of parts required for service and repair of the manufacturer's or distributor's vehicles based on the volume of service work performed by the dealer.

5. Have the right to independently determine the types of physical and digital advertising media the dealer chooses to advertise all brands, models, and types of vehicles offered for sale by the dealer as well as the content and format of the advertising and all locations where the dealer chooses to establish, publish, broadcast, circulate, or display such advertising and the individuals to whom advertising is targeted or directed; provided, however, that nothing in this sub-subdivision shall be deemed to interfere with the intellectual property rights of manufacturers and distributors.

6. Have the ability to use any digital platform or digital retailing tool selected by the dealer as long as it is capable of performing the essential functions required by the manufacturer or distributor.

d. Engage in any of the following actions:

1. Maintain a website or other electronic or digital means of communication for negotiating prices or other binding terms of sale of new vehicles directly between the manufacturer or distributor and end users located in this State, including, but not limited to, agreements between the manufacturer or distributor and the end user on prices or other substantive terms of sale or leasing of new vehicles.

2. Retain ownership of new motor vehicles until they are sold to end users located in this State.
3. Consign new motor vehicles to its franchised dealers in this State for dealer inventory or for sale to end users located in this State.

4. Reserve the right to negotiate binding terms of sale directly with buyers of new motor vehicles located in this State.

5. Designate its franchised dealers in this State to be only delivery agents for new motor vehicles and service and parts outlets, reserving for the respective manufacturer or distributor the right to establish the binding terms of vehicle sales or the right to negotiate the binding terms of sale directly with end users located in this State.

6. Unreasonably impede or interfere with the ability of its rural and other franchised dealers located in this State to obtain from that manufacturer or distributor and sell or lease any series or models of technologically advanced vehicles that the manufacturer or distributor makes available for sale or lease in this State by or through its same line-make dealers. For purposes of this sub-sub-subdivision, the term "technologically advanced vehicle" or "TAV" means a vehicle that utilizes an alternative technology other than an internal combustion engine for propulsion, such as an electric vehicle (EV) or hydrogen vehicle, or a vehicle that utilizes autonomous or self-driving technology rated at Level 3, 4, or 5 by the Society of Automotive Engineers. For purposes of this sub-sub-subdivision, the term "EV" means any plug-in electric vehicle that does not rely on any nonelectric source of power in all modes of operation. For purposes of this sub-sub-subdivision, the term "unreasonably impede or interfere with" includes, but is not limited to, any of the following:

I. To fail or refuse to promptly cause, at a dealer's request and at no cost to the dealer, a detailed, itemized, individual dealer assessment to be performed for each of its franchised dealers located in this State that desires to sell and service that manufacturer's or distributor's TAVs to determine the minimum TAV investment each dealer would need to make for training, facilities, tools, parts, equipment, and charging stations for vehicle service and for training dealership employees and customers. Charging stations for use by the public and all other charges or expenditures not technically essential to sell and service the manufacturer's or distributor's TAVs shall not be required or included in determining a dealer's minimum TAV investment. The minimum TAV investment established for each dealer must be scaled based on the estimated number of the manufacturer's or distributor's new TAVs the dealer would be anticipated to sell and the number of TAVs the dealer would be expected to service within the following three-year period. In the event that a manufacturer or distributor had performed an
individualized dealer assessment required in this sub-sub-sub-subdivision prior to July 1, 2023, such assessment shall be deemed to have satisfied the requirements contained in this sub-sub-sub-subdivision as long as it complies with all of the requirements of an individual TAV assessment established in this sub-sub-sub-subdivision and contains no charges in excess of those charges includable under this sub-sub-sub-subdivision.

II. To charge a dealer or require that a dealer located in this State invest or spend more than the minimum TAV investment determined in sub-sub-sub-subdivision I. of this sub-sub-sub-subdivision in order to sell and service any and all TAV models that the manufacturer or distributor makes available for purchase or lease in this State by or through its same line-make dealers. Any requirement that a dealer invest or spend more than the TAV investment determined in sub-sub-sub-subdivision I. of this sub-sub-sub-subdivision shall be void and of no effect, and the affected manufacturer or distributor shall be required to allocate TAVs to the dealer and otherwise comply with all of the requirements contained in this sub-sub-sub-subdivision as if such excessive requirement had been satisfied.

III. To fail or refuse to allocate all TAV models offered by the manufacturer or distributor for sale or lease in this State in accordance with the requirements of this sub-sub-sub-subdivision to each of its same line-make franchised dealers located in this State that has made the minimum TAV investment determined pursuant to sub-sub-sub-subdivision I. of this sub-sub-sub-subdivision.

e. Withhold all or any portion of any incentive payment from any of its dealers located in this State on the basis of a dealer's failure to comply with any condition or requirement that is unlawful, prohibited, contrary, or inconsistent with any of the provisions of this subdivision.

Nothing contained in sub-subdivision a. of this subdivision shall (i) require that a manufacturer or distributor allocate or supply additional or supplemental inventory to a franchised dealer located in this State in order to satisfy a retail customer's vehicle reservation or request submitted directly to the manufacturer or distributor as provided in this section, (ii) apply to the generation of sales leads; provided, however, that for purposes of this subdivision the term "sales leads" shall not include any reservation or request to purchase or lease a vehicle submitted directly by a customer or potential customer to a manufacturer or distributor, or (iii) apply to a reservation or request to purchase or lease a vehicle directly from the manufacturer or distributor received from customer that is a resident of this State if the customer designates a dealer outside of this State to be assigned the reservation or request to purchase or lease, or if the dealer located in closest proximity to the customer's location is in another state and the manufacturer or distributor assigns the reservation or request to purchase or lease to that dealer.
SECTION 1.(b) G.S. 20-305(44) reads as rewritten:

"(44) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, to require, coerce, or attempt to coerce any new motor vehicle dealer located in this State to refrain from doing any of the following:

a. Displaying in the dealer's showroom or elsewhere within the dealership facility any sports-related honors, awards, photographs, displays, or other artifacts or memorabilia; provided, however, that such sports-related honors, awards, photographs, displays, or other artifacts or memorabilia (i) pertain to an owner, investor, or executive manager of the dealership; (ii) relate to professional sports; (iii) do not reference or advertise a competing brand of motor vehicles; and (iv) do not conceal or disparage any of the required branding elements that are part of the dealership facility.

b. Using all or part of the name of a dealer's founder, owner, existing trade name, or dealer principal in the dealer's trade name."

SECTION 1.(c) G.S. 20-305 is amended by adding a new subdivision to read:

"(55) To interfere with the independence and governance of a dealer or dealer applicant having multiple owners by requiring, coercing, or attempting to coerce the dealer or dealer applicant to adopt a corporate structure under which a single individual has the sole legal authority to issue additional corporate stock; add one or more new managers, members, or shareholders; purchase or sell franchises or line-makes of vehicles; acquire or sell real estate; invest in new or substantially remodeled or updated facilities; borrow money in the name of the dealer; select a new or successor dealer principal; file a petition in bankruptcy or receivership; or require that owners contribute additional capital."

OWNERSHIP OR CONTROL OF DEALERSHIP WEBSITE

SECTION 2. G.S. 20-305, as amended by Section 1 of this act, is amended by adding a new subdivision to read:

"(56) Notwithstanding the terms of any franchise, agreement, or policy, to unreasonably interfere with the establishment, maintenance, operation, or control of either a single location dealer website or a dealer group website. For purposes of this subdivision, the term "single location dealer website" means a website that is owned or operated by a new motor vehicle dealer or an entity that is affiliated with a new motor vehicle dealer licensed in this State and that advertises, markets, displays, sells, or leases new and used motor vehicles that are available for sale or lease at a single dealership location within this State. For purposes of this subdivision, the term "dealer group website" means a website that is owned or operated by one or more new motor vehicle dealers or an entity that is affiliated with one or more new motor vehicle dealers licensed in this State and that advertises, markets, displays, sells, or leases new and used motor vehicles that are available for sale or lease at more than one dealership location within this State. For purposes of this subdivision, the term "unreasonable interference" includes, but is not limited to, any contractual prohibition or any policy or any bonus or incentive program created or sponsored by a manufacturer or distributor that does any of the following:

a. Prohibits or in any way disincentivizes any of its franchised dealers in this State who own or operate either a single location dealer website
or a dealer group website from prominently displaying throughout the website the name and logo of the applicable dealer or dealer group.

b. Requires or provides bonuses or incentives for any dealer or dealer group located in this State to use a digital platform or digital retailing tool provided, recommended, endorsed, or approved by the manufacturer or distributor; provided, however, that the digital platform or digital retailing tool selected by the dealer possesses substantially the same level of quality and performs substantially the same functions as the digital platform or digital retailing tool provided, recommended, endorsed, or approved by the manufacturer or distributor.

c. Requires or provides bonuses or incentives for any dealer or dealer group located in this State to use, on either a single location dealer website or a dealer group website, one or more chat tools, appraisal tools, payment calculators, or other online digital tools provided, recommended, endorsed, or approved by the manufacturer or distributor, provided, however, that any such digital retailing tools selected by the dealer possess substantially the same quality and performs substantially the same functions as the digital retailing tools provided, recommended, endorsed, or approved by the manufacturer or distributor.

d. Restricts or in any way disincentivizes any of its franchised dealers in this State who own or operate either a single location dealer website or a dealer group website from using any method, procedure, or protocol selected by the dealer in communicating with the dealer's customers or permitting or allowing customers to make an appointment to see a vehicle, hold or reserve a vehicle, or purchase or lease a vehicle through a digital retail process.

e. Restricts or in any way disincentivizes any of its franchised dealers in this State who own or operate a single location dealer website from displaying, selling, or leasing all brands and line-makes of new and used motor vehicles offered for sale or lease at that dealership location, including the dealer's display of manufacturer logos and marks for all such brands and line-makes of vehicles offered for sale or lease, to the extent such display of manufacturer logos and marks does not interfere with the intellectual property rights of the manufacturer.

f. Restricts or in any way disincentivizes any of its franchised dealers in this State who own or operate a dealer group website from displaying, selling, or leasing all brands and line-makes of new and used motor vehicles offered for sale or lease at any dealership affiliated with the dealer group, including the display of manufacturer logos and marks for all such brands and line-makes of vehicles offered for sale or lease at any such affiliated dealerships, to the extent such display of manufacturer logos and marks does not interfere with the intellectual property rights of the manufacturer.

Nothing contained in this subdivision shall prevent or prohibit a manufacturer or distributor from requiring that, in establishing and operating either single location dealer websites or dealer group websites, dealers not violate the intellectual property rights of the manufacturer or distributor.

Any requirement, term, or condition contained in any bonus or incentive program established by a manufacturer or distributor that is inconsistent with
any of the provisions contained in this subdivision shall be void and
unenforceable, and all dealers located in this State that are franchised or
licensed by such manufacturer or distributor shall be entitled to receive the
full amount of the bonus or incentive being offered by the manufacturer or
distributor whether or not the dealer has complied with the terms or conditions
of any such bonus or incentive program that are inconsistent with the
provisions of this subdivision.”

PROHIBITING UNFAIR COMPETITION/PREVENTING DEALERS FROM SELLING
ELECTRIC VEHICLES AND OTHER VEHICLES WITH ADVANCED
TECHNOLOGIES

SECTION 3. G.S. 20-305.2 is amended by adding a new subsection to read:

“(g) It is unlawful for any manufacturer or distributor that has any franchised dealers in
this State to sell, lease, or otherwise distribute one or more models, brands, or series of motor
vehicles in this State that are solely or primarily electric or hydrogen vehicles or that utilize one
or more advanced technologies that are not available for purchase by all of its franchised dealers
located in this State; provided, however, that it shall not be a violation of this subsection if the
manufacturer or distributor makes a reasonable quantity of vehicles utilizing the same electric,
hydrogen, or other new technology available on some models, brands, or series of vehicles that
are available for all of its existing franchised dealers located within this State to purchase at no
additional charge to such dealers other than the minimum costs necessary for these dealers to sell
and service the electric, hydrogen, or other new technology vehicles. Additionally, it is not a
violation of this subsection if the manufacturer or distributor is selling, leasing, or otherwise
distributing new electric, hydrogen, or other new technology vehicles in this State as part of a
trial or introductory program in which fewer than 2,000 of such vehicles are sold, leased, or
otherwise distributed in this State during any 12-month period of time. The Commissioner shall
deny any new or renewal application for a manufacturer or distributor license or revoke any
manufacturer or distributor license previously issued to any manufacturer or distributor, or to any
entity affiliated with such manufacturer or distributor, that is in violation of this subsection.”

RURAL DEALER MINIMUM EARNED ALLOCATION RIGHTS

SECTION 4. G.S. 20-305(14) reads as rewritten:

”(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or
accessories in reasonable quantities relative to the new motor vehicle dealer's
facilities and sales potential in the new motor vehicle dealer's market area as
determined in accordance with reasonably applied economic principles, or
within a reasonable time, after receipt of a bona fide sold retail customer
order from a dealer having a franchise for the retail sale of any new motor
vehicle sold or distributed by the manufacturer or distributor, any new vehicle,
parts or accessories to new vehicles as are covered by such franchise, and such
vehicles, parts or accessories as are publicly advertised as being available or
actually being delivered. A manufacturer or distributor shall be required to fill
each bona fide retail customer order from one of its franchised dealers in this
State in the chronological sequence such order is received without regard for
or consideration of the dealer's previously earned allocation of vehicles. All
such bona fide sold retail customer orders shall be filled before the
manufacturer or distributor allocates vehicles that are similarly configured and
that have similar options to dealers based on any other allocation system,
program, policy, or criteria, except for those vehicles allocated in accordance
with sub-subdivision g. of this subdivision, and be filled by a manufacturer or
distributor from the entire allocation of all new motor vehicles that the
manufacturer or distributor has designated for distribution within this State
without regard to any allocation or distribution levels, tiers, pools, groups, or
priorities the manufacturer or distributor has established for dealers, or
whether such other sales are retail, wholesale, or fleet. The delivery to another
dealer of a motor vehicle of the same model and similarly equipped as the
vehicle ordered by a motor vehicle dealer who has not received delivery
thereof, but who has placed his written order for the vehicle prior to the order
of the dealer receiving the vehicle, shall be prima facie evidence of a delayed
delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer
within a reasonable time, without cause. Additionally, except as may be
required by any consent decree of the Commissioner or other order of the
Commissioner or court of competent jurisdiction, any sales objectives which
a manufacturer, factory branch, distributor, or distributor branch establishes
for any of its franchised dealers in this State must be reasonable, and every
manufacturer, factory branch, distributor, or distributor branch must allocate
its products within this State in a manner that does all of the following:

a. Provides each of its franchised dealers in this State an adequate supply
   of vehicles by series, product line, and model in a fair, reasonable, and
equitable manner based on each dealer's historical selling pattern and
reasonable sales standards as compared to other same line-make
dealers in the State.

b. Allocates an adequate supply of vehicles to each of its dealers by
   series, product line, and model so as to allow the dealer to achieve any
   performance standards established by the manufacturer and
distributor.

b1. Allocates vehicles to each of its dealers that are configured in a manner
   and that contain options that take into consideration the dealer's
   historical experience and success in selling vehicles similarly
   configured and that contain similar options.

c. Is fair and equitable to all of its franchised dealers in this State.

d. Makes available to each of its franchised dealers in this State a
   minimum of one of each vehicle series, model, or product line that the
   manufacturer makes available to any dealer in this State and advertises
   in the State as being available for purchase.

e. Does not unfairly discriminate among its franchised dealers in its
   allocation process.

f. Provides each of its franchised dealers in this State a process for a
   dealer to appeal the dealer's vehicle allocation should the dealer
   believe it was not allocated or did not receive vehicle inventory in a
   manner that complies with both this subdivision and the
   manufacturer's or distributor's uniformly applied allocation formula.
   Participation in the appeal process does not waive or impair any rights,
   claims, or defenses available to the dealer, manufacturer, or distributor
   under applicable law. All in-person meetings, mediations, or other
   proceedings related to the appeal process shall be conducted in this
   State unless otherwise agreed to by the parties.

g. If, during the immediately preceding 12 calendar months, a new motor
   vehicle dealer located in this State sold a total of 250 or fewer new
   motor vehicles manufactured or distributed by a particular
   manufacturer or distributor, that manufacturer or distributor shall be
   required to allocate to the dealer and deliver in a timely manner,
monthly and on a model-by-model or series basis, no fewer than the
number of new motor vehicles of each such model or series that dealer
sold at retail during the immediately previous calendar month, not to
exceed 20 vehicles per month of any given model. The minimum
vehicle allocation rights of dealers pursuant to this sub-subdivision
shall be filled by a manufacturer or distributor from the entire
allocation of all new motor vehicles that the manufacturer or
distributor has designated for distribution within this State without
regard to any allocation or distribution levels, tiers, pools, groups, or
priorities the manufacturer or distributor has established for dealers, or
whether such other sales are retail, wholesale, or fleet.

This subdivision is not violated, however, if such failure is caused solely by
the occurrence of temporary international, national, or regional product
shortages resulting from natural disasters, unavailability of parts, labor strikes,
product recalls, and other factors and events beyond the control of the
manufacturer that temporarily reduce a manufacturer’s product supply. In the
event of any such shortages in vehicle availability, each manufacturer or
distributor shall be required to allocate and distribute all available new motor
vehicles to its franchised dealers in this State in accordance with the allocation
priorities established in this subdivision and in a fair, equitable, and
nondiscriminatory manner. The willful or malicious maintenance, creation, or
alteration of a vehicle allocation process or formula by a manufacturer, factory
branch, distributor, or distributor branch that is in any part designed or
intended to force or coerce a dealer in this State to close or sell the dealer’s
franchise, cause the dealer financial distress, or to relocate, update, or renovate
the dealer's existing dealership facility shall constitute an unfair and deceptive
trade practice under G.S. 75-1.1."

FAIR AND REASONABLE VEHICLE ALLOCATION

SECTION 5. G.S. 20-305, as amended by Sections 1 and 2 of this act, is amended
by adding a new subdivision to read:

"(14a) To establish a system of motor vehicle allocation or distribution or to
implement a system of allocation or distribution of motor vehicles to one or
more of its franchised motor vehicle dealers which reduces or alters
allocations or supplies of new motor vehicles to the dealer to achieve, directly
or indirectly, a purpose that is prohibited by this Article; or which
conditionally or unconditionally reserves a specific motor vehicle identified
by Vehicle Identification Number or other unique identifier for a specifically
named person; or which requires or incentivizes motor vehicle dealers to sell
or lease, or to negotiate the sale or lease of, a specific motor vehicle identified
by Vehicle Identification Number or other unique identifier to a specifically
named person; or which requires or incentivizes motor vehicle dealers to sell
or lease a motor vehicle at a specified price or profit margin; or which
otherwise is unfair, inequitable, unreasonably discriminatory, or not
supportable by reason and good cause after considering the equities of the
affected motor vehicles dealer or dealers. An applicant or licensee shall
maintain for three years records that describe its methods or formula of
allocation and distribution of its motor vehicles and records of its actual
allocation and distribution of motor vehicles to its motor vehicle dealers in
this State. As used in this subdivision, “unfair” includes, without limitation,
(i) the refusal or failure to offer to any dealer an equitable supply of new
vehicles under its franchise, by model, mix, or colors as the licensee offers or
allocates to its other same line-make dealers in the State or (ii) using as a factor
in allocation of motor vehicles the number of motor vehicles preordered or
reserved by consumers."

ECONOMIC COERCION

SECTION 6. G.S. 20-305, as amended by Sections 1, 2, and 5 of this act, is amended
by adding a new subdivision to read:

"(57) To use economic coercion to influence a dealer to participate in or comply
with any program or policy sponsored, endorsed, or supported by the
manufacturer or distributor, to sell any model, type, or series of vehicle or
other products or services, or to take or refuse to take any action or to engage
in or refuse to engage in any conduct. For purposes of this subdivision, the
terms "economic coercion," "coerce," and "attempt to coerce" shall include
the manufacturer's or distributor's use of rebates, credits, incentive payments,
or other consideration that has the effect of causing a variance in the price of
new motor vehicles offered to its franchised dealers located in the State or that
offers participating or compliant dealers the ability to sell or receive any
model, type, or series of vehicle or other products or services offered by or
through the manufacturer or distributor. Each of the manufacturer's or
distributor's franchised dealers in this State shall be entitled to receive the
maximum rebate, credit, incentive payment, or other consideration the
manufacturer or distributor is offering under its program or policy, or to sell
or receive any model, type, or series of vehicle or other products or services
offered by or through the manufacturer or distributor, regardless of whether
the dealer has complied with any or all of the conditions or requirements of
the manufacturer's program or policy.

Nothing contained in this subdivision shall be deemed to prohibit a
manufacturer or distributor from establishing for each dealer reasonable
requirements for training, facilities, parts, and equipment necessary to sell and
service any model, type, or series of vehicle or other products or services
offered by or through the manufacturer or distributor, as long as these
requirements are scaled to take into consideration that dealer's reasonably
anticipated sales volumes of these products or services over the following
three-year period."

ADD DEFINITION OF "SELL" OR "SELLING"

SECTION 7. G.S. 20-286 reads as rewritten:

The following definitions apply in this Article:

... (15a) Sell or selling. – Includes taking deposits or receiving payment for the
purchase, lease, exchange, subscription, or use of a motor vehicle; accepting
a reservation for a specific motor vehicle identified by Vehicle Identification
Number or other product identifier from a retail consumer; setting the retail
price for the purchase, lease, or exchange of a motor vehicle; offering or
negotiating terms for the purchase, lease, finance, or exchange of a motor
vehicle with a retail consumer; negotiating directly with a retail consumer the
value of a motor vehicle being traded in as part of the purchase, lease,
exchange, subscription, or use of a motor vehicle; offering or negotiating
directly with a retail consumer any service contract, extended warranty,
vehicle maintenance contract, guaranteed asset protection agreement, or any
other vehicle-related products and services in connection with the purchase,
lease, or exchange of a motor vehicle; any transaction where the title of a
motor vehicle or a used motor vehicle is transferred to a retail consumer; and
also any retail lease transaction where a retail customer leases a vehicle for a
period of at least 12 months. The terms "sell," "selling," "sold," "exchange,"
"retail sales," "selling activities," and "leases" are synonymous.

(15b) Special tool or essential tool. – A tool designed and required by the
manufacturer or distributor and not readily available from another source that
is utilized for the purpose of performing service repairs on a motor vehicle
sold by a manufacturer or distributor to its franchised new motor vehicle
dealers in this State.

MANUFACTURER SALE OR SUBSCRIPTION OF ADD-ON PRODUCTS

SECTION 8. (a) G.S. 20-305, as amended by Sections 1, 2, 5, and 6 of this act, is
amended by adding a new subdivision to read:

"(58) To engage in this State in any of the activities of a motor vehicle dealer as
defined in G.S. 20-286, except as expressly permitted by G.S. 20-305.2, or to
compete with any of its same line-make dealers in this State with respect to
the sale of any products or services that the dealer is authorized to sell pursuant
to the dealer's franchise with the manufacturer or distributor, by the
manufacturer's or distributor's remote electronic transmission to the end user
of any motor vehicle accessory, option, add-on, feature, improvement, or
upgrade."

SECTION 8. (b) G.S. 20-305, as amended by Sections 1, 2, 5, and 6 of this act and
subsection (a) of this section, is amended by adding a new subdivision to read:

"(59) To sell or lease any motor vehicle of a line-make for which it has any
franchised dealers in this State directly to an end user located in this State or
to activate for a fee any permanent or temporary motor vehicle accessory,
option, add-on, feature, improvement, or upgrade, on or to any vehicle owned
or leased by an end user located in this State, in a manner other than through
a same line-make dealer."

SECTION 8. (c) Subsection (a) of G.S. 20-305.2 is amended by adding a new
subdivision to read:

"(9) Notwithstanding the provisions of G.S. 20-305(59), and provided that the new
motor vehicle dealers of the line-make located in this State are permitted to
sell end users the same motor vehicle accessory, option, add-on, feature,
improvement, or upgrade for a motor vehicle of the line-make manufactured,
imported, or distributed by the manufacturer or distributor, a manufacturer or
distributor may, on the same terms offered to the dealer, also sell to the end
user or activate for a fee a permanent or temporary motor vehicle accessory,
option, add-on, feature, improvement, or upgrade for a motor vehicle of a
line-make manufactured, imported, or distributed by the manufacturer;
provided, however, that the accessory, option, add-on, feature, improvement,
or upgrade is activated or installed directly on the end user's motor vehicle
through remote electronic transmission, and further provided that if such
motor vehicle was sold or leased as new by a franchised new motor vehicle
dealer in this State within the five-year period preceding such remote
electronic transmission, then the manufacturer must pay such franchised new
motor vehicle dealer a minimum of twenty percent (20%) of the gross revenue
received by the manufacturer, agent, or common entity for such sale or activation and renewals during such five-year period. The manufacturer must provide each of its franchised dealers with a quarterly statement of the revenue received by the manufacturer, its agent, or its common entity during that quarter for such remote sales or activations and renewals relating to those vehicles sold or leased by the dealer during the preceding five years."

WARRANTY REIMBURSEMENT CLARIFICATION

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

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

... (a1) The retail rate customarily charged by the dealer for parts and labor may be established at the election of the dealer by the dealer submitting to the manufacturer or distributor 100 sequential nonwarranty customer-paid service repair orders which contain warranty-like parts, or 60 consecutive days of nonwarranty customer-paid service repair orders which contain warranty-like parts, whichever is less, covering repairs made no more than 180 days before the submission and declaring the average percentage markup. The average of the parts markup rate and the average labor rate shall both be presumed to be reasonable, accurate, however, a manufacturer or distributor may, not later than 30 days after submission, rebut that presumption by reasonably substantiating that the rate is unfair and unreasonable in light of the retail rates charged for parts and labor by all other franchised motor vehicle dealers located in the dealer's relevant market area offering the same line make vehicles. In the event there are no other franchised dealers offering the same line make of vehicle in the dealer's relevant market area, the manufacturer or distributor may compare the dealer's retail rate for parts and labor with the retail rates charged for parts and labor by other same segment franchised dealers who are selling competing line makes of vehicles within the dealer's relevant market area. In the event there is also no other same segment franchised dealer who is selling a competing line make of vehicle within the dealer's relevant market area, the manufacturer or distributor may then compare the dealer's retail rate for parts and labor with the retail rates charged for parts and labor by other same line make dealers or same segment franchised dealers who are selling competing line makes of vehicles that are located within the relevant market area of the franchised dealer who is located in closest proximity, measured by straight line distance, to the dealer, provided they are not all owned, operated, or controlled by the subject dealer. For the purposes of this section, the term "relevant market area" shall have the same meaning as set forth in G.S. 20-286(13b), requested is not supported by the submission and by declaring the accurate rate based upon the submission repair orders. The retail rate and the average labor rate shall go into effect 30 days following the manufacturer's approval, but in no event later than 60 days following the declaration, subject to audit review of the accuracy of the submitted repair orders by the manufacturer or distributor and a rebuttal of the declared rate as described above. If the declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the average percentage markup based on that rebuttal not later than 30 days after such audit, but in no event later than 60 days after submission. If the dealer does not agree with the proposed average percentage markup, the dealer may file a protest with the Commissioner not later than 30 days after receipt of that proposal by the manufacturer or distributor. If such a protest is filed, the Commissioner shall inform the manufacturer or distributor that a timely protest has been filed and that a hearing will be held on such protest. In any hearing held pursuant to this subsection, the manufacturer or distributor shall have the burden of proving by a preponderance of the evidence that the rate declared by the dealer was unreasonable, inaccurate as described in this subsection and that the proposed adjustment of the average percentage markup is reasonable pursuant to the provisions of this subsection. correct. If the dealer prevails at a protest hearing, the dealer's proposed rate, affirmed at the hearing, shall be effective as of 60 days after the date
of the dealer's initial submission of the customer-paid service orders to the manufacturer or
distributor. If the manufacturer or distributor prevails at a protest hearing, the rate proposed by
the manufacturer or distributor, that was affirmed at the hearing, shall be effective beginning 30
days following issuance of the final order.

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

(1) Repairs for manufacturer or distributor special events, specials, coupons, or
other promotional discounts for retail customer repairs.
(2) Parts sold at wholesale or at reduced or specially negotiated rates for insurance
repairs.
(3) Engine and transmission assemblies.
(4) Routine maintenance, including fluids, filters, alignments, flushes, oil
changes, belts, and brake drums/rotors and shoes/pads not provided in the
course of repairs.
(5) Nuts, bolts, fasteners, and similar items that do not have an individual part
number.
(6) Tires and vehicle alignments.
(7) Vehicle reconditioning.
(8) Batteries and light bulbs.

SEVERABILITY CLAUSE

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

EFFECTIVE DATE

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