

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 447
PROPOSED COMMITTEE SUBSTITUTE H447-PCS40454-SU-7

Short Title: Clarify Motor Vehicle Dealer Laws.

(Public)

Sponsors:

Referred to:

March 23, 2023

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

4
5 **DEALER INDEPENDENCE AND INCREASING THE AVAILABILITY OF ELECTRIC**
6 **VEHICLES FOR RURAL CONSUMERS**

7 **SECTION 1.(a)** G.S. 20-305(53) reads as rewritten:

8 "(53) Notwithstanding the terms of any franchise or agreement, or the terms of any
9 program or policy, to do any of the following if it has any franchised dealers
10 in this ~~State and if State:~~

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

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

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

34 e-3. Prohibit a retail customer that has reserved or requested to
35 purchase or lease a vehicle directly from the manufacturer or
36 distributor from using any vehicle financing or leasing source



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- 1 available from or through the dealer to whom the customer's
 2 vehicle reservation or request to purchase or lease has been
 3 assigned or to prohibit a franchised dealer in this State from
 4 offering and negotiating directly with the customer the terms
 5 of vehicle financing or leasing through all sources available to
 6 the dealer.
- 7 ~~e.4.~~ Prohibit a retail customer that has reserved or requested to
 8 purchase or lease a vehicle directly from the manufacturer or
 9 distributor from purchasing on terms negotiated or agreed to
 10 directly between the customer and the dealer to whom the
 11 customer's reservation or request to purchase or lease has been
 12 assigned, any service contract, extended warranty, vehicle
 13 maintenance contract, or guaranteed asset protection (GAP)
 14 agreement, or any other vehicle-related products and services
 15 offered by the dealer, provided that a manufacturer, distributor,
 16 or captive finance source shall not be required to finance any
 17 such product or service that is not offered or supported by the
 18 manufacturer or distributor.
- 19 ~~e.5.~~ Prohibit a retail customer that has reserved or requested to
 20 purchase or lease a vehicle directly from the manufacturer or
 21 distributor and the dealer to whom the customer's reservation
 22 or request to purchase or lease has been assigned from directly
 23 negotiating the trade-in value the customer will receive, or to
 24 prohibit the dealer from conducting an on-site inspection of the
 25 condition of a trade-in vehicle before the dealer becomes
 26 contractually obligated to accept the trade-in value negotiated.
- 27 ~~f.6.~~ Use a third party to accomplish what would otherwise be
 28 prohibited by this subdivision.
- 29 b. Fail or refuse to do any of the following:
- 30 1. Allow consumers located in this State the ability to directly
 31 purchase from any of its franchised dealers in this State all
 32 makes and models of new vehicles the dealer is authorized to
 33 sell; provided that this sub-subdivision is not violated to the
 34 extent that the inability of the manufacturer or distributor to
 35 provide vehicles to the dealer is based on acts of God, labor
 36 strikes, unavailability of parts, recalls, or material shortages.
- 37 2. Require that all of the new vehicles manufactured or
 38 distributed by the manufacturer or distributor that are sold or
 39 leased to purchasers or lessees located in this State be
 40 physically delivered to the ultimate purchaser or lessee by the
 41 same line-make franchised dealer selected by the purchaser or
 42 lessee, or in the absence of such selection, by the same
 43 line-make dealer from whom the vehicle was purchased or
 44 leased, or by the same line-make dealer that is located in
 45 closest proximity to the purchaser or lessee.
- 46 c. Fail or refuse to allow all of its franchised dealers located in this State
 47 to do any of the following:
- 48 1. Subject to availability, have the ability to maintain on the
 49 ground and in the dealer's stock a reasonable supply of all
 50 makes and models of new vehicles the dealer is authorized to
 51 sell; provided, however, that this sub-sub-subdivision is not

- 1 violated to the extent that the inability of the manufacturer to
2 provide a reasonable on-the-ground supply of new vehicles to
3 dealers is based on Acts of God, labor strikes, unavailability of
4 parts, recalls, material shortages, or other factors and events
5 beyond the control of the manufacturer or distributor.
- 6 2. Have the right to store new and used batteries used for electric
7 vehicles and hybrid electric vehicles at a safe and secure
8 location selected and paid for by the dealer that is separate from
9 the dealership premises or fail or refuse to compensate dealers
10 for the full cost of storing used batteries more than 30 days
11 after the manufacturer or distributor has been notified by the
12 dealer of their availability to be picked up.
- 13 3. Have the opportunity to purchase used vehicle inventory
14 distributed or made available by that manufacturer or
15 distributor without imposing any additional conditions or
16 requirements on their dealers; provided that a manufacturer or
17 distributor may uniformly restrict dealers to purchase through
18 such program only used vehicles for which the dealer holds a
19 franchise.
- 20 4. Have the opportunity to order from or through the
21 manufacturer or distributor, receive, and maintain in stock a
22 reasonable supply of parts required for service and repair of the
23 manufacturer's or distributor's vehicles based on the volume of
24 service work performed by the dealer; provided that this
25 sub-sub-subdivision is not violated to the extent that the failure
26 of the manufacturer or distributor to provide parts is caused by
27 the occurrence of product shortages resulting from natural
28 disasters, unavailability of parts, labor strikes, or product
29 recalls beyond the control of the manufacturer or distributor.
- 30 5. Have, if the manufacturer or distributor has not contributed
31 money or content toward the dealer's advertising, the right to
32 independently determine the types of physical and digital
33 advertising media the dealer chooses to advertise for all brands,
34 models, and types of vehicles offered for sale by the dealer as
35 well as the content and format of the advertising and all
36 locations where the dealer chooses to establish, publish,
37 broadcast, circulate, or display such advertising and the
38 individuals to whom advertising is targeted or directed;
39 provided that nothing in this sub-sub-subdivision allows a
40 dealer to infringe upon or to interfere with the intellectual
41 property rights of manufacturers and distributors or to
42 advertise the products offered by the manufacturer or
43 distributor in a manner that disparages or violates the
44 reasonable brand image requirements of the manufacturer or
45 distributor.
- 46 d. Engage in any of the following actions:
- 47 1. Retain ownership of new motor vehicles until they are sold or
48 leased to retail customers located in this State, except for fleet
49 sales to a fleet customer that has a designation as such by the
50 manufacturer or distributor.

1 manufacturer's or distributor's TAVs to determine the
2 minimum TAV investment each dealer would need to
3 make for training, facilities, tools, parts, equipment,
4 and charging stations for vehicle service and for
5 training dealership employees and customers.
6 Charging stations for use by the public and all other
7 charges or expenditures not technically essential to sell
8 and service the manufacturer's or distributor's TAVs
9 shall not be required or included in determining a
10 dealer's minimum TAV investment. The minimum
11 TAV investment established for each dealer must be
12 scaled based on the estimated number of the
13 manufacturer's or distributor's new TAVs the dealer
14 would be anticipated to sell and the number of TAVs
15 the dealer would be expected to service within the
16 following three-year period. In the event that a
17 manufacturer or distributor had performed an
18 individualized dealer assessment required in this
19 sub-sub-sub-subdivision prior to July 1, 2023, the
20 assessment shall be deemed to satisfy the requirements
21 contained in this sub-sub-sub-subdivision as long as it
22 complies with all of the requirements of an individual
23 TAV assessment established in this
24 sub-sub-sub-subdivision and the TAV assessment
25 contains no charges in excess of those charges
26 includable under this sub-sub-sub-subdivision. It shall
27 be unlawful for a manufacturer or distributor to require
28 a dealer to pay for an assessment of the type required
29 under this sub-sub-sub-subdivision if the manufacturer
30 or distributor requires that an assessment be performed
31 as a prerequisite for the dealer to sell or lease TAVs that
32 the manufacturer or distributor sells or distributes.

33 II. To charge a dealer or require that a dealer located in
34 this State invest or spend more than ten percent (10%)
35 above the minimum TAV investment determined in
36 sub-sub-sub-subdivision I. of this sub-sub-subdivision
37 in order to sell and service any and all TAV models that
38 the manufacturer or distributor makes available for
39 purchase or lease in this State by or through its same
40 line-make dealers. Any requirement that a dealer invest
41 or spend more than ten percent (10%) above the TAV
42 investment determined in sub-sub-sub-subdivision I. of
43 this sub-sub-subdivision shall be void and of no effect,
44 and the affected manufacturer or distributor shall be
45 required to allocate TAVs to the dealer and otherwise
46 comply with all of the requirements contained in this
47 sub-subdivision as if such excessive requirement had
48 been satisfied.

49 III. To fail or refuse to allocate all TAV models offered by
50 the manufacturer or distributor for sale or lease in this
51 State in accordance with the requirements of this

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-subdivision.

7. 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.

8. Require, coerce, or attempt to coerce a dealer to make expenditures related to achieving CO2 reductions or neutrality at the dealer's facility at the expense of the dealer.

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~~ 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, provided the name the dealer proposes to use for its trade name would not disparage the manufacturer's or distributor's brand or be confusing to the consuming public."

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

1 corporate stock; add one or more new managers, members, or shareholders;
2 purchase or sell franchises or line-makes of vehicles; acquire or sell real
3 estate; invest in new or substantially remodeled or updated facilities; borrow
4 money in the name of the dealer; select a new or successor dealer principal;
5 file a petition in bankruptcy or receivership; or require that owners contribute
6 additional capital. Nothing in this subdivision shall prohibit a manufacturer or
7 distributor from requiring the dealer or dealer applicant to designate a single
8 natural person that the manufacturer or distributor may contact and who shall
9 be responsible for all business communications and day-to-day business
10 decisions with the manufacturer or distributor, or from requiring that the
11 designated person own a minimum percentage of ownership reasonably
12 determined by the manufacturer or distributor."

14 DEALER AND MANUFACTURER WEBSITES

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

16 "(56) Notwithstanding the terms of any franchise, agreement, or policy, to do any
17 of the following with regard to dealer and manufacturer websites:

18 a. Dealer websites. – It is unlawful for any manufacturer or distributor to
19 unreasonably interfere with the establishment, maintenance,
20 operation, or control of either a single location dealer website or a
21 dealer group website. For purposes of this subdivision, the term "single
22 location dealer website" means a website that is owned or operated by
23 a new motor vehicle dealer or an entity that is affiliated with a new
24 motor vehicle dealer licensed in this State and that advertises, markets,
25 displays, sells, or leases new and used motor vehicles that are only
26 available for sale or lease at a single dealership location within this
27 State. For purposes of this subdivision, the term "dealer group
28 website" means a website that is owned or operated by one or more
29 affiliated new motor vehicle dealers or one or more affiliated entities
30 licensed in this State and that advertises, markets, displays, sells, or
31 leases new and used motor vehicles that are available for sale or lease
32 at more than one dealership location within this State. For purposes of
33 this sub-subdivision, the term "unreasonably interfere" includes, but is
34 not limited to, any contractual prohibition or any policy or any bonus
35 or incentive program created or sponsored by a manufacturer or
36 distributor that does any of the following:

37 1. Prohibits or in any way disincentivizes any of its franchised
38 dealers in this State that own or operate either a single location
39 dealer website or a dealer group website from prominently
40 displaying throughout the website the name and logo of the
41 applicable dealer or dealer group.

42 2. Requires or provides bonuses or incentives for any dealer or
43 dealer group located in this State to use a digital platform or
44 digital retailing tool provided, recommended, endorsed, or
45 approved by the manufacturer or distributor; provided,
46 however, that the digital platform or digital retailing tool
47 selected by the dealer possesses substantially the same level of
48 quality and performs substantially the same functions as the
49 digital platform or digital retailing tool provided,
50 recommended, endorsed, or approved by the manufacturer or
51 distributor.

- 1 3. Requires as a condition to sell any line-make, brand, model, or
2 series of vehicles or participate in a program, or that provides
3 bonuses or incentives, for any dealer or dealer group located in
4 this State to use, on either a single location dealer website or a
5 dealer group website, one or more chat tools, appraisal tools,
6 payment calculators, or other online digital tools provided,
7 recommended, endorsed, or approved by the manufacturer or
8 distributor, provided, however, that any such digital retailing
9 tools selected by the dealer possess substantially the same
10 quality and perform substantially the same functions as the
11 digital retailing tools provided, recommended, endorsed, or
12 approved by the manufacturer or distributor.
- 13 4. Restricts or in any way disincentivizes any of its franchised
14 dealers in this State that own or operate either a single location
15 dealer website or a dealer group website from using any
16 method, procedure, or protocol selected by the dealer for
17 communicating with the dealer's customers or permitting or
18 allowing customers to make an appointment to see or test drive
19 a vehicle, hold or reserve a vehicle, or negotiate the price of or
20 purchase or lease a vehicle directly with the dealer through a
21 dealer-owned website or other digital retail process.
- 22 5. Restricts or in any way disincentivizes any of its franchised
23 dealers in this State that own or operate a single location dealer
24 website from displaying, selling, or leasing all brands and
25 line-makes of new and used motor vehicles offered for sale or
26 lease at that dealership location, including the dealer's display
27 of manufacturer logos and marks for all such brands and
28 line-makes of vehicles offered for sale or lease, to the extent
29 such display of manufacturer logos and marks does not
30 interfere with the intellectual property rights of the
31 manufacturer.
- 32 6. Restricts or in any way disincentivizes any of its franchised
33 dealers in this State that own or operate a dealer group website
34 from displaying, selling, or leasing all brands and line-makes
35 of new and used motor vehicles offered for sale or lease at any
36 dealership affiliated with the dealer group, including the
37 display of manufacturer logos and marks for all such brands
38 and line-makes of vehicles offered for sale or lease at any such
39 affiliated dealerships, to the extent such display of
40 manufacturer logos and marks does not interfere with the
41 intellectual property rights of the manufacturer.

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

47 Any requirement, term, or condition contained in any bonus or
48 incentive program established by a manufacturer or distributor that is
49 inconsistent with any of the provisions contained in this
50 sub-subdivision shall be void and unenforceable, and all dealers
51 located in this State that are franchised or licensed by such

1 manufacturer or distributor shall be entitled to receive the full amount
 2 of the bonus or incentive being offered by the manufacturer or
 3 distributor whether or not the dealer has complied with the terms or
 4 conditions of any such bonus or incentive program that are
 5 inconsistent with the provisions of this subdivision.

6 b. Manufacturer websites. – It is unlawful for any manufacturer or
 7 distributor to do either of the following:

8 1. Fail to give, to the extent technologically feasible, substantially
 9 equivalent visibility to all of the manufacturer's or distributor's
 10 franchised dealers that are located in this State, on any website
 11 owned, operated, or controlled by the manufacturer or
 12 distributor on which customers are permitted to order or
 13 reserve vehicles for purchase or lease.

14 2. Maintain a website or other electronic or digital means of
 15 communication for negotiating or otherwise establishing prices
 16 or other binding terms of sale or lease of new vehicles directly
 17 between the manufacturer or distributor and retail customers
 18 located in this State, provided that a manufacturer, factory
 19 branch, distributor, or distributor branch may maintain a
 20 website or other electronic or digital means of communication
 21 if the final selling or lease price of the new vehicles is
 22 determined by eligible dealers, and provided further that a
 23 dealer may not be required to set a non-negotiable price as a
 24 condition for the dealer's inclusion on any website owned,
 25 controlled, or maintained by a manufacturer or distributor."

26
 27 **PROHIBITING UNFAIR COMPETITION/PREVENTING DEALERS FROM SELLING**
 28 **ELECTRIC VEHICLES AND OTHER VEHICLES WITH ADVANCED**
 29 **TECHNOLOGIES**

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

31 "(g) It is unlawful for any manufacturer or distributor that has any franchised dealers in
 32 this State to sell, lease, or otherwise distribute one or more models, brands, or series of motor
 33 vehicles in this State that are propelled solely or primarily by electric or hydrogen, or vehicles
 34 that utilize autonomous self-driving technology rated at Level 3, 4, or 5 by the Society of
 35 Automotive Engineers, without making some vehicles utilizing the same or substantially similar
 36 advanced technology functionally available for purchase by all of its franchised dealers located
 37 in this State within 12 months of the date vehicles possessing such advanced technology are first
 38 delivered to any of the manufacturer's or distributor's dealers in this State or at such time as the
 39 manufacturer or distributor has sold at least 2,500 vehicles utilizing such advanced technology
 40 in this State, whichever date occurs first. The Commissioner shall promptly investigate any
 41 complaint brought by a franchised dealer that a manufacturer or distributor with whom the dealer
 42 holds a franchise or any affiliated entity has violated this subsection, and, if the Commissioner
 43 determines that this subsection has been violated, the Commissioner shall take appropriate action
 44 against the subject manufacturer or distributor."

45
 46 **RURAL DEALER MINIMUM EARNED ALLOCATION RIGHTS**

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

48 "(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or
 49 accessories in reasonable quantities relative to the new motor vehicle dealer's
 50 facilities and sales potential in the new motor vehicle dealer's market area as
 51 determined in accordance with reasonably applied economic principles, or

1 within a reasonable time, after receipt of an order from a dealer having a
2 franchise for the retail sale of any new motor vehicle sold or distributed by the
3 manufacturer or distributor, any new vehicle, parts or accessories to new
4 vehicles as are covered by such franchise, and such vehicles, parts or
5 accessories as are publicly advertised as being available or actually being
6 delivered. The delivery to another dealer of a motor vehicle of the same model
7 and similarly equipped as the vehicle ordered by a motor vehicle dealer who
8 has not received delivery thereof, but who has placed his written order for the
9 vehicle prior to the order of the dealer receiving the vehicle, shall be prima
10 facie evidence of a delayed delivery of, or refusal to deliver, a new motor
11 vehicle to a motor vehicle dealer within a reasonable time, without cause.
12 Additionally, except as may be required by any consent decree of the
13 Commissioner or other order of the Commissioner or court of competent
14 jurisdiction, any sales objectives which a manufacturer, factory branch,
15 distributor, or distributor branch establishes for any of its franchised dealers
16 in this State must be reasonable, and every manufacturer, factory branch,
17 distributor, or distributor branch must allocate its products within this State in
18 a manner that does all of the following:

- 19 a. Provides each of its franchised dealers in this State an adequate supply
20 of vehicles by series, product line, and model in a fair, reasonable, and
21 equitable manner based on each dealer's historical selling pattern and
22 reasonable sales standards as compared to other same line-make
23 dealers in the State.
- 24 b. Allocates an adequate supply of vehicles to each of its dealers by
25 series, product line, and model so as to allow the dealer to achieve any
26 performance standards established by the manufacturer and
27 distributor.
- 28 b1. Allocates vehicles to each of its dealers that are configured in a manner
29 and that contain options that take into consideration the dealer's
30 historical experience and success in selling vehicles similarly
31 configured and that contain similar options.
- 32 c. Is fair and equitable to all of its franchised dealers in this State.
- 33 d. Makes available to each of its franchised dealers in this State a
34 minimum of one of each vehicle series, model, or product line that the
35 manufacturer makes available to any dealer in this State and advertises
36 in the State as being available for purchase.
- 37 e. Does not unfairly discriminate among its franchised dealers in its
38 allocation process.
- 39 f. Discloses to all of its franchised dealers handling the same line-make
40 both its system of allocation and the actual new vehicle allocation that
41 occurred during the previous calendar month and during the previous
42 12 calendar months, including, but not limited to, a complete
43 breakdown by model, color, equipment, and other items or terms; a
44 concise listing of same line-make dealerships broken down by same
45 line-make dealers within each dealer's area of responsibility, district,
46 region, and the State; and an explanation of the derivation of the
47 allocation system, including its mathematical formula or formulae, in
48 a clear and comprehensible form. The data provided by the
49 manufacturer or distributor pursuant to this sub-subdivision is required
50 to reflect all new vehicles allocated to its franchised dealers in this
51 State pursuant to a mathematical formula or on a discretionary basis.

1 All of the allocation data that a manufacturer or distributor is required
2 to provide to each of its same line-make dealers in this State pursuant
3 to this sub-subdivision shall either be made available for its dealers to
4 review online at their discretion or be provided to dealers regularly, at
5 least on a quarterly basis, as well as promptly upon the email, online,
6 or other written request of a dealer or in the event a manufacturer or
7 distributor has changed its allocation formula, process, or policies.

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

18 h. If, during the immediately preceding 12 calendar months, a new motor
19 vehicle dealer located in this State sold a total of 250 or fewer new
20 motor vehicles manufactured or distributed by a particular
21 manufacturer or distributor, that manufacturer or distributor shall be
22 required to allocate to the dealer and deliver in a timely manner,
23 monthly and on a model-by-model or series basis, no fewer than the
24 number of new motor vehicles of each such model or series that dealer
25 sold at retail during the immediately previous calendar month, not to
26 exceed five vehicles per month of any given model. The minimum
27 vehicle allocation rights of dealers pursuant to this sub-subdivision
28 shall be filled by a manufacturer or distributor from the entire
29 allocation of all new motor vehicles that the manufacturer or
30 distributor has designated for distribution within this State without
31 regard to any allocation or distribution levels, tiers, pools, groups, or
32 priorities the manufacturer or distributor has established for dealers, or
33 whether such other sales are retail, wholesale, or fleet. The minimum
34 vehicle allocation rights of dealers pursuant to this sub-subdivision
35 shall not be applicable with respect to any model or series of vehicle
36 for which a manufacturer or distributor has sold fewer than 1,000 units
37 in this State within the previous 12 months.

38 This subdivision is not violated, however, if such failure is caused solely by
39 the occurrence of temporary international, national, or regional product
40 shortages resulting from natural disasters, unavailability of parts, labor strikes,
41 product recalls, and other factors and events beyond the control of the
42 manufacturer that temporarily reduce a manufacturer's product supply. In the
43 event of any such shortages in vehicle availability, each manufacturer or
44 distributor shall be required to allocate and distribute all available new motor
45 vehicles to its franchised dealers in this State in accordance with the allocation
46 priorities established in this subdivision and in a fair, equitable, and
47 nondiscriminatory manner. The willful or malicious maintenance, creation, or
48 alteration of a vehicle allocation process or formula by a manufacturer, factory
49 branch, distributor, or distributor branch that is in any part designed or
50 intended to force or coerce a dealer in this State to close or sell the dealer's
51 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."

ECONOMIC COERCION

SECTION 5. G.S. 20-305 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, in order 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 Chapter, 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 6. G.S. 20-286 reads as rewritten:

"§ 20-286. Definitions.

The following definitions apply in this Article:

...
(15a) Sell or selling. – Includes taking deposits or receiving payment for the retail purchase, lease, exchange, or subscription of a motor vehicle; accepting a reservation for a specific motor vehicle identified by Vehicle Identification Number or other product identifier from a retail customer; setting the retail price for the retail purchase, lease, or exchange of a motor vehicle; offering or negotiating terms for the purchase, lease, finance, or exchange of a motor vehicle directly with a retail customer; negotiating directly with a retail customer the value of a motor vehicle being traded in as part of the purchase, lease, exchange, or subscription of a motor vehicle; offering or negotiating directly with a retail customer 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 new

motor vehicle or a used motor vehicle is transferred to a retail customer; 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 7.(a) G.S. 20-305 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 retail customer of any motor vehicle accessory, option, add-on, feature, improvement, or upgrade."

SECTION 7.(b) G.S. 20-305 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 within a five-year period subsequent to the sale or lease of the vehicle to the retail customer, in a manner other than through a same line-make dealer."

SECTION 7.(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 retail customers 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, the manufacturer or distributor may, on the same terms offered to the dealer, also sell to the retail customer 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 or distributor; provided, however, that the accessory, option, add-on, feature, improvement, or upgrade is activated or installed directly on the retail customer'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 or distributor must pay such franchised new motor vehicle dealer a minimum of twenty percent (20%) of the gross revenue received by the manufacturer, distributor, agent, or common entity for such sale or activation and renewals during such five-year period. The manufacturer or distributor must provide each of its franchised dealers with a quarterly statement of the revenue

1 received by the manufacturer or distributor, its agent, or its common entity
2 during that quarter for such remote sales or activations and renewals relating
3 to those vehicles sold or leased by the dealer during the five-year period
4 subsequent to the sale or lease of the vehicle to the retail customer. When
5 providing a new motor vehicle to a dealer for offer or sale to the public, it shall
6 be unlawful for the manufacturer or distributor to fail to provide to the dealer
7 a written disclosure that may be provided to a potential buyer of the new motor
8 vehicle of each accessory or function of the vehicle that may be initiated,
9 updated, changed, or maintained by the manufacturer or distributor through
10 over the air or remote means and the charge to the customer for initiation,
11 update, change, or maintenance. A manufacturer or distributor may comply
12 with this subdivision by notifying the dealer that the information is available
13 on a website or by other digital means."
14

15 **WARRANTY REIMBURSEMENT CLARIFICATION**

16 **SECTION 8.** G.S. 20-305.1 reads as rewritten:

17 **"§ 20-305.1. Automobile dealer warranty and recall obligations.**

18 ...

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

1 manufacturer or distributor believes the dealer's submission is fraudulent, the manufacturer or
 2 distributor may file a protest with the Commissioner not later than 30 days following the dealer's
 3 rejection of the rebuttal rate. If such a protest is filed, the Commissioner shall inform the
 4 ~~manufacturer or distributor parties~~ that a timely protest has been filed and that a hearing will be
 5 held on such protest. In any hearing held pursuant to this subsection, the manufacturer or
 6 distributor shall have the burden of proving by a preponderance of the evidence that the rate
 7 declared by the dealer was ~~unreasonable~~ either (i) inaccurate as described in this subsection and
 8 that the proposed adjustment of the average percentage markup is ~~reasonable pursuant to the~~
 9 ~~provisions of this subsection~~ correct or (ii) that the rate claimed is fraudulent. If the dealer
 10 prevails at a protest hearing, the dealer's proposed rate, affirmed at the hearing, shall be effective
 11 as of 60 days after the date of the dealer's initial submission of the customer-paid service orders
 12 to the manufacturer or distributor. If the manufacturer or distributor prevails at a protest hearing,
 13 the rate proposed by the manufacturer or distributor, that was affirmed at the hearing, shall be
 14 effective beginning 30 days following issuance of the final order.

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

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

30"

31
 32 **GRANDFATHER EXTENSION**

33 **SECTION 9.** G.S. 20-305(30) reads as rewritten:

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

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

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

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

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

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

40 In the event that as of October 1, 1999, a manufacturer was operating a
41 program that varied the price charged to its franchised dealers in this State in
42 a manner that would violate this subdivision, or had in effect a documented
43 policy that had been conveyed to its franchised dealers in this State and that
44 varied the price charged to its franchised dealers in this State in a manner that
45 would violate this subdivision, it shall be lawful for that program or policy,
46 including amendments to that program or policy that are consistent with the
47 purpose and provisions of the existing program or policy, or a program or
48 policy similar thereto implemented after October 1, 1999, to continue in effect
49 as to the manufacturer's franchised dealers located in this State until ~~June 30,~~
50 2025 June 30, 2028.

1 In the event that as of June 30, 2001, a manufacturer was operating a
2 program that varied the price charged to its franchised dealers in this State in
3 a manner that would violate this subdivision, or had in effect a documented
4 policy that had been conveyed to its franchised dealers in this State and that
5 varied the price charged to its franchised dealers in this State in a manner that
6 would violate this subdivision, and the program or policy was implemented in
7 this State subsequent to October 1, 1999, and prior to June 30, 2001, and
8 provided that the program or policy is in compliance with this subdivision as
9 it existed as of June 30, 2001, it shall be lawful for that program or policy,
10 including amendments to that program or policy that comply with this
11 subdivision as it existed as of June 30, 2001, to continue in effect as to the
12 manufacturer's franchised dealers located in this State until ~~June 30, 2025~~June
13 30, 2028.

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

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

23 SEVERABILITY CLAUSE

24 **SECTION 10.** If any provision of this act or its application is held invalid, the
25 invalidity does not affect other provisions or applications of this act that can be given effect
26 without the invalid provisions or application and, to this end, the provisions of this act are
27 severable.
28

29 EFFECTIVE DATE

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