

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2025

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SENATE BILL 295
Commerce and Insurance Committee Substitute Adopted 4/29/25
PROPOSED HOUSE COMMITTEE SUBSTITUTE S295-PCS35300-SU-12

Short Title: Clarify Motor Vehicle Dealer Laws.

(Public)

Sponsors:

Referred to:

March 17, 2025

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 **PREVENT UNFAIR DEALER FRANCHISE TERMINATIONS AND CLARIFY RV**
6 **DEALER TERMINATION ASSISTANCE RIGHTS**

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

8 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel**
9 **franchise; preventing transfer of ownership; granting additional franchises;**
10 **terminating franchises without good cause; preventing family succession.**

11 It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch,
12 or any field representative, officer, agent, or any representative whatsoever of any of them:

13 ...

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

27 ...

28 i. It is unlawful for a manufacturer to, in any way, do any of the
29 following:

30 1. Condition its approval of a proposed transfer, sale, assignment,
31 change in the dealer's executive management, principal
32 operator, or appointment of a designated successor, on the
33 existing or proposed dealer's willingness to construct a new
34 facility, renovate the existing facility, acquire or refrain from
35 acquiring one or more line-makes of vehicles, separate or



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divest one or more line-makes of vehicle, or establish or maintain exclusive facilities, personnel, or display space.

...

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

5. In determining whether to approve a dealer's proposed transfer, sale, assignment, change in the dealer's executive management, principal operator, or appointment of a designated successor, to require an applicant to provide information about or base a disapproval on whether another manufacturer or distributor had previously denied, rejected, or otherwise turned down the application of the applicant, or any person or entity affiliated with the applicant, to acquire a franchise or dealership or become principal operator, part of the executive management, or a successor owner or manager of a dealership.

6. In determining whether to approve a dealer's proposed transfer, sale, assignment, change in the dealer's executive management, principal operator, or appointment of a designated successor, to require an applicant to provide information about or base a disapproval on whether the applicant, or any person or entity affiliated with the applicant, had, for any reason, ever previously commenced a civil or administrative proceeding against any manufacturer or distributor.

j. If a manufacturer or distributor objects to, denies, rejects, or otherwise turns down a dealer's proposed transfer, sale, assignment, change in the dealer's executive management, principal operator, or appointment of a designated successor, the manufacturer or distributor shall reimburse both the dealer and applicant for their respective attorneys' fees, if the decision of the manufacturer or distributor to object to, deny, reject, or otherwise turn down the dealer's application is ultimately overturned by a reviewing court or administrative agency, and after all appellate remedies within this State are exhausted, if it is found that the turndown was unreasonable.

...

(6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements of sub-subdivision c. of this subdivision and the Commissioner has determined, if requested in writing by the dealer within (i) the time period specified in G.S. 20-305(6)c.1.II., III., or IV., as applicable, or (ii) the effective date of the franchise termination specified or proposed by the manufacturer in the notice of termination, whichever period of time is longer, and after a hearing on the

1 matter, that there is good cause for the termination, cancellation, or
2 nonrenewal of the franchise and that the manufacturer has acted in good faith
3 as defined in this act regarding the termination, cancellation or nonrenewal.
4 When such a petition is made to the Commissioner by a dealer for
5 determination as to the existence of good cause and good faith for the
6 termination, cancellation or nonrenewal of a franchise, the Commissioner
7 shall promptly inform the manufacturer that a timely petition has been filed,
8 and the franchise in question shall continue in effect pending the
9 Commissioner's decision. The Commissioner shall try to conduct the hearing
10 and render a final determination within 180 days after a petition has been filed.
11 If the termination, cancellation or nonrenewal is pursuant to
12 G.S. 20-305(6)c.1.III. then the Commissioner shall give the proceeding
13 priority consideration and shall try to render his final determination no later
14 than 90 days after the petition has been filed. Any parties to a hearing by the
15 Commissioner under this section shall have a right of review of the decision
16 in a court of competent jurisdiction pursuant to Chapter 150B of the General
17 Statutes. Any determination of the Commissioner under this section finding
18 that good cause exists for the nonrenewal, cancellation, or termination of any
19 franchise shall automatically be stayed during any period that the affected
20 dealer shall have the right to judicial review or appeal of the determination
21 before the superior court or any other appellate court and during the pendency
22 of any appeal; provided, however, that within 30 days of entry of the
23 Commissioner's order, the affected dealer provide such security as the
24 reviewing court, in its discretion, may deem appropriate for payment of such
25 costs and damages as may be incurred or sustained by the manufacturer by
26 reason of and during the pendency of the stay. Although the right of the
27 affected dealer to such stay is automatic, the procedure for providing such
28 security and for the award of damages, if any, to the manufacturer upon
29 dissolution of the stay shall be in accordance with G.S. 1A-1, Rule 65(d) and
30 (e). No such security provided by or on behalf of any affected dealer shall be
31 forfeited or damages awarded against a dealer who obtains a stay under this
32 subdivision in the event the ownership of the affected dealership is
33 subsequently transferred, sold, or assigned to a third party in accordance with
34 this subdivision or subdivision (4) of this section and the closing on such
35 transfer, sale, or assignment occurs no later than 180 days after the date of
36 entry of the Commissioner's order. Furthermore, unless and until the
37 termination, cancellation, or nonrenewal of a dealer's franchise shall finally
38 become effective, in light of any stay or any order of the Commissioner
39 determining that good cause exists for the termination, cancellation, or
40 nonrenewal of a dealer's franchise as provided in this subdivision, a dealer
41 who receives a notice of termination, cancellation, or nonrenewal from a
42 manufacturer as provided in this subdivision shall continue to have the same
43 rights to assign, sell, or transfer the franchise to a third party under the
44 franchise and as permitted under G.S. 20-305(4) as if notice of the termination
45 had not been given by the manufacturer. Any franchise under notice or threat
46 of termination, cancellation, or nonrenewal by the manufacturer which is duly
47 transferred in accordance with G.S. 20-305(4) shall not be subject to
48 termination by reason of failure of performance or breaches of the franchise
49 on the part of the transferor.

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a. Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:

...

2. If the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; and

...

II. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with the criteria; ~~and~~

...

Good cause for the termination, cancellation, or nonrenewal of a dealer's franchise by a manufacturer does not exist and the dealer's franchise may not be terminated, canceled, or not renewed unless it has been determined that the manufacturer made available to the dealer a sufficient number and model mix of new motor vehicles for the dealer to have made substantial progress toward compliance with the manufacturer's performance criteria.

d. Payments.

1. Notwithstanding the terms of any franchise, agreement, or waiver, upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, the cessation of business or the termination, nonrenewal, or cancellation of any franchise by any new motor vehicle dealer located in this State, or upon any of the occurrences set forth in G.S. 20-305(6)c.1.IV., the manufacturer or distributor shall purchase from and compensate the new motor vehicle dealer for all of the following:

I. Each new and unsold motor vehicle-vehicle, and each motorized or nonmotorized trailer, including, but not limited to, travel trailers, slide-in truck campers, and park models, if such trailers, campers, and models are part of the franchise between the manufacturer or distributor and the dealer, within the new motor vehicle dealer's inventory that has been acquired within 24 months of the effective date of the termination from the manufacturer or distributor or another same line-make dealer in the ordinary course of business, and which has not been substantially altered or damaged to the prejudice of the manufacturer or distributor while in the new motor vehicle dealer's possession, and which has been driven less than 1,000 miles or, for purposes of a recreational vehicle motor home as defined in G.S. 20-4.01(32b)c., less than 1,500-2,500 miles following the original date of delivery to the dealer, and for which no certificate of title has been issued. For

purposes of this sub-subdivision, the term "ordinary course of business" shall include inventory transfers of all new, same line-make vehicles between affiliated dealerships, or otherwise between dealerships having common or interrelated ownership, provided that the transfer is not intended solely for the purpose of benefiting from the termination assistance described in this sub-subdivision.

f. The provisions of sub-subdivision e. above shall not be applicable when the termination, nonrenewal, or cancellation of the franchise agreement by a new motor vehicle dealer is the result of the sale of assets or stock of the motor vehicle dealership. ~~The provisions of sub-subdivisions d. and e. above shall not be applicable when the termination, nonrenewal, or cancellation of the franchise agreement is at the initiation of a new motor vehicle dealer of recreational vehicle motor homes, as defined in G.S. 20-4.01(32b)e., provided that at the time of the termination, nonrenewal, or cancellation, the recreational vehicle manufacturer or distributor has paid to the dealer all claims for warranty or recall work, including payments for labor, parts, and other expenses, which were submitted by the dealer 30 days or more prior to the date of termination, nonrenewal, or cancellation.~~

...."

DEALER COMPENSATION FOR THE SALE OF OVER-THE-AIR PRODUCTS AND SERVICES

SECTION 2. G.S. 20-305(57) reads as rewritten:

"(57) To sell, or activate for a fee, any permanent or temporary motor vehicle accessory, option, add-on, service, feature, improvement, or upgrade on or to any motor vehicle owned or leased by a retail customer located in this State, through over-the-air or remote means, unless the manufacturer or distributor complies with all of the following requirements:

...

f. When providing a new motor vehicle to a dealer for offer or sale to the public, the manufacturer or distributor shall provide to the dealer a written disclosure that may be furnished by the dealer to a potential purchaser or lessee of the new motor vehicle identifying each permanent or temporary motor vehicle accessory, option, add-on, service, upgrade, feature, or improvement of the vehicle that may be initiated, updated, changed, or maintained by the manufacturer or distributor through over-the-air or remote means, the cost to the retail customer at the time of the new motor vehicle sale or lease, and the fact that all such accessories, options, add-ons, services, upgrades, features, or improvements may be purchased directly from the dealer. Every manufacturer or distributor that, through over-the-air or remote means, provides for a fee any permanent or temporary motor vehicle accessory, option, add-on, service, feature, improvement, or upgrade on or to any motor vehicle owned or leased by a retail customer located in this State shall make available to each of its franchised dealers within this State both of the following:

- 1 1. An itemized schedule of compensation the dealer will receive
- 2 for the sale of all over-the-air or remotely activated permanent
- 3 or temporary motor vehicle accessories, options, add-ons,
- 4 services, features, improvements, or upgrades offered by the
- 5 manufacturer or distributor. The manufacturer or distributor
- 6 shall promptly provide or make available to each of its
- 7 franchised dealers within this State an updated schedule of
- 8 compensation in the event there is a substantive change in the
- 9 over-the-air or remotely activated products or services that are
- 10 being offered or a change in the compensation the
- 11 manufacturer or distributor is paying to the dealer.
- 12 2. Upon the dealer's request via email or other form of written
- 13 communication, a statement itemizing the type, volume, and
- 14 gross receipts generated from the sales of over-the-air or
- 15 remotely activated products and services that were sold to the
- 16 dealer's customers and calculating the fees and commissions to
- 17 which the dealer is entitled pursuant to this sub-subdivision
- 18 covering a period of time not to exceed the prior six months,
- 19 unless otherwise agreed by the manufacturer or distributor and
- 20 the dealer.

A manufacturer or distributor may comply with this sub-subdivision by notifying the dealer that such information is available on a website or by other digital means."

FACILITATE DEALER TRANSFER OF OWNERSHIP TO QUALIFIED BUYERS

SECTION 3. G.S. 20-305(4) reads as rewritten:

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

...

e. With respect to a proposed change in the executive management or principal operator of the dealership, the sole issue for determination by the Commissioner and the sole issue on which the Commissioner shall hear or consider evidence shall be whether, by reason of lack of training, lack of prior experience, poor past performance, or poor character, the proposed candidate for a position within the executive management or as principal operator of the dealership is unfit for the position. For purposes of this subdivision, the refusal by the manufacturer to accept a proposed candidate for executive management or as principal operator who is of good moral character and who otherwise meets the written, reasonable, and uniformly

1 applied standards or qualifications, if any, of the manufacturer relating
 2 to the business experience and prior performance of executive
 3 management required by the manufacturers of its dealers is presumed
 4 to demonstrate the manufacturer's failure to prove the proposed
 5 candidate for executive management or as principal operator is unfit
 6 to serve the capacity. If the manufacturer is in any part basing its
 7 decision to object to the proposed change in the executive management
 8 or principal operator of the dealership on the candidate's alleged poor
 9 past performance, and reasonably sufficient performance data
 10 requested by the manufacturer has been supplied to the manufacturer
 11 by the proposed candidate, the manufacturer shall have the burden of
 12 proving that, during the immediately preceding three calendar-year
 13 period, the average overall sales performance or average overall
 14 customer satisfaction performance of all of the dealerships owned or
 15 operated by the candidate, when considering all line-makes of new
 16 motor vehicles sold by the franchised dealerships owned or operated
 17 by the candidate, was below the State or national average, whichever
 18 one of these standards is customarily employed by the manufacturer,
 19 as measured by each such line-make. In its notice of objection, the
 20 manufacturer is required to cite and provide the specific data and
 21 calculations upon which the manufacturer bases its contention that
 22 during the immediately preceding three calendar-year period, the
 23 candidate's overall sales performance or average overall customer
 24 satisfaction performance of all of the dealerships owned or operated
 25 by the candidate, when considering all line-makes of new motor
 26 vehicles sold by the franchised dealerships owned or operated by the
 27 candidate, was below the State or national average, whichever one of
 28 these standards is customarily employed by the manufacturer, as
 29 measured by each such line-make. For purposes of this subdivision,
 30 the sales performance or customer satisfaction performance of a
 31 dealership that has been owned by the candidate for less than two years
 32 prior to the date the existing dealer notified the manufacturer or
 33 distributor of the proposed change in the executive management or
 34 principal operator of the dealership may not be used in whole or in part
 35 as a basis for rejecting the candidate's application.

36"

37
38 **CLARIFY DEFINITION OF MOTOR VEHICLE DEALER**

39 **SECTION 4.** G.S. 20-286(11) reads as rewritten:

40 "(11) Motor vehicle dealer or dealer. –

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

42 ...

- 43 6. For commission, money, or other thing of value, or on behalf
- 44 of another person sharing ten percent (10%) or more common
- 45 ownership, offers new vehicles as part of a subscription
- 46 program. ~~This sub-sub-subdivision shall not apply to any~~
- 47 ~~person providing a vehicle subscription or monthly rental~~
- 48 ~~program on or after January 1, 2025.~~
- 49 7. Performs any warranty service or recall work on motor
- 50 vehicles; provided, however, that this sub-sub-subdivision
- 51 shall not be applicable with respect to a commercial fleet

customer that has a designation as such by the manufacturer or distributor and shall not apply to any remote transmission of software to a motor vehicle in the course of performing work under a warranty or pursuant to a recall, that is provided at no cost to the vehicle owner or lessee.

...."

DEFINITION OF SELLING

SECTION 5. G.S. 20-286 reads as rewritten:

"§ 20-286. Definitions.

The following definitions apply in this Article:

...

(15a) Sell. – The terms "sell," "retail sales," "selling activities," and "lease" and their cognates are synonymous. Selling includes, but is not limited to, all of the following:

- a. Directly, or indirectly, offering for sale, taking deposits or down payments, or receiving payment of any kind for the ordering, reservation, purchase, lease, exchange, or subscription of a motor vehicle, but does not include receiving payment under a retail installment contract or lease.
- b. Accepting a reservation for a specific motor vehicle identified by Vehicle Identification Number or other product identifier from a retail consumer, provided this definition shall not apply to a manufacturer or distributor if the reservation is promptly assigned to a franchised dealer in this State that is authorized to sell the vehicle being reserved.
- c. Setting the retail price for the purchase, lease, or exchange of a motor vehicle.
- d. Offering or negotiating terms for the purchase, lease, or finance of a motor vehicle with a retail consumer, but does not include setting a manufacturer's or distributor's suggested retail price or offering of incentives.
- e. Except as provided in G.S. 20-305(53)d.4.II., negotiating directly with a retail consumer the value of a motor vehicle being traded in as part of the purchase, lease, exchange, or subscription of a motor vehicle.
- f. 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 a sale or lease transaction for a motor vehicle.
- g. Any transaction where the title of a motor vehicle or a used motor vehicle is transferred to a retail consumer.
- h. Any retail lease transaction where a retail consumer leases a vehicle for a period of at least 12 months, but does not include taking assignments of leases, performing required actions pursuant to such leases, or receiving payments under a lease agreement.
- i. "Selling" does not include a repurchase, replacement, or exchange of a motor vehicle with a consumer pursuant to Article 15A of this Chapter.
- j. "Selling" does not include setting a manufacturer's or distributor's suggested retail price, advertising generally available finance or lease terms, or offering generally available customer incentives.

1 ~~(15a)~~(15b) Special tool or essential tool. – A tool designed and required by the
2 manufacturer or distributor and not readily available from another source that
3 is utilized for the purpose of performing service repairs on a motor vehicle
4 sold by a manufacturer or distributor to its franchised new motor vehicle
5 dealers in this State.

6 "

8 **CLARIFY DEALERSHIP SUCCESSION**

9 **SECTION 6.** G.S. 20-305(7) reads as rewritten:

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

13 The following applies:

14 a. Any owner of a new motor vehicle dealership may appoint by will, or
15 any other written instrument, a designated successor to succeed in the
16 respective ownership interest or interest as principal operator of the
17 owner in the new motor vehicle dealership, including the franchise,
18 upon the retirement, death or incapacity of the owner or principal
19 operator. In order for succession to the position of principal operator
20 to occur by operation of law in accordance with sub-subdivision c.
21 below, the owner's choice of a successor must be approved by the
22 dealer, in accordance with the dealer's bylaws, if applicable, either
23 prior or subsequent to the death or incapacity of the existing principal
24 operator.

25 "

27 **UNFINISHED VEHICLES AND COST OF TRAINING REQUIREMENTS**

28 **SECTION 7.** G.S. 20-305 reads as rewritten:

29 "**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel**
30 **franchise; preventing transfer of ownership; granting additional franchises;**
31 **terminating franchises without good cause; preventing family succession.**

32 It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch,
33 or any field representative, officer, agent, or any representative whatsoever of any of them:

34 ...

35 (58) To require a dealer to accept ownership or possession of, or fail to refund and
36 take back from the dealer within 30 days of the dealer's written request, a new
37 and unused motor vehicle that either (i) cannot be sold at retail due to the
38 existence of an open recall that cannot be repaired within 30 days of the later
39 of the issuance of the recall notice or the dealer taking possession of the
40 vehicle, missing or inoperable parts or components that have not been
41 accounted for on the vehicle invoice, or a stop sale order that cannot be
42 resolved within the later of 30 days of the issuance of the recall notice or the
43 dealer taking possession of the vehicle; or (ii) has not actually been delivered
44 to a dealer within 120 days after the manufacturer or distributor has
45 represented to the dealer that the vehicle was shipped to the dealer.

46 (59) To vary the price charged to a dealer for any training, software, equipment, or
47 tools that is in any way based upon a dealer's compliance with a facility image
48 program or requirement."

50 **WARRANTY REIMBURSEMENT CLARIFICATIONS**

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

1 **"§ 20-305.1. Automobile dealer warranty and recall obligations.**

2 (a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch,
3 shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's
4 obligations for preparation, delivery, pre-sale maintenance, manufacturer-directed component
5 installation or assembly, warranty, manufacturer-sponsored maintenance programs,
6 manufacturer extended warranty, parts exchange programs, and recall service on its products.
7 The disclosure required under this subsection shall include the schedule of compensation to be
8 paid the dealers for parts, work, and service in connection with preparation, delivery, warranty,
9 and recall service, and the time allowances for the performance of the work and service. In no
10 event shall the schedule of compensation fail to include reasonable compensation for diagnostic
11 work, shipping, if required by the manufacturer or distributor, and for battery disposal or other
12 disposal ~~charges~~ charges; defective airbag shipping, storage, and disposal, if the airbag is
13 removed from a consumer's motor vehicle as part of a warranty, manufacturer or distributor good
14 will, or recall repair; and for all other associated fees that were actually incurred by the dealer,
15 dealer; and associated administrative requirements as well as repair service and labor. Time
16 allowances for the performance of preparation, delivery, warranty, and recall work and service
17 shall be reasonable and adequate for the work to be performed. The compensation paid under this
18 section shall be reasonable, provided, however, that under Under no circumstances shall the
19 reasonable compensation under this section for warranty and recall service be in an amount less
20 than the dealer's current retail labor rate and the amount charged to retail customers for the
21 manufacturer's or distributor's original parts for nonwarranty work of like kind, ~~provided the~~
22 ~~amount is competitive with the retail rates charged for parts and labor by other franchised dealers~~
23 ~~of the same line make located within the dealer's market. If there is no other same line make~~
24 ~~dealer located in the dealer's market or if all other same line make dealers in the dealer's market~~
25 ~~are owned or operated by the same entities or individuals as the dealership being compared, the~~
26 ~~retail rates charged for parts and labor by other franchised dealers located in the dealer's market~~
27 ~~that sell competing line make motor vehicles as the dealer may be considered when determining~~
28 ~~whether the dealer's rates are competitive.~~ kind.

29 (a1) The retail rate customarily charged by the dealer for parts and labor may be
30 established at the election of the dealer by the dealer submitting to the manufacturer or distributor
31 100 sequential nonwarranty customer-paid service repair orders which contain warranty-like
32 parts, or 60 consecutive days of nonwarranty customer-paid service repair orders which contain
33 warranty-like parts, whichever is less, covering repairs made no more than 180 days before the
34 submission and declaring the average percentage markup. The average of the parts markup rate
35 and the average labor rate shall both be presumed to be reasonable, accurate, however, a
36 manufacturer or distributor may, not later than 30 days after submission, rebut that presumption
37 by reasonably substantiating that the ~~rate is unfair and unreasonable in light of the retail rates~~
38 ~~charged for parts and labor by all other franchised motor vehicle dealers located in the dealer's~~
39 ~~relevant market area offering the same line make vehicles. In the event there are no other~~
40 ~~franchised dealers offering the same line make of vehicle in the dealer's relevant market area, the~~
41 ~~manufacturer or distributor may compare the dealer's retail rate for parts and labor with the retail~~
42 ~~rates charged for parts and labor by other same segment franchised dealers who are selling~~
43 ~~competing line makes of vehicles within the dealer's relevant market area. In the event there is~~
44 ~~also no other same segment franchised dealer who is selling a competing line make of vehicle~~
45 ~~within the dealer's relevant market area, the manufacturer or distributor may then compare the~~
46 ~~dealer's retail rate for parts and labor with the retail rates charged for parts and labor by other~~
47 ~~same line make dealers or same segment franchised dealers who are selling competing~~
48 ~~line makes of vehicles that are located within the relevant market area of the franchised dealer~~
49 ~~who is located in closest proximity, measured by straight line distance, to the dealer, provided~~
50 ~~they are not all owned, operated, or controlled by the subject dealer. For the purposes of this~~
51 ~~section, the term "relevant market area" shall have the same meaning as set forth in~~

1 G.S. 20-286(13b). The retail rate and the average labor rate shall go into effect 30 days following
2 the manufacturer's approval, but in no event later than 60 days following the declaration, subject
3 to audit of the submitted repair orders by the manufacturer or distributor and a rebuttal of the
4 declared rate as described above. submission is inaccurate. If the declared rate is rebutted, the
5 manufacturer or distributor shall propose an adjustment of the average percentage markup based
6 on ~~that rebuttal~~ the correct rate reflected by the submission not later than 30 days after such audit,
7 but in no event later than 60 days after submission. If the dealer does not agree with the proposed
8 average percentage markup, the dealer may file a protest with the Commissioner not later than
9 30 days after receipt of that proposal by the manufacturer or distributor. If such a protest is filed,
10 the Commissioner shall inform the manufacturer or distributor that a timely protest has been filed
11 and that a hearing will be held on such protest. In any hearing held pursuant to this subsection,
12 the manufacturer or distributor shall have the burden of proving by a preponderance of the
13 evidence that the rate declared by the dealer was ~~unreasonable as described in this subsection and~~
14 ~~that the proposed adjustment of the average percentage markup is reasonable pursuant to the~~
15 ~~provisions of this subsection.~~ inaccurate. If the dealer prevails at a protest hearing, the dealer's
16 proposed rate, affirmed at the hearing, shall be effective as of 60 days after the date of the dealer's
17 initial submission of the customer-paid service orders to the manufacturer or distributor. If the
18 manufacturer or distributor prevails at a protest hearing, the rate proposed by the manufacturer
19 or distributor, that was affirmed at the hearing, shall be effective beginning 30 days following
20 issuance of the final order.

21 (a2) In calculating the retail rate customarily charged by the dealer for parts and ~~labor,~~
22 labor under subsection (a1) of this section, the following work shall not be included in the
23 calculation:

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

37 ...

38 (a5) A manufacturer or distributor shall not unreasonably deny a written request submitted
39 by a dealer for modification of a manufacturer's or distributor's uniform time allowance for a
40 specific warranty repair, or a request submitted by a dealer for an additional time allowance for
41 either diagnostic or repair work on a specific vehicle covered under warranty, provided the
42 request includes any information and documentation reasonably required by the manufacturer or
43 distributor to assess the merits of the dealer's request.

44 (b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor
45 vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of
46 its warranty or recall obligations with respect to a motor vehicle, to fail to fully compensate its
47 motor vehicle dealers licensed in this State for a qualifying used motor vehicle pursuant to
48 subsections (i) and (j) of this section or warranty and recall parts other than parts used to repair
49 the living facilities of recreational vehicles, including motor homes, travel trailers, fifth-wheel
50 trailers, camping trailers, and truck campers as defined in G.S. 20-4.01(32b), at the prevailing
51 retail rate according to the factors in subsection (a) of this section, or, in service in accordance

1 with the schedule of compensation provided the dealer pursuant to subsection (a) of this section,
2 or to otherwise recover all or any portion of its costs for compensating its motor vehicle dealers
3 licensed in this State for warranty or recall parts and service or for payments for a qualifying
4 used motor vehicle pursuant to subsections (i) and (j) of this section either by reduction in the
5 amount due to the dealer, or by separate charge, surcharge, or other imposition, and to fail to
6 indemnify and hold harmless its franchised dealers licensed in this State against any judgment
7 for damages or settlements agreed to by the manufacturer, including, but not limited to, court
8 costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims
9 or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or
10 implied warranty, or rescission or revocation of acceptance of the sale of a motor vehicle as defined
11 in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective or
12 negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other
13 functions by the manufacturer, factory branch, distributor or distributor branch, beyond the
14 control of the dealer. Any audit, other than an audit conducted for cause, for warranty or recall
15 parts or service compensation, or compensation for a qualifying used motor vehicle in accordance
16 with subsections (i) and (j) of this section may only be conducted one time within any 12-month
17 period and shall only be for the 12-month period immediately following the date of the payment
18 of the claim by the manufacturer, factory branch, distributor, or distributor branch. Any audit,
19 other than an audit conducted for cause, for sales incentives, service incentives, rebates, or other
20 forms of incentive compensation may only be conducted one time within any 12-month period
21 and shall only be for the 12-month period immediately following the date of the payment of the
22 claim by the manufacturer, factory branch, distributor, or distributor branch pursuant to a sales
23 incentives program, service incentives program, rebate program, or other form of incentive
24 compensation program. Provided, however, these limitations shall not be effective in the case of
25 fraudulent claims. For purposes of this subsection, the term "audit conducted for cause" is defined
26 as an audit based on any of the following: (i) ~~statistical evidence that the dealer's claims are~~
27 ~~unreasonably high in comparison to other dealers similarly situated or the dealer's claim history,~~
28 ~~(ii) that the dealer's claims submissions violate reasonable claims documentation or other~~
29 ~~requirements of the applicable manufacturer, factory branch, distributor, or distributor branch,~~
30 ~~(iii) a follow up to an earlier audit in which the dealer was notified of a claim documentation~~
31 ~~procedure violation that occurred within the prior 12-month period, provided the audit and any~~
32 ~~chargeback are in compliance with subdivision (b1) or (b2) of this section and are limited in~~
33 ~~scope to just the specific violation determined previously, or (iv) (ii) reasonable evidence of~~
34 ~~malfeasance or fraud. In the event a manufacturer, factory branch, distributor, or distributor~~
35 ~~branch elects to perform an audit conducted for cause, the manufacturer, factory branch,~~
36 ~~distributor, or distributor branch, simultaneously with providing the affected dealer with written~~
37 ~~notice of the audit, shall further be required to explain in detail in the notice the data or other~~
38 ~~foundation upon which the cause is based.~~

39"

41 LOANER VEHICLE COST REIMBURSEMENT

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

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

1 required or approved by the manufacturer or distributor and further provided
2 that all or any portion of the time the dealer has provided the customer with a
3 loaner or rental vehicle is due to the unavailability of one or more parts sold
4 or distributed by the manufacturer or through a supplier designated or
5 approved by the ~~manufacturer~~ manufacturer, or whether or not the
6 manufacturer has its own loaner program in which the dealer has elected not
7 to participate. In the event that a manufacturer has its own loaner vehicle
8 program in which a dealer has elected not to participate, the manufacturer may
9 limit the dealer's daily reimbursement amount to the same daily
10 reimbursement amount as the manufacturer would have paid the dealer for a
11 vehicle of similar size and class provided by the dealer under the
12 manufacturer's loaner program, plus applicable taxes and third-party fees. The
13 manufacturer shall allow a dealer to submit a claim for rental vehicle
14 reimbursement as required pursuant to this subdivision, in 30-day increments,
15 prior to the end of the rental vehicle period if the repair for which the rental
16 vehicle is associated is open due to a delay in parts or repair information from
17 the manufacturer, factory branch, distributor, or distributor branch. A
18 manufacturer may establish policies and procedures that are consistent with
19 the provisions of this subdivision for dealers to submit claims for loaner
20 vehicle cost reimbursement."

21 SEVERABILITY CLAUSE

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

27 EFFECTIVE DATE

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