

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 447
Committee Substitute Favorable 4/26/23
Senate Commerce and Insurance Committee Substitute Adopted 6/27/23

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



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

- 1 1. Subject to availability, have the ability to maintain on the
2 ground and in the dealer's stock a reasonable supply of all
3 makes and models of new vehicles the dealer is authorized to
4 sell; provided, however, that this sub-sub-subdivision is not
5 violated to the extent that the inability of the manufacturer to
6 provide a reasonable on-the-ground supply of new vehicles to
7 dealers is based on acts of God, labor strikes, unavailability of
8 parts, recalls, material shortages, natural disasters, or other
9 factors and events beyond the control of the manufacturer or
10 distributor.
- 11 2. Have the right to store new and used propulsion batteries used
12 for electric vehicles and hybrid electric vehicles at a safe and
13 secure location selected and paid for by the dealer that is
14 separate from the dealership premises or fail or refuse to
15 compensate dealers for the reasonable pro rata cost of storing
16 used batteries for a period of more than 30 days after the
17 manufacturer or distributor has been notified by the dealer of
18 their availability to be picked up. Nothing in this
19 sub-sub-subdivision shall be deemed to grant a dealer the right
20 to purchase new or used propulsion batteries from a
21 manufacturer or distributor to maintain in the dealer's
22 inventory. A dealer's right to order propulsion batteries from or
23 through a manufacturer or distributor and maintain a
24 reasonable supply of such batteries in stock is governed by the
25 same provisions, limitations, and availability as the dealer's
26 right to order and stock other parts, as delineated in
27 sub-sub-subdivision 4. of this sub-subdivision.
- 28 3. Have the opportunity to purchase, on the same terms, used
29 vehicle inventory distributed or made available by that
30 manufacturer or distributor without imposing any unrelated or
31 unreasonable conditions or requirements on their dealers;
32 provided that a manufacturer or distributor may uniformly
33 restrict dealers to purchase through such program only used
34 vehicles for which the dealer holds a franchise.
- 35 4. Subject to availability, have the opportunity to order from or
36 through the manufacturer or distributor, receive, and maintain
37 in stock a reasonable supply of parts required for service and
38 repair of the manufacturer's or distributor's vehicles based on
39 the volume of warranty service work performed by the dealer;
40 provided that this sub-sub-subdivision is not violated to the
41 extent that the failure of the manufacturer or distributor to
42 provide parts is caused by the occurrence of product shortages
43 resulting from acts of God, natural disasters, unavailability of
44 parts, material shortages, labor strikes, product recalls, or other
45 factors or events beyond the control of the manufacturer or
46 distributor. Notwithstanding the requirements of this
47 sub-sub-subdivision, a manufacturer or distributor may impose
48 reasonable restrictions and limitations on a dealer's ability to
49 order and maintain in inventory certain parts exclusively used
50 for a particular model of motor vehicle, provided that (i) the
51 model is publicly designated by the manufacturer or distributor

- 1 as being a specialty or limited production motor vehicle and
2 (ii) worldwide production of the motor vehicle model is less
3 than 10,000 vehicles in any given model year.
- 4 5. Have, if the manufacturer or distributor has not contributed
5 money, tangible items of property or resources owned or paid
6 for by the manufacturer or distributor, or content toward the
7 specific dealer advertising material, the right to independently
8 determine the types of physical and digital advertising media
9 the dealer chooses to advertise for all brands, models, and types
10 of vehicles offered for sale by the dealer as well as the content
11 and format of the advertising and all locations where the dealer
12 chooses to establish, publish, broadcast, circulate, or display
13 such advertising and the individuals to whom advertising is
14 targeted or directed; provided that nothing in this
15 sub-sub-subdivision allows a dealer to infringe upon or to
16 interfere with the intellectual property rights of manufacturers
17 and distributors or to advertise the products offered by the
18 manufacturer or distributor in a disparaging or misleading
19 manner.
- 20 d. Engage in any of the following actions:
- 21 1. Retain ownership of new motor vehicles until they are sold or
22 leased to retail customers located in this State, provided, a
23 manufacturer, factory branch, distributor, or distributor branch
24 may retain ownership of new motor vehicles held in a common
25 supply of new vehicles until such vehicles are sold to its
26 authorized franchised dealers. This provision shall not apply to
27 fleet sales to a fleet customer that has a designation as such by
28 the manufacturer or distributor.
- 29 2. Except for the sale or lease of a vehicle in connection with a
30 repurchase or replacement under Article 15A of this Chapter,
31 or for display purposes, consign new motor vehicles to its
32 franchised dealers in this State for dealer inventory or for sale
33 or lease to retail customers located in this State.
- 34 3. Reserve the right to negotiate binding terms of sale or lease
35 directly with retail customers purchasing or leasing new motor
36 vehicles located in this State; provided that a manufacturer or
37 distributor may engage in fleet sales to a fleet customer that
38 has a designation as such by the manufacturer or distributor.
- 39 4. Designate its franchised dealers in this State to be only delivery
40 agents for new motor vehicles and service and parts outlets,
41 reserving for the respective manufacturer or distributor the
42 right to establish the binding terms of vehicle sales or leases or
43 the right to negotiate the binding terms of vehicle sales or
44 leases directly with retail customers located in this State;
45 provided that a manufacturer or distributor may engage in fleet
46 sales with a fleet customer that has a designation as such by the
47 manufacturer or distributor. Nothing in this
48 sub-sub-subdivision shall prohibit a manufacturer or
49 distributor from:
- 50 I. Setting or advertising a suggested retail price,
51 minimum advertised price, employee or supplier

- 1 discount price, or special finance, lease, or other
2 promotional offers.
- 3 II. Stating an estimated trade-in valuation of a customer's
4 vehicle that is designated as such and based on a
5 valuation guide whose identity is conspicuously
6 disclosed; provided that in close proximity to any such
7 stated estimated trade-in valuation, the manufacturer or
8 distributor conspicuously discloses that the actual
9 valuation of any used vehicle is dependent on many
10 factors and the dealer is not obligated to accept the
11 estimated trade-in valuation.
- 12 III. Displaying prices that dealers voluntarily set and
13 choose to display.
- 14 5. Unreasonably impede or interfere with the ability of its rural
15 and other franchised dealers located in this State to obtain from
16 that manufacturer or distributor and sell or lease any series or
17 models of technologically advanced vehicles that the
18 manufacturer or distributor makes available for sale or lease to
19 retail customers in this State by or through its same line-make
20 dealers and which the dealer is authorized to sell. For purposes
21 of this sub-sub-subdivision, the term "technologically
22 advanced vehicle" or "TAV" means a motor vehicle that is an
23 electric vehicle (EV) or hydrogen vehicle. For purposes of this
24 sub-sub-subdivision, the term "EV" means any plug-in electric
25 vehicle that does not rely on any nonelectric source of power
26 in all modes of operation. For purposes of this
27 sub-sub-subdivision, the term "unreasonably impede or
28 interfere with" includes, but is not limited to, any of the
29 following:
- 30 I. If a manufacturer or distributor has established any
31 training, infrastructure, capital, or equipment
32 requirements as a condition for a dealer to sell TAVs,
33 to fail or refuse to promptly cause, at a dealer's request,
34 a detailed, itemized, individual dealer assessment to
35 determine the minimum TAV investment each dealer
36 would need to make for training, facilities, tools, parts,
37 equipment, and charging stations for vehicle service
38 and for training dealership employees and customers.
39 Charging stations for use by the public and all other
40 charges or expenditures not technically essential to sell
41 and service the manufacturer's or distributor's TAVs
42 shall not be required or included in determining a
43 dealer's minimum TAV investment. The minimum
44 TAV investment established for each dealer must be
45 scaled based on the estimated number of the
46 manufacturer's or distributor's new TAVs the dealer
47 would be anticipated to sell and the number of TAVs
48 the dealer would be expected to service within the
49 following three-year period. In the event that a
50 manufacturer or distributor had performed an
51 individualized dealer assessment required in this

sub-sub-sub-subdivision prior to July 1, 2023, the assessment shall be deemed to satisfy the requirements contained in this sub-sub-sub-subdivision as long as it complies with all of the requirements of an individual TAV assessment established in this sub-sub-sub-subdivision and the TAV assessment contains no charges in excess of those charges includable under this sub-sub-sub-subdivision. It shall be unlawful for a manufacturer or distributor to require a dealer to pay for an assessment of the type required under this sub-sub-sub-subdivision if the manufacturer or distributor requires that an assessment be performed as a prerequisite for the dealer to sell or lease TAVs that the manufacturer or distributor sells or distributes.

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

6. 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 unlawful or prohibited condition or requirement.

7. Require, coerce, or attempt to coerce a dealer to make expenditures related to achieving or making progress toward achieving CO2 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,

1 displays, or other artifacts or memorabilia; provided, however, that
2 such sports-related honors, awards, photographs, displays, or other
3 artifacts or memorabilia (i) pertain to an owner, investor, or executive
4 manager of the dealership; (ii) relate to professional sports; (iii) do not
5 reference or advertise a competing brand of motor vehicles; and (iv)
6 do not conceal or disparage any of the required branding elements that
7 are part of the dealership facility.

8 b. Using all or part of the name of a dealer's founder, owner, existing
9 trade name, or dealer principal in the dealer's trade name, provided the
10 name the dealer proposes to use for its trade name would not disparage
11 the manufacturer's or distributor's brand or be confusing or misleading
12 to the consuming public."

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

14 "(55) To interfere with the independence and governance of a dealer or dealer
15 applicant having multiple owners by requiring, coercing, or attempting to
16 coerce the dealer or dealer applicant to adopt a corporate structure under
17 which a single individual has the sole legal authority to issue additional
18 corporate stock; add one or more new managers, members, or shareholders;
19 purchase or sell any franchises or line-makes of vehicles; acquire or sell real
20 estate; invest in new or substantially remodeled or updated facilities; borrow
21 money in the name of the dealer; select a new or successor dealer principal;
22 file a petition in bankruptcy or receivership; or require that owners contribute
23 additional capital. Nothing in this subdivision shall prohibit a manufacturer or
24 distributor from requiring the dealer or dealer applicant to designate a single
25 natural person that the manufacturer or distributor may contact and who shall
26 be responsible for all business communications with the manufacturer or
27 distributor and any day-to-day business decisions not identified in this
28 subdivision, or from requiring that the designated person own a minimum
29 percentage of ownership reasonably determined by the manufacturer or
30 distributor or be physically present at the dealership premises."

31 **SECTION 1.(d)** G.S. 20-286(10) reads as rewritten:

32 "(10) Motor vehicle. – Any motor propelled vehicle, regardless of the size and type
33 of motor or source of power, trailer or semitrailer, required to be registered
34 under the laws of this State. This term does not include modified utility
35 vehicles or mopeds, as defined in G.S. 20-4.01.

36 ...

37 d. Except as expressly provided in sub-subdivision c. of this subdivision,
38 all autonomous vehicles are motor vehicles that are subject to all of
39 the provisions of Article 12 of this Chapter. For purposes of this
40 Article, the term "autonomous vehicle" means a motor vehicle that
41 utilizes autonomous or self-driving technology rated at Level 0, 1, 2,
42 3, 4, or 5 by the Society of Automotive Engineers."

43 **DEALER AND MANUFACTURER WEBSITES**

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

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

47 a. Dealer websites. – It is unlawful for any manufacturer or distributor to
48 unreasonably interfere with the establishment, maintenance,
49 operation, or control of either a single location dealer website or a
50 dealer group website. For purposes of this subdivision, the term "single
51

1 location dealer website" means a website that is owned or operated by
2 or on behalf of a new motor vehicle dealer that is licensed in this State
3 and that advertises, markets, displays, sells, or leases new and used
4 motor vehicles that are only available for sale or lease at the dealership
5 owned by that dealer. For purposes of this subdivision, the term
6 "dealer group website" means a website that is owned or operated by
7 or on behalf of a new motor vehicle dealer licensed in this State and
8 that advertises, markets, displays, sells, or leases new and used motor
9 vehicles that are available for sale or lease at more than one dealership
10 location within this State. For purposes of this sub-subdivision, the
11 term "unreasonably interfere" includes, but is not limited to, any
12 contractual or other prohibition or any policy that does any of the
13 following:

- 14 1. Prohibits any of its franchised dealers in this State that own or
15 operate either a single location dealer website or a dealer group
16 website from prominently displaying throughout the website
17 the name and logo of the applicable dealer or dealer group.
- 18 2. Requires any dealer or dealer group located in this State to use
19 a digital platform or digital retailing tool provided,
20 recommended, endorsed, or approved by the manufacturer or
21 distributor; provided, however, that the digital platform or
22 digital retailing tool selected by the dealer possesses
23 substantially the same level of quality and performs the same
24 essential functions as the digital platform or digital retailing
25 tool provided, recommended, endorsed, or approved by the
26 manufacturer or distributor.
- 27 3. Requires, as a condition to sell any line-make, brand, model,
28 or series of vehicles, any single location dealer or dealer group
29 located in this State to use, on either a single location dealer
30 website or a dealer group website, one or more chat tools,
31 appraisal tools, payment calculators, or other online digital
32 tools provided, recommended, endorsed, or approved by the
33 manufacturer or distributor, provided, however, that any such
34 digital retailing tools selected by the dealer possess
35 substantially the same quality and perform the same essential
36 functions as the digital retailing tools provided, recommended,
37 endorsed, or approved by the manufacturer or distributor.
- 38 4. Restricts any of its franchised dealers in this State that own or
39 operate either a single location dealer website or a dealer group
40 website from using any method, procedure, or protocol
41 selected by the dealer for communicating with the dealer's
42 customers or permitting or allowing customers to make an
43 appointment to see or test drive a vehicle, hold or reserve a
44 vehicle in the dealer's inventory, or negotiate the purchase or
45 lease price of a vehicle directly with the dealer through a
46 dealer-owned website or other digital retail process.
- 47 5. Restricts any of its franchised dealers in this State that own or
48 operate a single location dealer website from displaying,
49 selling, or leasing all brands and line-makes of new and used
50 motor vehicles offered for sale or lease at that dealership
51 location, including the dealer's display of manufacturer logos

1 and marks for all such brands and line-makes of new motor
2 vehicles the dealer is authorized by the manufacturer or
3 distributor to offer for sale or lease, to the extent such display
4 of manufacturer logos and marks does not interfere with the
5 intellectual property rights of the manufacturer or advertise the
6 products offered by the manufacturer or distributor in a
7 disparaging or misleading manner.

- 8 6. Restricts any of its franchised dealers in this State that own or
9 operate a dealer group website from displaying, selling, or
10 leasing all brands and line-makes of new and used motor
11 vehicles offered for sale or lease at any dealership affiliated
12 with the dealer group, including the display of manufacturer
13 logos and marks for all such brands and line-makes of new
14 motor vehicles the dealer is authorized by the manufacturer or
15 distributor to offer for sale or lease at any such affiliated
16 dealerships, to the extent such display of manufacturer logos
17 and marks does not interfere with the intellectual property
18 rights of the manufacturer or advertise the products offered by
19 the manufacturer or distributor in a disparaging or misleading
20 manner.

21 Nothing contained in this sub-subdivision shall prevent or prohibit a
22 manufacturer or distributor from requiring that, in establishing and
23 operating either single location dealer websites or dealer group
24 websites, dealers not violate the intellectual property rights of the
25 manufacturer or distributor or advertise the products offered by the
26 manufacturer or distributor in a disparaging or misleading manner.

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

29 1. Fail to give, to the extent technologically feasible and practical,
30 substantially equivalent visibility to all of the manufacturer's
31 or distributor's authorized same line-make franchised dealers
32 that are located in this State, on any website owned, operated,
33 or controlled by the manufacturer or distributor on which
34 customers are permitted to order or reserve vehicles for
35 purchase or lease, provided such visibility may be limited (i) at
36 the election of the customer or (ii) in relation to the distance of
37 the authorized dealer to the customer or the location at which
38 the customer appears to be.

39 2. Maintain a website or other electronic or digital means of
40 communication for negotiating or otherwise establishing
41 binding terms of sale or lease of new vehicles directly between
42 the manufacturer or distributor and retail customers located in
43 this State, provided that a manufacturer, factory branch,
44 distributor, or distributor branch may maintain a website or
45 other electronic or digital means of communication if the final
46 selling or lease price of the new vehicles is determined by
47 eligible dealers, and provided further that a dealer may not be
48 required to set a nonnegotiable price as a condition for the
49 dealer's inclusion on any website owned, controlled, or
50 maintained by a manufacturer or distributor. Nothing in this
51 sub-sub-subdivision shall prevent a manufacturer or distributor

1 from engaging in fleet sales to a fleet customer that has
2 designation as such by the manufacturer or distributor, or
3 establishing or offering employee or supplier discount pricing,
4 provided the dealer is not required to participate in such
5 program."

6 **SECTION 2.(b)** G.S. 20-305(56)b., as enacted by subsection (a) of this section,
7 becomes effective November 1, 2023, and applies to all current and future franchises and other
8 agreements in existence between any new motor vehicle dealer located in this State and a
9 manufacturer or distributor as of that date.

10 **RURAL DEALER MINIMUM EARNED ALLOCATION RIGHTS**

11 **SECTION 3.** G.S. 20-305(14) reads as rewritten:

12 "(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or
13 accessories in reasonable quantities relative to the new motor vehicle dealer's
14 facilities and sales potential in the new motor vehicle dealer's market area as
15 determined in accordance with reasonably applied economic principles, or
16 within a reasonable time, after receipt of an order from a dealer having a
17 franchise for the retail sale of any new motor vehicle sold or distributed by the
18 manufacturer or distributor, any new vehicle, parts or accessories to new
19 vehicles as are covered by such franchise, and such vehicles, parts or
20 accessories as are publicly advertised as being available or actually being
21 ~~delivered.~~ delivered in this State. The delivery to another dealer of a motor
22 vehicle of the same model and similarly equipped as the vehicle ordered by a
23 motor vehicle dealer who has not received delivery thereof, but who has
24 placed his written order for the vehicle prior to the order of the dealer receiving
25 the vehicle, shall be prima facie evidence of a delayed delivery of, or refusal
26 to deliver, a new motor vehicle to a motor vehicle dealer within a reasonable
27 time, without cause. Additionally, except as may be required by any consent
28 decree of the Commissioner or other order of the Commissioner or court of
29 competent jurisdiction, any sales objectives which a manufacturer, factory
30 branch, distributor, or distributor branch establishes for any of its franchised
31 dealers in this State must be reasonable, and every manufacturer, factory
32 branch, distributor, or distributor branch must allocate its products within this
33 State in a manner that does all of the following:

- 34
- 35 a. Provides each of its franchised dealers in this State an adequate supply
36 of vehicles by series, product line, and model in a fair, reasonable, and
37 equitable manner based on each dealer's historical selling pattern and
38 reasonable sales standards as compared to other same line-make
39 dealers in the State.
 - 40 b. Allocates an adequate supply of vehicles to each of its dealers by
41 series, product line, and model so as to allow the dealer to achieve any
42 performance standards established by the manufacturer and
43 distributor.
 - 44 b1. Allocates available vehicle features and options to each of its
45 authorized same line-make dealers in a fair, reasonable, and equitable
46 manner that takes into consideration the dealer's historical experience
47 and success in selling vehicles similarly configured and that contain
48 similar options.
 - 49 c. Is fair and equitable to all of its franchised dealers in this State.
 - 50 d. Makes available to each of its franchised dealers in this State a
51 minimum of one of each vehicle series, model, or product line that the

1 manufacturer makes available to any dealer in this State and advertises
2 in the State as being available for purchase.

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

5 f. Discloses to each of its franchised dealers handling the same line-make
6 both its system of allocation and the dealer's actual new vehicle
7 allocation that occurred during the previous calendar month and
8 during the previous six calendar months, including, but not limited to,
9 a complete breakdown by model, color, equipment, and, to the extent
10 tracked by the manufacturer or distributor, other available features and
11 an explanation of the derivation of the allocation system, including its
12 mathematical formula or formulae, in a clear and comprehensible
13 form. The data provided by the manufacturer or distributor pursuant to
14 this sub-subdivision is required to reflect the dealer's total vehicle
15 availability by model, along with the dealer's measurement of
16 available days supply for each model in comparison to the threshold
17 available days supply by model in the dealer's peer group of all new
18 vehicles allocated to its franchised dealers in this State broken down
19 by tiers or other groups of dealers created by the manufacturer or
20 distributor and those allocated to dealers in this State, if available, or
21 another geographical area utilized by the manufacturer or distributor
22 pursuant to a mathematical formula or on a discretionary basis. All of
23 the allocation data that a manufacturer or distributor is required to
24 disclose to its same line-make dealers in this State pursuant to this
25 sub-subdivision may be made available for its dealers to review online
26 at the dealer's discretion, if the data and the ability to display the data
27 online are reasonably available to the manufacturer or distributor, or
28 be provided within 30 days of receipt of the written request of a dealer
29 or in the event a manufacturer or distributor has changed its allocation
30 formula, process, or policies. This sub-subdivision shall not apply to
31 manufacturers or distributors of Class 4 vehicles or above (Gross
32 Vehicle Weight Rating exceeding 14,000 lbs.) as classified by the
33 Federal Highway Administration.

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

44 This subdivision is not violated, however, if such failure is caused solely by
45 the occurrence of temporary international, national, or regional product
46 shortages resulting from natural disasters, unavailability of parts, labor strikes,
47 product recalls, and other factors and events beyond the control of the
48 manufacturer that temporarily reduce a manufacturer's product supply. In the
49 event of any such shortages in vehicle availability, each manufacturer or
50 distributor shall be required to allocate and distribute all available new motor
51 vehicles to its franchised dealers in this State in accordance with the allocation

1 priorities established in this subdivision and in a fair, equitable, and
2 nondiscriminatory manner. The willful or malicious maintenance, creation, or
3 alteration of a vehicle allocation process or formula by a manufacturer, factory
4 branch, distributor, or distributor branch that is in any part designed or
5 intended to force or coerce a dealer in this State to close or sell the dealer's
6 franchise, cause the dealer financial distress, or to relocate, update, or renovate
7 the dealer's existing dealership facility shall constitute an unfair and deceptive
8 trade practice under G.S. 75-1.1."
9

10 **MANUFACTURER SALE OR SUBSCRIPTION OF ADD-ON PRODUCTS**

11 **SECTION 4.** G.S. 20-305 is amended by adding a new subdivision to read:

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

17 a. The manufacturer or distributor permits all of its franchised same
18 line-make dealers that are located in this State to sell the same motor
19 vehicle accessory, option, add-on, service, upgrade, feature, or
20 improvement to retail customers on the same terms offered by the
21 manufacturer or distributor.

22 b. The permanent or temporary motor vehicle accessory, option, add-on,
23 service, upgrade, feature, or improvement is activated or installed
24 directly on the retail customer's motor vehicle through remote
25 electronic transmission.

26 c. If the sale or activation of the permanent or temporary motor vehicle
27 accessory, option, add-on, service, upgrade, feature, or improvement
28 by either the manufacturer or the direct involvement of the dealer who
29 sells or leases the vehicle to the retail customer occurs at the time of
30 the new motor vehicle sale or lease, or within the 12-month period
31 immediately following the sale or lease of the new motor vehicle by a
32 North Carolina franchised motor vehicle dealer, the manufacturer or
33 distributor provides the franchised motor vehicle dealer that sold the
34 new motor vehicle reasonable compensation for the sale or activation
35 of the accessory, option, add-on, service, upgrade, feature, or
36 improvement to the original North Carolina vehicle owner or lessee
37 when the cost of which would equal or exceed (i) fifty dollars (\$50.00),
38 if the cost or purchase price to the retail customer involves a single,
39 one-time payment, or (ii) seventy-five dollars (\$75.00) in cumulative
40 cost or purchase price over any 12-month period, if the retail customer
41 is making multiple or periodic payments.

42 d. If the sale or activation of the permanent or temporary motor vehicle
43 accessory, option, add-on, service, upgrade, feature, or improvement
44 did not occur as provided in sub-subdivision c. of this subdivision, and
45 a North Carolina franchised new motor vehicle dealer of the
46 manufacturer or distributor was directly involved in the sale of the
47 feature or improvement, the manufacturer or distributor provides
48 reasonable compensation to the North Carolina franchised new motor
49 vehicle dealer that sold the accessory, option, add-on, service,
50 upgrade, feature, or improvement to a North Carolina resident when
51 the cost of which would equal or exceed (i) fifty dollars (\$50.00), if

1 the cost or purchase price to the retail customer involves a single,
2 one-time payment, or (ii) seventy-five dollars (\$75.00) in cumulative
3 cost or purchase price over any 12-month period, if the retail customer
4 is making multiple or periodic payments.

5 e. The manufacturer or distributor provides compensation consistent
6 with G.S. 20-305.1 to an authorized dealer for providing assistance or
7 repair at the dealership for a failed, damaged, nonfunctioning, or
8 defective over-the-air or remote accessory, option, add-on, service,
9 upgrade, feature or improvement, change, or repair, administered by
10 the vehicle manufacturer to any part, system, accessory, or function of
11 the customer's vehicle at the request of the customer.

12 f. When providing a new motor vehicle to a dealer for offer or sale to the
13 public, the manufacturer or distributor shall provide to the dealer a
14 written disclosure that may be furnished by the dealer to a potential
15 purchaser or lessee of the new motor vehicle identifying each
16 permanent or temporary motor vehicle accessory, option, add-on,
17 service, upgrade, feature, or improvement of the vehicle that may be
18 initiated, updated, changed, or maintained by the manufacturer or
19 distributor through over-the-air or remote means, the cost to the retail
20 customer at the time of the new motor vehicle sale or lease, and the
21 fact that all such accessories, options, add-ons, services, upgrades,
22 features, or improvements may be purchased directly from the dealer.
23 A manufacturer or distributor may comply with this sub-subdivision
24 by notifying the dealer that such information is available on a website
25 or by other digital means."

27 **WARRANTY REIMBURSEMENT CLARIFICATION**

28 **SECTION 5.** G.S. 20-305.1(a2) reads as rewritten:

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

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

45 **GRANDFATHER EXTENSION**

46 **SECTION 6.** G.S. 20-305(30) reads as rewritten:

47 "(30) To vary the price charged to any of its franchised new motor vehicle dealers
48 located in this State for new motor vehicles based on the dealer's purchase of
49 new facilities, supplies, tools, equipment, or other merchandise from the
50 manufacturer, the dealer's relocation, remodeling, repair, or renovation of
51 existing dealerships or construction of a new facility, the dealer's participation

1 in training programs sponsored, endorsed, or recommended by the
2 manufacturer, whether or not the dealer is dualed with one or more other line
3 makes of new motor vehicles, or the dealer's sales penetration. Except as
4 provided in this subdivision, it shall be unlawful for any manufacturer, factory
5 branch, distributor, or distributor branch, or any field representative, officer,
6 agent, or any representative whatsoever of any of them to vary the price
7 charged to any of its franchised new motor vehicle dealers located in this State
8 for new motor vehicles based on the dealer's sales volume, the dealer's level
9 of sales or customer service satisfaction, the dealer's purchase of advertising
10 materials, signage, nondiagnostic computer hardware or software,
11 communications devices, or furnishings, or the dealer's participation in used
12 motor vehicle inspection or certification programs sponsored or endorsed by
13 the manufacturer.

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

18 Notwithstanding the foregoing, nothing in this subdivision shall be
19 deemed to preclude a manufacturer from establishing sales contests or
20 promotions that provide or award dealers or consumers rebates or incentives;
21 provided, however, that the manufacturer complies with all of the following
22 conditions:

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

44 Nothing contained in this subdivision shall prohibit a manufacturer from
45 providing assistance or encouragement to a franchised dealer to remodel,
46 renovate, recondition, or relocate the dealer's existing facilities, provided that
47 this assistance, encouragement, or rewards are not determined on a per vehicle
48 basis.

49 It is unlawful for any manufacturer to charge or include the cost of any
50 program or policy prohibited under this subdivision in the price of new motor

1 vehicles that the manufacturer sells to its franchised dealers or purchasers
2 located in this State.

3 In the event that as of October 1, 1999, a manufacturer was operating a
4 program that varied the price charged to its franchised dealers in this State in
5 a manner that would violate this subdivision, or had in effect a documented
6 policy that had been conveyed to its franchised dealers in this State and that
7 varied the price charged to its franchised dealers in this State in a manner that
8 would violate this subdivision, it shall be lawful for that program or policy,
9 including amendments to that program or policy that are consistent with the
10 purpose and provisions of the existing program or policy, or a program or
11 policy similar thereto implemented after October 1, 1999, to continue in effect
12 as to the manufacturer's franchised dealers located in this State until ~~June 30,~~
13 2025-June 30, 2028.

14 In the event that as of June 30, 2001, a manufacturer was operating a
15 program that varied the price charged to its franchised dealers in this State in
16 a manner that would violate this subdivision, or had in effect a documented
17 policy that had been conveyed to its franchised dealers in this State and that
18 varied the price charged to its franchised dealers in this State in a manner that
19 would violate this subdivision, and the program or policy was implemented in
20 this State subsequent to October 1, 1999, and prior to June 30, 2001, and
21 provided that the program or policy is in compliance with this subdivision as
22 it existed as of June 30, 2001, it shall be lawful for that program or policy,
23 including amendments to that program or policy that comply with this
24 subdivision as it existed as of June 30, 2001, to continue in effect as to the
25 manufacturer's franchised dealers located in this State until ~~June 30, 2025-June~~
26 30, 2028.

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

31 The provisions of this subdivision shall not be applicable to multiple or
32 repeated sales of new motor vehicles made by a new motor vehicle dealer to
33 a single purchaser under a bona fide fleet sales policy of a manufacturer,
34 factory branch, distributor, or distributor branch."
35

36 MOTOR VEHICLE DEALER AND MANUFACTURER LICENSEES/SETTLEMENT 37 AGREEMENTS AND CONSENT ORDERS

38 SECTION 7.(a) G.S. 20-296 reads as rewritten:

39 "**§ 20-296. Notice and hearing upon denial, suspension, revocation, placing on probation,
40 or refusal to renew license.**

41 No license shall be suspended, revoked, denied, placed on probation, or renewal thereof
42 refused, until a written notice of the complaint made has been furnished to the licensee against
43 whom the same is directed, and a hearing thereon has been had before the Commissioner, or a
44 person designated by him. At least 10 days' written notice of the time and place of ~~such the~~
45 hearing shall be given to the licensee by certified mail with return receipt requested to ~~his the~~
46 licensee's last known address as shown on ~~his the licensee's~~ license or other record of information
47 in possession of the Division. At any such hearing, the licensee shall have the right to be heard
48 personally or by counsel. After hearing, the Division shall have power to suspend, revoke, place
49 on probation, or refuse to renew the license in question. Immediate notice of any such action
50 shall be given to the licensee in accordance with G.S. 1A-1, Rule 4(j) of the Rules of Civil
51 Procedure. For each alleged violation, the Division shall determine in its sole and unappealable

1 discretion whether entering into a settlement agreement or consent order with the applicable
2 licensee or license applicant either prior to or subsequent to the hearing would promote the
3 interests of justice and administrative efficiency."

4 **SECTION 7.(b)** This section becomes effective December 1, 2023, and applies to
5 violations occurring on or after that date.

7 **CLARIFY LAW GOVERNING CONDITIONAL DELIVERY OF MOTOR VEHICLES**

8 **SECTION 8.(a)** G.S. 20-75.1 reads as rewritten:

9 **"§ 20-75.1. Conditional delivery of motor vehicles.**

10 Notwithstanding G.S. 20-52.1, 20-72, and 20-75, nothing contained in those sections
11 prohibits a dealer from entering into a contract with any purchaser for the sale of a vehicle and
12 delivering the vehicle to the purchaser under terms by which the dealer's obligation to execute
13 the manufacturer's certificate of origin or the certificate of title is conditioned on the purchaser
14 obtaining financing for the purchase of the vehicle. Liability, collision, and comprehensive
15 insurance on a vehicle sold and delivered conditioned on the purchaser obtaining financing for
16 the purchaser of the vehicle shall be covered by the dealer's insurance policy until such financing
17 is finally approved and execution of the manufacturer's certificate of origin or execution of the
18 certificate of title. Upon final approval and execution of the manufacturer's certificate of origin
19 or the certificate of title, and upon the purchaser having liability insurance on another vehicle,
20 the delivered vehicle shall be covered by the purchaser's insurance policy beginning at the time
21 of final financial approval and execution of the manufacturer's certificate of origin or the
22 certificate of title. ~~The dealer shall notify the insurance agency servicing the purchaser's~~
23 ~~insurance policy or the purchaser's insurer of the purchase on the day of, or if the insurance~~
24 ~~agency or insurer is not open for business, on the next business day following approval of the~~
25 ~~purchaser's financing and execution of the manufacturer's certificate of origin or the certificate~~
26 ~~of title. For conditionally delivered vehicles, the dealer shall execute the manufacturer's~~
27 ~~certificate of origin or the certificate of title. The purchaser or lessee shall be responsible for~~
28 ~~notification of the insurer or insurance agency servicing the purchaser's or lessee's insurance~~
29 ~~policy of the purchase or lease on the date the approval notice is received, or if the insurer or~~
30 ~~insurance agency is not open for business that day, on the next business day following approval~~
31 ~~of the purchaser's or lessee's financing. The purchaser shall be solely responsible for obtaining~~
32 ~~and paying for insurance on the purchased or leased vehicle, and the dealer shall under no~~
33 ~~circumstances be liable to the purchaser, lessee, or any third parties in the event the purchaser or~~
34 ~~lessee fails to timely obtain insurance on the purchased or leased vehicle. This subsection is in~~
35 addition to any other provisions of law or insurance policies and does not repeal or supersede
36 those provisions."

37 **SECTION 8.(b)** This section is effective when it becomes law and applies to
38 purchases on or after that date.

40 **MOTOR VEHICLE DEALERS AND MANUFACTURERS/PUBLISH NOTICE OF** 41 **LICENSE APPLICATION**

42 **SECTION 9.(a)** G.S. 20-288(a) reads as rewritten:

43 "(a) A new motor vehicle dealer, motor vehicle sales representative, manufacturer, factory
44 branch, factory representative, distributor, distributor branch, distributor representative, or
45 wholesaler may obtain a license by filing an application with the Division. An application must
46 be on a form provided by the Division and contain the information required by the Division. An
47 application for a license must be accompanied by the required fee. The following requirements
48 also apply to applicants under this section:

- 49 (1) An application for a new motor vehicle dealer license must be accompanied
50 by an application for a dealer license plate. In addition, the Division shall
51 require each applicant for a new motor vehicle dealer license to certify on the

1 application whether the applicant or any parent, subsidiary, affiliate, or any
2 other entity related to the applicant is a manufacturer, factory branch, factory
3 representative, distributor, distributor branch, or distributor representative. In
4 the event the applicant indicates on the application that the applicant or any
5 parent, subsidiary, affiliate, or any other entity related to the applicant is a
6 manufacturer, factory branch, factory representative, distributor, distributor
7 branch, or distributor representative, the Division shall not issue a motor
8 vehicle dealer license to the applicant until ~~both~~all of the following conditions
9 are satisfied:

10 a. The applicant states on the application the specific exception or
11 exceptions to the prohibition on the issuance of a motor vehicle dealer
12 license to any manufacturer, factory branch, factory representative,
13 distributor, distributor branch, or distributor representative for which
14 the applicant contends it qualifies under G.S. 20-305.2(a).

15 a1. Upon receipt of a motor vehicle dealer license application by a
16 manufacturer, factory branch, factory representative, distributor,
17 distributor branch, or distributor representative, the Division shall
18 promptly publish notice of the license application in the North
19 Carolina Register. The notice shall include the applicant's name,
20 address, application date, and the names and titles of any individual
21 listed on the application as an owner, partner, member, or officer of
22 the applicant. The notice shall also include the specific exception or
23 exceptions to the prohibition on the issuance of a motor vehicle dealer
24 license to any manufacturer, factory branch, factory representative,
25 distributor, distributor branch, or distributor representative for which
26 the applicant contends it qualifies under G.S. 20-305.2(a) that are
27 included on the license application.

28 b. If the applicant does not currently hold a motor vehicle dealer license
29 issued by the Division, the Commissioner determines, after an
30 evidentiary ~~hearing,~~hearing held no earlier than 30 days from the date
31 of publication of the notice required in sub-subdivision a1. of this
32 subdivision, that the applicant qualifies under one or more of the
33 exceptions to the prohibition against the issuance of a motor vehicle
34 dealer license to any manufacturer, factory branch, factory
35 representative, distributor, distributor branch, or distributor
36 representative provided in G.S. 20-305.2(a). The applicant shall bear
37 the burden of proving the applicant's qualification for the exception or
38 exceptions claimed.

39 (2) Upon ~~submission~~receipt of a license application by a manufacturer, factory
40 branch, factory representative, distributor, distributor branch, or distributor
41 representative that has not previously been issued a license by the Division,
42 the Division shall promptly publish notice of the license application in the
43 North Carolina Register. The notice shall include the applicant's name,
44 address, application date, and the names and titles of any individual listed on
45 the application as an owner, partner, member, or officer of the applicant. The
46 Division shall not approve or issue any license for a manufacturer, factory
47 branch, factory representative, distributor, distributor branch, or distributor
48 representative earlier than 15 days from the date the notice of the license or
49 license renewal application was published in the North Carolina Register."

50 **SECTION 9.(b)** G.S. 20-295(a) reads as rewritten:

1 "(a) Division Action. – ~~The~~ Except as provided in G.S. 20-288(a)(1)b. and (a)(2), the
2 Division shall either grant or deny an application for a license or license renewal within 30 days
3 after receiving it. Any applicant denied a license shall, upon filing a written request within 30
4 days, be given a hearing at the time and place determined by the Commissioner or a person
5 designated by the Commissioner. A hearing shall be public and shall be held with reasonable
6 promptness."

7 **SECTION 9.(c)** This section is effective when it becomes law and applies to
8 applications received on or after that date.

9
10 **SEVERABILITY CLAUSE**

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

15
16 **EFFECTIVE DATE**

17 **SECTION 11.** Except as provided in Section 2(b) of this act, Sections 1 through 6
18 of this act become effective September 1, 2023, and apply to all current and future franchises and
19 other agreements in existence between any new motor vehicle dealer located in this State and a
20 manufacturer or distributor as of that date. Except as otherwise provided, this act is effective
21 when it becomes law.