

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 438

Short Title: Clarify Motor Vehicle Licensing Law. (Public)

Sponsors: Senators Apodaca; Allran, Atwater, Brock, East, Jenkins, Tillman, and Vaughan.

Referred to: Commerce.

March 29, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY MOTOR VEHICLE DEALERS AND MANUFACTURERS
3 LICENSING LAW.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 20-288(a1) reads as rewritten:

6 "(a1) A used motor vehicle dealer may obtain a license by filing an application, as
7 prescribed in subsection (a) of this section, and providing the following:

8 (1) The required fee.

9 (2) Proof that the applicant, within the last 12 months, has completed a 12-hour
10 licensing course approved by the Division if the applicant is seeking an
11 initial license and a six-hour course approved by the Division if the applicant
12 is seeking a renewal license. The requirements of this subdivision do not
13 apply to a used motor vehicle dealer the primary business of which is the
14 sale of salvage vehicles on behalf of insurers or to a manufactured home
15 dealer licensed under G.S. 143-143.11 who complies with the continuing
16 education requirements of G.S. 143-143.11B. The requirement of this
17 subdivision does not apply to persons age 62 or older as of July 1, 2002, who
18 are seeking a renewal license. This subdivision also does not apply to an
19 applicant who holds a license as a new motor vehicle dealer as defined in
20 G.S. 20-286(13) ~~and operates from an established showroom one mile or~~
21 ~~less from the established showroom for which the applicant seeks a used~~
22 ~~motor vehicle dealer license. An applicant who also holds a license as a new~~
23 ~~motor vehicle dealer may designate a representative to complete the~~
24 ~~licensing course required by this subdivision.~~

25 (3) If the applicant is an individual, proof that the applicant is at least 18 years
26 of age and proof that all salespersons employed by the dealer are at least 18
27 years of age.

28 (4) The application for a dealer license plate."

29 **SECTION 2.** G.S. 20-288 is amended by adding a new subsection to read:

30 "(b1) The Division shall require in such license application and each application for
31 renewal of license a certification that the applicant is familiar with the North Carolina Motor
32 Vehicle Dealers and Manufacturers Licensing Law and with other North Carolina laws
33 governing the conduct and operation of the business for which the license or license renewal is
34 sought and that the applicant shall comply with the provisions of these laws, with the
35 provisions of Article 12 of Chapter 20 of the General Statutes of North Carolina, and with other
36 lawful regulations of the Division."



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1 **SECTION 3.** G.S. 20-301 is amended by adding a new subsection to read:

2 "(g) Notwithstanding any other statute, regulation or rule, or the existence of a pending
3 legal or administrative proceeding in any other forum, any franchised new motor vehicle dealer
4 may elect to file a petition before the Commissioner for resolution of any dispute that may arise
5 with respect to any of the dealer's rights or obligations related to a franchise or franchise-related
6 form agreement. The Commissioner shall have the authority to apply principles of law, equity,
7 and good faith in determining such matters. The filing of a petition by a dealer pursuant to this
8 section shall not preclude the dealer from pursuing any other form of recourse it may have,
9 either before the Commissioner or in another form, including any damages and injunctive
10 relief. The Commissioner shall have the authority to receive and evaluate the facts in the matter
11 of controversy and render a decision by entering an order which shall thereafter become
12 binding and enforceable with respect to the parties, subject to the right of review of the decision
13 in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes."

14 **SECTION 4.** G.S. 20-301.1(a) reads as rewritten:

15 "(a) Notwithstanding the terms of any contract, franchise, novation, or agreement, it
16 shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to
17 charge or assess one of its franchised motor vehicle dealers located in this State, or to charge or
18 debit the account of the franchised motor vehicle dealer for merchandise, tools, or equipment,
19 or other charges or amounts which individually or collectively total more than two hundred
20 fifty dollars (\$250.00), other than the published cost of new motor vehicles, and merchandise,
21 tools, or equipment specifically ordered by the franchised motor vehicle dealer, unless the
22 franchised motor vehicle dealer receives a detailed itemized description of the nature and
23 amount of each charge in writing at least 10 days prior to the date the charge or account debit is
24 to become effective or due. For purposes of this subsection, ~~the~~ prior written notice ~~is~~ required
25 ~~for~~ pursuant to this subsection includes, but is not limited to, all charges or debits to a dealer's
26 ~~account for the following charges or debits:~~ advertising or advertising materials; advertising or
27 showroom displays; customer informational materials; computer or communications hardware
28 or software; special tools; equipment; dealership operation guides; Internet programs; and any
29 additional charges or surcharges made or proposed for merchandise, tools, or equipment
30 previously charged to the ~~dealer.~~ dealer; and any other charges or amounts which individually
31 or collectively total more than two hundred fifty dollars (\$250.00). If the franchised new motor
32 vehicle dealer disputes all or any portion of an actual or proposed charge or debit to the dealer's
33 account, the dealer may proceed as provided in G.S. 20-301(b) and G.S. 20-308.1. Upon the
34 filing of a petition pursuant to G.S. 20-301(b) or a civil action pursuant to G.S. 20-308.1, the
35 affected manufacturer, factory branch, distributor, or distributor branch shall not require
36 payment from the dealer, or debit or charge the dealer's account, unless and until a final
37 judgment supporting the payment or charge had been rendered by the Commissioner or court."

38 **SECTION 5.** G.S. 20-305(4) reads as rewritten:

39 "(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse
40 to approve the sale or transfer of the ownership of a dealership by the sale of
41 the business, stock transfer, or otherwise, or the transfer, sale or assignment
42 of a dealer franchise, or a change in the executive management or principal
43 operator of the dealership, change in use of an existing facility to provide for
44 the sales or service of one or more additional line-makes of new motor
45 vehicles, or relocation of the dealership to another site within the dealership's
46 relevant market area, if the Commissioner has determined, if requested in
47 writing by the dealer within 30 days after receipt of an objection to the
48 proposed transfer, sale, assignment, relocation, or change, and after a
49 hearing on the matter, that the failure to permit or honor the transfer, sale,
50 assignment, relocation, or change is unreasonable under the circumstances.
51 No franchise may be transferred, sold, assigned, relocated, or the executive

1 management or principal operators changed, unless the franchisor has been
2 given at least 30 days' prior written notice as to the proposed transferee's
3 name and address, financial ability, and qualifications of the proposed
4 transferee, a copy of the purchase agreement between the dealership and the
5 proposed transferee, the identity and qualifications of the persons proposed
6 to be involved in executive management or as principal operators, and the
7 location and site plans of any proposed relocation or change in use of a
8 dealership facility. The franchisor shall send the dealership and the proposed
9 transferee notice of objection, by registered or certified mail, return receipt
10 requested, to the proposed transfer, sale, assignment, relocation, or change
11 within 30 days after receipt of notice from the dealer, as provided in this
12 section. The notice of objection shall state in detail all factual and legal bases
13 for the objection on the part of the franchisor to the proposed transfer, sale,
14 assignment, relocation, or change that is specifically referenced in this
15 subdivision. An objection to a proposed transfer, sale, assignment,
16 relocation, or change in the executive management or principal operator of
17 the dealership may only be premised upon the factual and legal bases
18 specifically referenced in this subdivision. A manufacturer's notice of
19 objection which is based upon factual or legal issues that are not specifically
20 referenced in this subdivision as being issues upon which the Commissioner
21 shall base his determination shall not be effective to preserve the franchisor's
22 right to object to the proposed transfer sale, assignment, relocation, or
23 change, provided the dealership or proposed transferee has submitted written
24 notice, as required above, as to the proposed transferee's name and address,
25 financial ability, and qualifications of the proposed transferee, a copy of the
26 purchase agreement between the dealership and the proposed transferee, the
27 identity and qualifications of the persons proposed to be involved in the
28 executive management or as principal operators, and the location and site
29 plans of any proposed relocation. Failure by the franchisor to send notice of
30 objection within 30 days shall constitute waiver by the franchisor of any
31 right to object to the proposed transfer, sale, assignment, relocation, or
32 change. If the franchisor requires additional information to complete its
33 review, the franchisor shall notify the dealership within 15 days after receipt
34 of the proposed transferee's name and address, financial ability, and
35 qualifications, a copy of the purchase agreement between the dealership and
36 the proposed transferee, the identity and qualifications of the persons
37 proposed to be involved in executive management or as principal operators,
38 and the location and site plans of any proposed relocation or change in use of
39 the dealership facility. If the franchisor fails to request additional
40 information from the dealer or proposed transferee within 15 days of receipt
41 of this initial information, the 30-day time period within which the
42 franchisor may provide notice of objection shall be deemed to run from the
43 initial receipt date. Otherwise, the 30-day time period within which the
44 franchisor may provide notice of objection shall run from the date the
45 franchisor has received the supplemental information requested from the
46 dealer or proposed transferee; provided, however, that failure by the
47 franchisor to send notice of objection within 60 days of the franchisor's
48 receipt of the initial information from the dealer shall constitute waiver by
49 the franchisor of any right to object to the proposed transfer, sale,
50 assignment, relocation, or change. With respect to a proposed transfer of
51 ownership, sale, or assignment, the sole issue for determination by the

1 Commissioner and the sole issue upon which the Commissioner shall hear or
2 consider evidence is whether, by reason of lack of good moral character,
3 lack of general business experience, or lack of financial ability, the proposed
4 transferee is unfit to own the dealership. For purposes of this subdivision, the
5 refusal by the manufacturer to accept a proposed transferee who is of good
6 moral character and who otherwise meets the written, reasonable, and
7 uniformly applied business experience and financial requirements, if any,
8 required by the manufacturer of owners of its franchised automobile
9 dealerships is presumed to demonstrate the manufacturer's failure to prove
10 that the proposed transferee is unfit to own the dealership. With respect to a
11 proposed change in the executive management or principal operator of the
12 dealership, the sole issue for determination by the Commissioner and the
13 sole issue on which the Commissioner shall hear or consider evidence shall
14 be whether, by reason of lack of training, lack of prior experience, poor past
15 performance, or poor character, the proposed candidate for a position within
16 the executive management or as principal operator of the dealership is unfit
17 for the position. For purposes of this subdivision, the refusal by the
18 manufacturer to accept a proposed candidate for executive management or as
19 principal operator who is of good moral character and who otherwise meets
20 the written, reasonable, and uniformly applied standards or qualifications, if
21 any, of the manufacturer relating to the business experience and prior
22 performance of executive management required by the manufacturers of its
23 dealers is presumed to demonstrate the manufacturer's failure to prove the
24 proposed candidate for executive management or as principal operator is
25 unfit to serve the capacity. With respect to a proposed change in use of a
26 dealership facility to provide for the sales or service of one or more
27 additional line-makes of new motor vehicles, the sole issue for determination
28 by the Commissioner is whether the new motor vehicle dealer has a
29 reasonable line of credit for each make or line of motor vehicle and remains
30 in compliance with any reasonable capital standards and facilities
31 requirements of the manufacturer or distributor. The reasonable facilities
32 requirements of the manufacturer or distributor shall not include any
33 requirement that a new motor vehicle dealer establish or maintain exclusive
34 facilities, personnel, or display space. With respect to a proposed relocation
35 or other proposed change, the issue for determination by the Commissioner
36 is whether the proposed relocation or other change is unreasonable under the
37 circumstances. For purposes of this subdivision, the refusal by the
38 manufacturer to agree to a proposed relocation which meets the written,
39 reasonable, and uniformly applied standards or criteria, if any, of the
40 manufacturer relating to dealer relocations is presumed to demonstrate that
41 the manufacturer's failure to prove the proposed relocation is unreasonable
42 under the circumstances. The manufacturer shall have the burden of proof
43 before the Commissioner under this subdivision. It is unlawful for a
44 manufacturer to, in any way, condition its approval of a proposed transfer,
45 sale, assignment, change in the dealer's executive management, principal
46 operator, or appointment of a designated successor, on the existing or
47 proposed dealer's willingness to construct a new facility, renovate the
48 existing facility, acquire or refrain from acquiring one or more line-makes of
49 vehicles, separate or divest one or more line-makes of vehicle, or establish or
50 maintain exclusive facilities, personnel, or display space. It is unlawful for a
51 manufacturer to, in any way, condition its approval of a proposed relocation

1 on the existing or proposed dealer's willingness to acquire or refrain from
2 acquiring one or more line-makes of vehicles, separate or divest one or more
3 line-makes of vehicle, or establish or maintain exclusive facilities, personnel,
4 or display space. The opinion or determination of a franchisor that the
5 continued existence of one of its franchised dealers situated in this State is
6 not viable, or that the dealer holds or fails to hold licensing rights for the sale
7 of other line-makes of vehicles in a manner consistent with the franchisor's
8 existing or future distribution or marketing plans, shall not constitute a
9 lawful basis for the franchisor to fail or refuse to approve a dealer's proposed
10 change in use of a dealership facility or relocation: provided, however, that
11 nothing contained in this subdivision shall be deemed to prevent or prohibit
12 a franchisor from failing to approve a dealer's proposed relocation on
13 grounds that the specific site or facility proposed by the dealer is otherwise
14 unreasonable under the circumstances. Approval of a relocation pursuant to
15 this subdivision shall not in itself constitute the franchisor's representation or
16 assurance of the dealer's viability at that location."

17 **SECTION 6.** G.S. 20-305(6)d.3. reads as rewritten:

18 "3. In addition to the other payments set forth in this section, if a
19 termination, cancellation, or nonrenewal is premised upon
20 any of the occurrences set forth in G.S. 20-305(6)c.1.IV., then
21 the manufacturer or distributor shall be liable to the dealer for
22 an amount at least equivalent to the fair market value of the
23 franchise on (i) the date the franchisor announces the action
24 which results in termination, cancellation, or nonrenewal; or
25 (ii) the date the action which results in termination,
26 cancellation, or nonrenewal first became general knowledge;
27 or (iii) the day ~~12 months~~ 3 years prior to the date on which
28 the notice of termination, cancellation, or nonrenewal is
29 issued, whichever amount is higher. Payment is due not later
30 than 90 days after the manufacturer or distributor has
31 received notice in writing from, or on behalf of, the new
32 motor vehicle dealer specifying the elements of compensation
33 requested by the dealer. If the termination, cancellation, or
34 nonrenewal is due to a manufacturer's change in distributors,
35 the manufacturer may avoid paying fair market value to the
36 dealer if the new distributor or the manufacturer offers the
37 dealer a franchise agreement with terms acceptable to the
38 dealer."

39 **SECTION 7.** G.S. 20-305(14) reads as rewritten:

40 "(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or
41 accessories in reasonable quantities relative to the new motor vehicle dealer's
42 facilities and sales potential in the new motor vehicle dealer's market area as
43 determined in accordance with reasonably applied economic principles, or
44 within a reasonable time, after receipt of an order from a dealer having a
45 franchise for the retail sale of any new motor vehicle sold or distributed by
46 the manufacturer or distributor, any new vehicle, parts or accessories to new
47 vehicles as are covered by such franchise, and such vehicles, parts or
48 accessories as are publicly advertised as being available or actually being
49 delivered. The delivery to another dealer of a motor vehicle of the same
50 model and similarly equipped as the vehicle ordered by a motor vehicle
51 dealer who has not received delivery thereof, but who has placed his written

1 order for the vehicle prior to the order of the dealer receiving the vehicle,
2 shall be evidence of a delayed delivery of, or refusal to deliver, a new motor
3 vehicle to a motor vehicle dealer within a reasonable time, without cause.
4 ~~Except~~ Additionally, except as may be required by any consent decree of the
5 Commissioner or other order of the Commissioner or court of competent
6 jurisdiction, each manufacturer, ~~factory branch, distributor, and distributor~~
7 ~~branch~~ shall allocate its products in a manner ~~that provides each of its~~
8 ~~franchised dealers in this State an adequate supply of vehicles by series,~~
9 ~~product line, and model to achieve the manufacturer's minimum sales~~
10 ~~requirements, planning volume, or sales objectives and that is fair and~~
11 ~~equitable to all of its franchised dealers in this State. Additionally, each~~
12 ~~manufacturer shall make available to each of its franchised dealers in this~~
13 ~~State a minimum of one of each vehicle series, model, or product line that~~
14 ~~the manufacturer advertises nationally as being available for purchase. A~~
15 ~~manufacturer shall not unfairly discriminate among its franchised dealers in~~
16 ~~this allocation process that:~~

- 17 a. Provides each of its franchised dealers in this State an adequate
18 supply of vehicles by series, product line, and model to achieve the
19 manufacturer's minimum sales requirements, planning volume, or
20 sales objectives.
- 21 b. Is based on each dealer's specific allocation needs and historical
22 selling patterns, and which provides each of its franchised dealers in
23 this State an adequate supply of vehicles by series, product line, and
24 model to remain economically viable.
- 25 c. Does not discriminate against a dealer because the dealer fails to
26 relocate, update, or renovate the dealer's existing dealership facility.
- 27 d. Is fair and equitable to all of its franchised dealers in this State.
- 28 e. Makes available to each of its franchised dealers in this State a
29 minimum of one of each vehicle series, model, or product line that
30 the manufacturer advertises nationally as being available for
31 purchase.
- 32 f. Does not unfairly discriminate among its franchised dealers in its
33 allocation process.

34 This subsection is not violated, however, if such failure is caused solely by
35 acts or causes beyond the control of the manufacturer, distributor, factory
36 branch, or factory representative the occurrence of temporary international,
37 national, or regional product shortages resulting from natural disasters,
38 unavailability of parts, labor strikes, product recalls, and other factors and
39 events beyond the control of the manufacturer that temporarily reduce a
40 manufacturer's product supply. The maintenance, creation, or alteration of a
41 vehicle allocation process or formula by a manufacturer, factory branch,
42 distributor, or distributor branch that is in any part designed or intended to
43 force or coerce a dealer in this State to close or sell the dealer's franchise,
44 cause the dealer financial distress, or to relocate, update, or renovate the
45 dealer's existing dealership facility, shall constitute an unfair and deceptive
46 trade practice under G.S. 75-1.1.

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

48 "(39) Notwithstanding the terms, provisions, or conditions of any agreement,
49 franchise, novation, waiver, or other written instrument, to require, coerce,
50 or attempt to coerce any of its franchised motor vehicle dealers in this State
51 to purchase or lease one or more signs displaying the name of the

1 manufacturer or franchised motor vehicle dealer upon unreasonable or
2 onerous terms or conditions or if installation of the additional signage would
3 violate local signage or zoning laws to which the franchised motor vehicle
4 dealer is subject. For purposes of this subdivision, if a dealer has purchased
5 or leased such a sign within the previous 10 years, the requirement of a
6 manufacturer or distributor that the dealer replace the sign or purchase or
7 lease an additional sign shall be deemed unreasonable and onerous. Any
8 term, provision, or condition of any agreement, franchise, waiver, novation,
9 or any other written instrument which is in violation of this subdivision shall
10 be deemed null and void and without force and effect. Any requirement by a
11 manufacturer or distributor that a new motor vehicle dealer purchase or lease
12 a sign in violation of this subdivision as a condition to the dealer's
13 participation in any incentive program or contest, for a customer or dealer to
14 receive any incentive payments otherwise earned under an incentive
15 program or contest, for the dealer to obtain customer leads, or for the dealer
16 to receive any other benefits, rights, merchandise, or services which the
17 dealer would otherwise be entitled to obtain under the franchise or any other
18 contract or agreement, or which shall customarily be provided to dealers,
19 shall be deemed null and void and without force and effect."

20 **SECTION 9.** G.S. 20-305 is amended by adding two new subdivisions to read:

21 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel**
22 **franchise; preventing transfer of ownership; granting additional franchises;**
23 **terminating franchises without good cause; preventing family succession.**

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

26 ...
27 (43) To require, coerce, or attempt to coerce any new motor vehicle dealer in this
28 State to change location of the dealership, or to make any substantial
29 alterations to the dealership premises or facilities, if the dealer has changed
30 the location of the dealership or made substantial alterations to the
31 dealership premises or facilities within the preceding 10 years at a cost of
32 more than one hundred thousand dollars (\$100,000) and the change in
33 location or alteration was made at the request of or with the approval of the
34 manufacturer, factory branch, distributor, or distributor branch.

35 (44) Notwithstanding the terms, provisions, or conditions of any agreement,
36 franchise, novation, waiver, or other written instrument, to require, coerce,
37 or attempt to coerce any of its franchised motor vehicle dealers in this State
38 to change the principal operator, general manager, or any other manager or
39 supervisor employed by the dealer. Any term, provision, or condition of any
40 agreement, franchise, waiver, novation, or any other written instrument that
41 is inconsistent with this subdivision shall be deemed null and void and
42 without force and effect."

43 **SECTION 10.** G.S. 20-305.1 reads as rewritten:

44 **"§ 20-305.1. Automobile dealer warranty obligations.**

45 (a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch,
46 shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's
47 obligations for preparation, delivery and warranty service on its products, the schedule of
48 compensation to be paid such dealers for parts, work, and service in connection with warranty
49 service, and the time allowances for the performance of such work and service. In no event
50 shall such schedule of compensation fail to include reasonable compensation for diagnostic
51 work and associated administrative requirements as well as repair service and labor. Time

1 allowances for the performance of warranty work and service shall be reasonable and adequate
2 for the work to be performed. The compensation which must be paid under this section must be
3 reasonable, provided, however, that under no circumstances may the reasonable compensation
4 under this section be in an amount less than the dealer's current retail labor rate and the amount
5 charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty
6 work of like kind, provided such amount is competitive with other franchised dealers within the
7 dealer's market.

8 (a1) The retail rate customarily charged by the dealer for parts may be established at the
9 election of the dealer by the dealer submitting to the manufacturer or distributor 100 sequential
10 nonwarranty customer-paid service repair orders which contain warranty-like parts, or 60
11 consecutive days of nonwarranty customer-paid service repair orders which contain
12 warranty-like parts, whichever is less, covering repairs made no more than 180 days before the
13 submission and declaring the average percentage markup. The average of the markup rate shall
14 be presumed to be fair and reasonable, however, a manufacturer or distributor may, not later
15 than 30 days after submission, rebut that presumption by reasonably substantiating that the rate
16 is unfair and unreasonable in light of the practices of all other franchised motor vehicle dealers
17 in the dealer's market offering the same line-make vehicles. In the event there are no other
18 franchised dealers offering the same line-make of vehicle in the dealer's market, the
19 manufacturer or distributor may compare the dealer's rate for parts with the practices of other
20 franchised dealers who are selling competing line-makes of vehicles within the dealer's market.
21 The retail rate shall go into effect 30 days following the declaration, subject to audit of the
22 submitted repair orders by the manufacturer or distributor and a rebuttal of the declared rate as
23 described above. If the declared rate is rebutted, the manufacturer or distributor shall propose
24 an adjustment of the average percentage markup based on that rebuttal not later than 30 days
25 after submission. If the dealer does not agree with the proposed average percentage markup, the
26 dealer may file a protest with the Commissioner not later than 30 days after receipt of that
27 proposal by the manufacturer or distributor. If such a protest is filed, the Commissioner shall
28 inform the manufacturer or distributor that a timely protest has been filed and that a hearing
29 will be held on such protest. In any hearing held pursuant to this subsection, the manufacturer
30 or distributor shall have the burden of proving by a preponderance of the evidence that the rate
31 declared by the dealer was unfair and unreasonable as described in this subsection and that the
32 proposed adjustment of the average percentage markup is fair and reasonable pursuant to the
33 provisions of this subsection.

34 (a2) The retail rate customarily charged by the dealer for labor may be established at the
35 election of the dealer by the dealer submitting to the manufacturer or distributor all
36 nonwarranty customer-paid service repair orders covering repairs made during the month prior
37 to the submission and dividing the amount of the dealer's total labor sales by the number of
38 total labor hours that generated those sales. The average labor rate shall be presumed to be fair
39 and reasonable, provided the manufacturer or distributor may, not later than 30 days after
40 submission, rebut such presumption by reasonably substantiating that such rate is unfair and
41 unreasonable in light of the practices of all other franchised motor vehicle dealers in the
42 dealer's market offering the same line-make vehicles. In the event there are no other franchised
43 dealers offering the same line-make of vehicle in the dealer's market, the manufacturer or
44 distributor may compare the dealer's rate with the practices of other franchised dealers who are
45 selling competing line-makes of vehicles within the dealer's market. The average labor rate
46 shall go into effect 30 days following the declaration, subject to the audit of the submitted
47 repair orders by the franchisor and a rebuttal of such declared rate. If the declared rate is
48 rebutted, the manufacturer or distributor shall propose an adjustment of the average labor rate
49 based in such rebuttal not later than 30 days after submission. If the dealer does not agree with
50 the proposed average labor rate, the dealer may file a protest with the Commissioner not later
51 than 30 days after receipt of that proposal by the manufacturer or distributor. If such a protest is

1 filed, the Commissioner shall inform the manufacturer or distributor that a timely protest has
2 been filed and that a hearing will be held on such protest. In any hearing held pursuant to this
3 subsection, the manufacturer or distributor shall have the burden of proving by a preponderance
4 of the evidence that the rate declared by the dealer was unfair and unreasonable as described in
5 this subsection and that the proposed adjustment of the average labor rate is fair and reasonable
6 pursuant to the provisions of this subsection.

7 (a3) In calculating the retail rate customarily charged by the dealer for parts and labor,
8 the following work shall not be included in the calculation:

9 (1) Repairs for manufacturer or distributor special events, specials, or
10 promotional discounts for retail customer repairs;

11 (2) Parts sold at wholesale or at reduced or specially negotiated rates for
12 insurance repairs;

13 (3) Engine assemblies and transmission assemblies;

14 (4) Routine maintenance not covered under warranty, such as fluids, filters, and
15 belts not provided in the course of repairs;

16 (5) Nuts, bolts, fasteners, and similar items that do not have an individual part
17 number;

18 (6) Tires; and

19 (7) Vehicle reconditioning.

20 (a4) If a manufacturer or distributor furnishes a part or component to a dealer, at no cost,
21 to use in performing repairs under a recall, campaign service action, or warranty repair, the
22 manufacturer or distributor shall compensate the dealer for the part or component in the same
23 manner as warranty parts compensation under this section by compensating the dealer the
24 average markup on the cost for the part or component as listed in the manufacturer's or
25 distributor's price schedule less the cost for the part or component.

26 (a5) A manufacturer or distributor may not require a dealer to establish the retail rate
27 customarily charged by the dealer for parts and labor by an unduly burdensome or time-
28 consuming method or by requiring information that is unduly burdensome or time-consuming
29 to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations.

30 (b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor
31 vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of
32 its warranty obligations with respect to a motor vehicle, to fail to fully compensate its motor
33 vehicle dealers licensed in this State for warranty parts other than parts used to repair the living
34 facilities of recreational vehicles, at the prevailing retail rate according to the factors in
35 subsection (a) of this section, or, in service in accordance with the schedule of compensation
36 provided the dealer pursuant to subsection (a) above, or to otherwise recover all or any portion
37 of its costs for compensating its motor vehicle dealers licensed in this State for warranty parts
38 and service either by reduction in the amount due to the dealer, or by separate charge,
39 surcharge, or other imposition, and to fail to indemnify and hold harmless its franchised dealers
40 licensed in this State against any judgment for damages or settlements agreed to by the
41 manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the
42 motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to,
43 strict liability, negligence, misrepresentation, express or implied warranty, or rescission or
44 revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the
45 extent that the judgment or settlement relates to the alleged defective negligent manufacture,
46 assembly or design of new motor vehicles, parts or accessories or other functions by the
47 manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer.
48 Any audit for warranty parts or service compensation shall only be for the ~~12~~ 6-month period
49 immediately following the date of the payment of the claim by the manufacturer, factory
50 branch, distributor, or distributor branch. Any audit for sales incentives, service incentives,
51 rebates, or other forms of incentive compensation shall only be for the ~~12~~ 6-month period

1 immediately following the date of the payment of the claim by the manufacturer, factory
2 branch, distributor, or distributor branch pursuant to a sales incentives program, service
3 incentives program, rebate program, or other form of incentive compensation program.
4 Provided, however, these limitations shall not be effective in the case of fraudulent claims.

5 (b1) All claims made by motor vehicle dealers pursuant to this section for compensation
6 for delivery, preparation, warranty and recall work including labor, parts, and other expenses,
7 shall be paid by the manufacturer within 30 days after receipt of claim from the dealer. When
8 any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval.
9 Any claim not specifically disapproved in writing within 30 days after receipt shall be
10 considered approved and payment is due immediately. No claim which has been approved and
11 paid may be charged back to the dealer unless it can be shown that the claim was false or
12 fraudulent, that the repairs were not properly made or were unnecessary to correct the defective
13 condition, or the dealer failed to reasonably substantiate the claim either in accordance with the
14 manufacturer's reasonable written procedures or by other reasonable means. A manufacturer or
15 distributor shall not deny a claim or reduce the amount to be reimbursed to the dealer as long as
16 the dealer has provided reasonably sufficient documentation that the dealer:

- 17 (1) Made a good faith attempt to perform the work in compliance with the
18 written policies and procedures of the manufacturer; and
- 19 (2) Actually performed the work.

20 Notwithstanding the foregoing, a manufacturer shall not fail to fully compensate a dealer for
21 warranty or recall work or make any chargeback to the dealer's account based on the dealer's
22 failure to comply with the manufacturer's claim documentation procedure or procedures unless
23 both of the following requirements have been met:

- 24 (1) The dealer has, within the previous ~~12~~ 6 months, failed to comply with the
25 same specific claim documentation procedure or procedures; and
- 26 (2) The manufacturer has, within the previous ~~12~~ 6 months, provided a written
27 warning to the dealer by certified United States mail, return receipt
28 requested, identifying the specific claim documentation procedure or
29 procedures violated by the dealer.

30 Nothing contained in this subdivision shall be deemed to prevent or prohibit a manufacturer
31 from adopting or implementing a policy or procedure which provides or allows for the
32 self-audit of dealers, provided, however, that if any such self-audit procedure contains
33 provisions relating to claim documentation, such claim documentation policies or procedures
34 shall be subject to the prohibitions and requirements contained in this subdivision. Notices sent
35 by a manufacturer under a bona fide self-audit procedure shall be deemed sufficient notice to
36 meet the requirements of this subsection provided that the dealer is given reasonable
37 opportunity through self-audit to identify and correct any out-of-line procedures for a period of
38 at least 60 days before the manufacturer conducts its own audit of the dealer warranty
39 operations and procedures. A manufacturer may further not charge a dealer back subsequent to
40 the payment of the claim unless a representative of the manufacturer has met in person at the
41 dealership, or by telephone, with an officer or employee of the dealer designated by the dealer
42 and explained in detail the basis for each of the proposed charge-backs and thereafter given the
43 dealer's representative a reasonable opportunity at the meeting, or during the telephone call, to
44 explain the dealer's position relating to each of the proposed charge-backs. In the event the
45 dealer was selected for audit or review on the basis that some or all of the dealer's claims were
46 viewed as excessive in comparison to average, mean, or aggregate data accumulated by the
47 manufacturer, or in relation to claims submitted by a group of other franchisees of the
48 manufacturer, the manufacturer shall, at or prior to the meeting or telephone call with the
49 dealer's representative, provide the dealer with a written statement containing the basis or
50 methodology upon which the dealer was selected for audit or review.

51 ...

1 (h) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor
2 vehicle manufacturer, factory branch, distributor, or distributor branch to deny a franchised
3 new motor vehicle dealer the right to return any part or accessory that the dealer has not sold
4 within 12 months where the part or accessory was not obtained through a specific order
5 initiated by the franchised new motor vehicle dealer but instead was specified for, sold to, and
6 shipped to the dealer pursuant to an automated ordering system, provided that such part or
7 accessory is in the condition required for return to the manufacturer, factory branch, distributor,
8 or distributor branch and the dealer returns the part within 90 days of it becoming eligible under
9 this subsection. For purposes of this subsection, an "automated ordering system" shall be a
10 computerized system that automatically specifies parts and accessories for sale and shipment to
11 the dealer without specific order thereof initiated by the dealer. The manufacturer, factory
12 branch, distributor, or distributor branch shall not charge a restocking or handling fee for any
13 part or accessory being returned under this subsection."

14 **SECTION 11.** G.S. 20-305.7 reads as rewritten:

15 **"§ 20-305.7. Protecting dealership data and consent to access dealership information.**

16 (a) All of the data and other information collected by a new motor vehicle dealer from
17 such dealer's customers and other consumers are the sole and exclusive property of the dealer.
18 Except as expressly authorized in this section, no manufacturer, factory branch, distributor, or
19 distributor branch shall require a new motor vehicle dealer to provide its customer lists,
20 customer information, consumer contact information, transaction data, or service files. Any
21 requirement by a manufacturer, factory branch, distributor, or distributor branch that a new
22 motor vehicle dealer provide its customer lists, customer information, consumer contact
23 information, transaction data, or service files as a condition to the dealer's participation in any
24 incentive program or contest for a customer or dealer to receive any incentive payments
25 otherwise earned under an incentive program or contest, for the dealer to obtain consumer or
26 customer leads, or for the dealer to receive any other benefits, rights, merchandise, or services
27 for which the dealer would otherwise be entitled to obtain under the franchise or any other
28 contract or agreement, or which shall customarily be provided to dealers, shall be voidable at
29 the option of the dealer. Nothing contained in this section shall limit the ability of the
30 manufacturer, factory branch, distributor, or distributor branch to require that the dealer provide
31 or to use in accordance with the law such customer information to the extent necessary to
32 satisfy any safety or recall notice obligations, to complete the sale and delivery of a new motor
33 vehicle to a customer, to validate and pay customer or dealer incentives, or for the submission
34 to the manufacturer, factory branch, distributor, or distributor branch for any services supplied
35 by the dealer for any claim for warranty parts or repairs. No manufacturer, factory branch,
36 distributor, or distributor branch shall access or obtain dealer or customer data from or write
37 dealer or customer data to a dealer management computer system utilized by a motor vehicle
38 dealer located in this State, or require or coerce a motor vehicle dealer located in this State to
39 utilize a particular dealer management computer system, unless the dealer management
40 computer system allows the dealer to reasonably maintain the security, integrity, and
41 confidentiality of the data maintained in the system. No manufacturer, factory branch,
42 distributor, distributor branch, dealer management computer system vendor, or any third party
43 acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer
44 management computer system vendor shall prohibit a dealer from providing a means to
45 regularly and continually monitor the specific data accessed from or written to the dealer's
46 computer system and from complying with applicable State and federal laws and any rules or
47 regulations promulgated thereunder. These provisions shall not be deemed to impose an
48 obligation on a manufacturer, factory branch, distributor, distributor branch, dealer
49 management computer system vendor, or any third party acting on behalf of any manufacturer,
50 factory branch, distributor, distributor branch, or dealer management computer system vendor
51 to provide such capability.

1 (b) No manufacturer, factory branch, distributor, distributor branch, dealer management
2 computer system vendor, or any third party acting on behalf of any manufacturer, factory
3 branch, distributor, distributor branch, or dealer management computer system vendor may
4 access or utilize customer or prospect information maintained in a dealer management
5 computer system utilized by a motor vehicle dealer located in this State for purposes of
6 soliciting any such customer or prospect on behalf of, or directing such customer or prospect to,
7 any other dealer. The limitations in this subsection do not apply to:

- 8 (1) A customer that requests a reference to another dealership;
- 9 (2) A customer that moves more than 60 miles away from the dealer whose data
10 was accessed;
- 11 (3) Customer or prospect information that was provided to the dealer by the
12 manufacturer, factory branch, distributor, or distributor branch; or
- 13 (4) Customer or prospect information obtained by the manufacturer, factory
14 branch, distributor, or distributor branch where the dealer agrees to allow the
15 manufacturer, factory branch, distributor, distributor branch, dealer
16 management computer system vendor, or any third party acting on behalf of
17 any manufacturer, factory branch, distributor, distributor branch, or dealer
18 management computer system vendor the right to access and utilize the
19 customer or prospect information maintained in the dealer's dealer
20 management computer system for purposes of soliciting any customer or
21 prospect of the dealer on behalf of, or directing such customer or prospect to,
22 any other dealer in a separate, stand-alone written instrument dedicated
23 solely to such authorization.

24 No manufacturer, factory branch, distributor, distributor branch, dealer management computer
25 system vendor, or any third party acting on behalf of any manufacturer, factory branch,
26 distributor, distributor branch, or dealer management computer system vendor, may provide
27 access to customer or dealership information maintained in a dealer management computer
28 system utilized by a motor vehicle dealer located in this State, without first obtaining the
29 dealer's prior express written consent, revocable by the dealer upon five business days written
30 notice, to provide such access. Prior to obtaining said consent and prior to entering into an
31 initial contract or renewal of a contract with a dealer located in this State, the manufacturer,
32 factory branch, distributor, distributor branch, dealer management computer system vendor, or
33 any third party acting on behalf of, or through any manufacturer, factory branch, distributor,
34 distributor branch, or dealer management computer system vendor shall provide to the dealer a
35 written list of all third parties to whom any North Carolina dealer management computer
36 system data has been provided within the 12-month period ending November 1 of the prior
37 year. The list shall further describe the scope of the data provided. In addition to the initial list,
38 a dealer management computer system vendor or any third party acting on behalf of, or through
39 a dealer management computer system vendor shall provide to the dealer an annual list of third
40 parties to whom said data is being provided on November 1 of each year and to whom said data
41 has been provided in the preceding 12 months and describe the scope of the data provided.
42 Such list shall be provided to the dealer by January 1 of each year. Any dealer management
43 computer system vendor's contract that directly relates to the transfer or accessing of dealer or
44 dealer customer information must conspicuously state, "NOTICE TO DEALER: THIS
45 AGREEMENT RELATES TO THE TRANSFER AND ACCESSING OF CONFIDENTIAL
46 INFORMATION AND CONSUMER RELATED DATA". Such consent does not change any
47 such person's obligations to comply with the terms of this section and any additional State or
48 federal laws (and any rules or regulations promulgated thereunder) applicable to them with
49 respect to such access. In addition, no dealer management computer system vendor may refuse
50 to provide a dealer management computer system to a motor vehicle dealer located in this State
51 if the dealer refuses to provide any consent under this subsection, ~~except to the extent that~~

1 consent is deemed by the parties to be reasonably necessary in order for the vendor to provide
2 the system to the dealer.subsection.

3 ...
4 (f) The following definitions apply to this section:

5 (1) "Dealer management computer system" – A computer hardware and
6 software system ~~having dealer business process management modules that~~
7 provide real time system, including a dealer's use of Web applications,
8 software, or hardware, whether located at the dealership or provided at a
9 remote location and that provides access to customer records and
10 transactions by a motor vehicle dealer located in this State and that ~~allow~~
11 allows such motor vehicle dealer timely information in order to sell vehicles,
12 parts or services through such motor vehicle dealership.

13 (2) "Dealer management computer system vendor" – A seller or reseller of
14 dealer management computer systems (but only to the extent that such
15 person is engaged in such activities).

16 (3) "Security breach" – An incident of unauthorized access to and acquisition of
17 records or data containing dealership or dealership customer information
18 where unauthorized use of the dealership or dealership customer information
19 has occurred or is reasonably likely to occur or that creates a material risk of
20 harm to a dealership or a dealership's customer. Any incident of
21 unauthorized access to and acquisition of records or data containing
22 dealership or dealership customer ~~information~~information, or any incident of
23 disclosure of dealership customer information to one or more third parties
24 which shall not have been specifically authorized by the dealer, shall
25 constitute a security breach.

26 ...
27 (h) Notwithstanding any of the terms or provisions contained in this section or in any
28 consent, authorization, release, novation, franchise, or other contract or agreement, whenever
29 any manufacturer, factory branch, distributor, distributor branch, dealer management computer
30 system vendor, or any third party acting on behalf of or through any dealer management
31 computer system vendor requires that a new motor vehicle dealer provide any dealer,
32 consumer, or customer data or information through direct access to a dealer's computer system,
33 the dealer is not required to provide, and may not be required to consent to provide in any
34 written agreement, such direct access to its computer system and may instead provide such
35 dealer, consumer, or customer data or information as may be reasonably necessary either by
36 timely obtaining and pushing the dealer, consumer, or customer data or information to the
37 requesting party itself or by timely obtaining and providing the required data or other
38 information through some other commercially reasonable medium or technology. Any term or
39 provision contained in any consent, authorization, release, novation, franchise, or other contract
40 or agreement which is inconsistent with any term or provision contained in this subsection shall
41 be voidable at the option of the dealer.

42 (i) Notwithstanding the terms or conditions of any consent, authorization, release,
43 novation, franchise, or other contract or agreement, every manufacturer, factory branch,
44 distributor, distributor branch, dealer management computer system vendor, or any third party
45 acting on behalf of or through any dealer management computer system vendor, having
46 electronic access to consumer or customer data or other information in a computer system
47 utilized by a new motor vehicle dealer, or who has otherwise been provided consumer or
48 customer data or information by the dealer, shall fully indemnify and hold harmless any dealer
49 from whom it has acquired such consumer or customer data or other information from all
50 damages, costs, and expenses incurred by such dealer, including, but not limited to, judgments,
51 settlements, fines, penalties, litigation costs, defense costs, court costs, and attorneys' fees

1 arising out of complaints, claims, civil or administrative actions, and, to the fullest extent
2 allowable under the law, governmental investigations and prosecutions related to the access,
3 storage, maintenance, use, sharing, disclosure, or retention of such dealer's consumer or
4 customer data or other information."

5 **SECTION 12.** The terms and provisions of this act shall be applicable to all current
6 and future franchises and other agreements in existence between any new motor vehicle dealer
7 located in this State and a manufacturer or distributor as of the effective date of this act.

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

12 **SECTION 14.** This act is effective when it becomes law.