

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
Fourth Edition Engrossed 6/28/23

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.



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

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

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

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- I. Setting or advertising a suggested retail price, minimum advertised price, employee or supplier discount price, or special finance, lease, or other promotional offers.
 - II. Stating an estimated trade-in valuation of a customer's vehicle that is designated as such and based on a valuation guide whose identity is conspicuously disclosed; provided that in close proximity to any such stated estimated trade-in valuation, the manufacturer or distributor conspicuously discloses that the actual valuation of any used vehicle is dependent on many factors and the dealer is not obligated to accept the estimated trade-in valuation.
 - III. Displaying prices that dealers voluntarily set and choose to display.
5. Unreasonably impede or interfere with the ability of its rural and other franchised dealers located in this State to obtain from that manufacturer or distributor and sell or lease any series or models of technologically advanced vehicles that the manufacturer or distributor makes available for sale or lease to retail customers in this State by or through its same line-make dealers and which the dealer is authorized to sell. For purposes of this sub-sub-subdivision, the term "technologically advanced vehicle" or "TAV" means a motor vehicle that is an electric vehicle (EV) or hydrogen vehicle. For purposes of this sub-sub-subdivision, the term "EV" means any plug-in electric vehicle that does not rely on any nonelectric source of power in all modes of operation. For purposes of this sub-sub-subdivision, the term "unreasonably impede or interfere with" includes, but is not limited to, any of the following:
- I. If a manufacturer or distributor has established any training, infrastructure, capital, or equipment requirements as a condition for a dealer to sell TAVs, to fail or refuse to promptly cause, at a dealer's request, a detailed, itemized, individual dealer assessment to determine the minimum TAV investment each dealer would need to make for training, facilities, tools, parts, equipment, and charging stations for vehicle service and for training dealership employees and customers. Charging stations for use by the public and all other charges or expenditures not technically essential to sell and service the manufacturer's or distributor's TAVs shall not be required or included in determining a dealer's minimum TAV investment. The minimum TAV investment established for each dealer must be scaled based on the estimated number of the manufacturer's or distributor's new TAVs the dealer would be anticipated to sell and the number of TAVs the dealer would be expected to service within the following three-year period. In the event that a

1 manufacturer or distributor had performed an
 2 individualized dealer assessment required in this
 3 sub-sub-sub-subdivision prior to July 1, 2023, the
 4 assessment shall be deemed to satisfy the requirements
 5 contained in this sub-sub-sub-subdivision as long as it
 6 complies with all of the requirements of an individual
 7 TAV assessment established in this
 8 sub-sub-sub-subdivision and the TAV assessment
 9 contains no charges in excess of those charges
 10 includable under this sub-sub-sub-subdivision. It shall
 11 be unlawful for a manufacturer or distributor to require
 12 a dealer to pay for an assessment of the type required
 13 under this sub-sub-sub-subdivision if the manufacturer
 14 or distributor requires that an assessment be performed
 15 as a prerequisite for the dealer to sell or lease TAVs that
 16 the manufacturer or distributor sells or distributes.

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

24 6. Withhold all or any portion of any incentive payment from any
 25 of its dealers located in this State on the basis of a dealer's
 26 failure to comply with any unlawful or prohibited condition or
 27 requirement.

28 7. Require, coerce, or attempt to coerce a dealer to make
 29 expenditures related to achieving or making progress toward
 30 achieving CO2 neutrality at the dealer's facility at the expense
 31 of the dealer.

32 Nothing contained in sub-subdivision a. of this subdivision shall (i) require
 33 that a manufacturer or distributor allocate or supply additional or
 34 supplemental inventory to a franchised dealer located in this State in order to
 35 satisfy a retail customer's vehicle reservation or request submitted directly to
 36 the manufacturer or distributor as provided in this section, (ii) apply to the
 37 generation of sales leads; provided, however, that for purposes of this
 38 subdivision the term "sales leads" shall not include any reservation or request
 39 to purchase or lease a vehicle submitted directly by a customer or potential
 40 customer to a manufacturer or distributor, or (iii) apply to a reservation or
 41 request to purchase or lease a vehicle directly from the manufacturer or
 42 distributor received from customer that is a resident of this State if the
 43 customer designates a dealer outside of this State to be assigned the
 44 reservation or request to purchase or lease, or if the dealer located in closest
 45 proximity to the customer's location is in another state and the manufacturer
 46 or distributor assigns the reservation or request to purchase or lease to that
 47 dealer."

48 **SECTION 1.(b)** G.S. 20-305(44) reads as rewritten:

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

- a. ~~displaying~~ Displaying in the dealer's showroom or elsewhere within the dealership facility any sports-related honors, awards, photographs, displays, or other artifacts or memorabilia; provided, however, that such sports-related honors, awards, photographs, displays, or other artifacts or memorabilia (i) pertain to an owner, investor, or executive manager of the dealership; (ii) relate to professional sports; (iii) do not reference or advertise a competing brand of motor vehicles; and (iv) do not conceal or disparage any of the required branding elements that are part of the dealership facility.
- b. Using all or part of the name of a dealer's founder, owner, existing trade name, or dealer principal in the dealer's trade name, provided the name the dealer proposes to use for its trade name would not disparage the manufacturer's or distributor's brand or be confusing or misleading to the consuming public."

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

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

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

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

...

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

DEALER AND MANUFACTURER WEBSITES

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

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

- a. Dealer websites. – It is unlawful for any manufacturer or distributor to unreasonably interfere with the establishment, maintenance,

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

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

motor vehicles offered for sale or lease at that dealership location, including the dealer's display of manufacturer logos and marks for all such brands and line-makes of new motor vehicles the dealer is authorized by the manufacturer or distributor to offer for sale or lease, to the extent such display of manufacturer logos and marks does not interfere with the intellectual property rights of the manufacturer or advertise the products offered by the manufacturer or distributor in a disparaging or misleading manner.

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

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

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

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

2. Maintain a website or other electronic or digital means of communication for negotiating or otherwise establishing binding terms of sale or lease of new vehicles directly between the manufacturer or distributor and retail customers located in this State, provided that a manufacturer, factory branch, distributor, or distributor branch may maintain a website or other electronic or digital means of communication if the final selling or lease price of the new vehicles is determined by eligible dealers, and provided further that a dealer may not be required to set a nonnegotiable price as a condition for the dealer's inclusion on any website owned, controlled, or

1 maintained by a manufacturer or distributor. Nothing in this
2 sub-sub-subdivision shall prevent a manufacturer or distributor
3 from engaging in fleet sales to a fleet customer that has a
4 designation as such by the manufacturer or distributor, or
5 establishing or offering employee or supplier discount pricing,
6 provided the dealer is not required to participate in such
7 program."

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

12 **DEALER ALLOCATION RIGHTS**

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

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

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

- 1 d. Makes available to each of its franchised dealers in this State a
2 minimum of one of each vehicle series, model, or product line that the
3 manufacturer makes available to any dealer in this State and advertises
4 in the State as being available for purchase.
- 5 e. Does not unfairly discriminate among its franchised dealers in its
6 allocation process.
- 7 f. Discloses to each of its franchised dealers handling the same line-make
8 both its system of allocation and the dealer's actual new vehicle
9 allocation that occurred during the previous calendar month and
10 during the previous six calendar months, including, but not limited to,
11 a complete breakdown by model, color, equipment, and, to the extent
12 tracked by the manufacturer or distributor, other available features and
13 an explanation of the derivation of the allocation system, including its
14 mathematical formula or formulae, in a clear and comprehensible
15 form. The data provided by the manufacturer or distributor pursuant to
16 this sub-subdivision is required to reflect the dealer's total vehicle
17 availability by model, along with the dealer's measurement of
18 available days supply for each model in comparison to the threshold
19 available days supply by model in the dealer's peer group of all new
20 vehicles allocated to its franchised dealers in this State broken down
21 by tiers or other groups of dealers created by the manufacturer or
22 distributor and those allocated to dealers in this State, if available, or
23 another geographical area utilized by the manufacturer or distributor
24 pursuant to a mathematical formula or on a discretionary basis. All of
25 the allocation data that a manufacturer or distributor is required to
26 disclose to its same line-make dealers in this State pursuant to this
27 sub-subdivision may be made available for its dealers to review online
28 at the dealer's discretion, if the data and the ability to display the data
29 online are reasonably available to the manufacturer or distributor, or
30 be provided within 30 days of receipt of the written request of a dealer
31 or in the event a manufacturer or distributor has changed its allocation
32 formula, process, or policies. This sub-subdivision shall not apply to
33 manufacturers or distributors of Class 4 vehicles or above (Gross
34 Vehicle Weight Rating exceeding 14,000 lbs.) as classified by the
35 Federal Highway Administration.
- 36 g. Provides each of its franchised dealers in this State a process for a
37 dealer to appeal the dealer's vehicle allocation should the dealer
38 believe it was not allocated or did not receive vehicle inventory in a
39 manner that complies with both this subdivision and the
40 manufacturer's or distributor's uniformly applied allocation formula.
41 Participation in the appeal process does not waive or impair any rights,
42 claims, or defenses available to the dealer, manufacturer, or distributor
43 under applicable law. All in-person meetings, mediations, or other
44 proceedings related to the appeal process shall be conducted in this
45 State unless otherwise agreed to by the parties.

46 This subdivision is not violated, however, if such failure is caused solely by
47 the occurrence of temporary international, national, or regional product
48 shortages resulting from natural disasters, unavailability of parts, labor strikes,
49 product recalls, and other factors and events beyond the control of the
50 manufacturer that temporarily reduce a manufacturer's product supply. In the
51 event of any such shortages in vehicle availability, each manufacturer or

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

11 12 MANUFACTURER SALE OR SUBSCRIPTION OF ADD-ON PRODUCTS

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

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

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

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

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

44 d. If the sale or activation of the permanent or temporary motor vehicle
45 accessory, option, add-on, service, upgrade, feature, or improvement
46 did not occur as provided in sub-subdivision c. of this subdivision, and
47 a North Carolina franchised new motor vehicle dealer of the
48 manufacturer or distributor was directly involved in the sale of the
49 feature or improvement, the manufacturer or distributor provides
50 reasonable compensation to the North Carolina franchised new motor
51 vehicle dealer that sold the accessory, option, add-on, service,

1 upgrade, feature, or improvement to a North Carolina resident when
 2 the cost of which would equal or exceed (i) fifty dollars (\$50.00), if
 3 the cost or purchase price to the retail customer involves a single,
 4 one-time payment, or (ii) seventy-five dollars (\$75.00) in cumulative
 5 cost or purchase price over any 12-month period, if the retail customer
 6 is making multiple or periodic payments.

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

14 f. When providing a new motor vehicle to a dealer for offer or sale to the
 15 public, the manufacturer or distributor shall provide to the dealer a
 16 written disclosure that may be furnished by the dealer to a potential
 17 purchaser or lessee of the new motor vehicle identifying each
 18 permanent or temporary motor vehicle accessory, option, add-on,
 19 service, upgrade, feature, or improvement of the vehicle that may be
 20 initiated, updated, changed, or maintained by the manufacturer or
 21 distributor through over-the-air or remote means, the cost to the retail
 22 customer at the time of the new motor vehicle sale or lease, and the
 23 fact that all such accessories, options, add-ons, services, upgrades,
 24 features, or improvements may be purchased directly from the dealer.
 25 A manufacturer or distributor may comply with this sub-subdivision
 26 by notifying the dealer that such information is available on a website
 27 or by other digital means."
 28

29 **WARRANTY REIMBURSEMENT CLARIFICATION**

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

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

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

47 **GRANDFATHER EXTENSION**

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

49 "(30) To vary the price charged to any of its franchised new motor vehicle dealers
 50 located in this State for new motor vehicles based on the dealer's purchase of
 51 new facilities, supplies, tools, equipment, or other merchandise from the

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

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

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

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

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

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

5 In the event that as of October 1, 1999, a manufacturer was operating a
6 program that varied the price charged to its franchised dealers in this State in
7 a manner that would violate this subdivision, or had in effect a documented
8 policy that had been conveyed to its franchised dealers in this State and that
9 varied the price charged to its franchised dealers in this State in a manner that
10 would violate this subdivision, it shall be lawful for that program or policy,
11 including amendments to that program or policy that are consistent with the
12 purpose and provisions of the existing program or policy, or a program or
13 policy similar thereto implemented after October 1, 1999, to continue in effect
14 as to the manufacturer's franchised dealers located in this State until ~~June 30,~~
15 ~~2025.~~ June 30, 2028.

16 In the event that as of June 30, 2001, a manufacturer was operating a
17 program that varied the price charged to its franchised dealers in this State in
18 a manner that would violate this subdivision, or had in effect a documented
19 policy that had been conveyed to its franchised dealers in this State and that
20 varied the price charged to its franchised dealers in this State in a manner that
21 would violate this subdivision, and the program or policy was implemented in
22 this State subsequent to October 1, 1999, and prior to June 30, 2001, and
23 provided that the program or policy is in compliance with this subdivision as
24 it existed as of June 30, 2001, it shall be lawful for that program or policy,
25 including amendments to that program or policy that comply with this
26 subdivision as it existed as of June 30, 2001, to continue in effect as to the
27 manufacturer's franchised dealers located in this State until ~~June 30, 2025.~~ June
28 30, 2028.

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

33 The provisions of this subdivision shall not be applicable to multiple or
34 repeated sales of new motor vehicles made by a new motor vehicle dealer to
35 a single purchaser under a bona fide fleet sales policy of a manufacturer,
36 factory branch, distributor, or distributor branch."
37

38 **MOTOR VEHICLE DEALER AND MANUFACTURER LICENSEES/SETTLEMENT** 39 **AGREEMENTS AND CONSENT ORDERS**

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

41 **"§ 20-296. Notice and hearing upon denial, suspension, revocation, placing on probation,**
42 **or refusal to renew license.**

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

1 shall be given to the licensee in accordance with G.S. 1A-1, Rule 4(j) of the Rules of Civil
2 Procedure. For each alleged violation, the Division shall determine in its sole and unappealable
3 discretion whether entering into a settlement agreement or consent order with the applicable
4 licensee or license applicant either prior to or subsequent to the hearing would promote the
5 interests of justice and administrative efficiency."

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

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

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

11 **"§ 20-75.1. Conditional delivery of motor vehicles.**

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

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

42 **MOTOR VEHICLE DEALERS AND MANUFACTURERS/PUBLISH NOTICE OF** 43 **LICENSE APPLICATION**

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

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

- 1 (1) An application for a new motor vehicle dealer license must be accompanied
2 by an application for a dealer license plate. In addition, the Division shall
3 require each applicant for a new motor vehicle dealer license to certify on the
4 application whether the applicant or any parent, subsidiary, affiliate, or any
5 other entity related to the applicant is a manufacturer, factory branch, factory
6 representative, distributor, distributor branch, or distributor representative. In
7 the event the applicant indicates on the application that the applicant or any
8 parent, subsidiary, affiliate, or any other entity related to the applicant is a
9 manufacturer, factory branch, factory representative, distributor, distributor
10 branch, or distributor representative, the Division shall not issue a motor
11 vehicle dealer license to the applicant until ~~both~~all of the following conditions
12 are satisfied:
- 13 a. The applicant states on the application the specific exception or
14 exceptions to the prohibition on the issuance of a motor vehicle dealer
15 license to any manufacturer, factory branch, factory representative,
16 distributor, distributor branch, or distributor representative for which
17 the applicant contends it qualifies under G.S. 20-305.2(a).
- 18 a1. Upon receipt of a motor vehicle dealer license application by a
19 manufacturer, factory branch, factory representative, distributor,
20 distributor branch, or distributor representative, the Division shall
21 promptly publish notice of the license application in the North
22 Carolina Register. The notice shall include the applicant's name,
23 address, application date, and the names and titles of any individual
24 listed on the application as an owner, partner, member, or officer of
25 the applicant. The notice shall also include the specific exception or
26 exceptions to the prohibition on the issuance of a motor vehicle dealer
27 license to any manufacturer, factory branch, factory representative,
28 distributor, distributor branch, or distributor representative for which
29 the applicant contends it qualifies under G.S. 20-305.2(a) that are
30 included on the license application.
- 31 b. If the applicant does not currently hold a motor vehicle dealer license
32 issued by the Division, the Commissioner determines, after an
33 evidentiary ~~hearing,~~hearing held no earlier than 30 days from the date
34 of publication of the notice required in sub-subdivision a1. of this
35 subdivision, that the applicant qualifies under one or more of the
36 exceptions to the prohibition against the issuance of a motor vehicle
37 dealer license to any manufacturer, factory branch, factory
38 representative, distributor, distributor branch, or distributor
39 representative provided in G.S. 20-305.2(a). The applicant shall bear
40 the burden of proving the applicant's qualification for the exception or
41 exceptions claimed.
- 42 (2) Upon ~~submission~~receipt of a license application by a manufacturer, factory
43 branch, factory representative, distributor, distributor branch, or distributor
44 representative that has not previously been issued a license by the Division,
45 the Division shall promptly publish notice of the license application in the
46 North Carolina Register. The notice shall include the applicant's name,
47 address, application date, and the names and titles of any individual listed on
48 the application as an owner, partner, member, or officer of the applicant. The
49 Division shall not approve or issue any license for a manufacturer, factory
50 branch, factory representative, distributor, distributor branch, or distributor

1 representative earlier than 15 days from the date the notice of the license or
2 license renewal application was published in the North Carolina Register."

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

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

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

12
13 **SEVERABILITY CLAUSE**

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

18
19 **EFFECTIVE DATE**

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