

§ 20-305.1. Automobile dealer warranty and recall obligations.

(a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch, shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's obligations for preparation, delivery, warranty, manufacturer-sponsored maintenance programs, manufacturer extended warranty, parts exchange programs, and recall service on its products. The disclosure required under this subsection shall include the schedule of compensation to be paid the dealers for parts, work, and service in connection with preparation, delivery, warranty, and recall service, and the time allowances for the performance of the work and service. In no event shall the schedule of compensation fail to include reasonable compensation for diagnostic work, shipping, if required by the manufacturer or distributor, and for battery disposal or other disposal charges and all other associated fees that were actually incurred by the dealer, and associated administrative requirements as well as repair service and labor. Time allowances for the performance of preparation, delivery, warranty, and recall work and service shall be reasonable and adequate for the work to be performed. The compensation paid under this section shall be reasonable, provided, however, that under no circumstances shall the reasonable compensation under this section for warranty and recall service be in an amount less than the dealer's current retail labor rate and the amount charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty work of like kind, provided the amount is competitive with the retail rates charged for parts and labor by other franchised dealers of the same line-make located within the dealer's market. If there is no other same line-make dealer located in the dealer's market or if all other same line-make dealers in the dealer's market are owned or operated by the same entities or individuals as the dealership being compared, the retail rates charged for parts and labor by other franchised dealers located in the dealer's market that sell competing line-make motor vehicles as the dealer may be considered when determining whether the dealer's rates are competitive.

(a1) The retail rate customarily charged by the dealer for parts and labor may be established at the election of the dealer by the dealer submitting to the manufacturer or distributor 100 sequential nonwarranty customer-paid service repair orders which contain warranty-like parts, or 60 consecutive days of nonwarranty customer-paid service repair orders which contain warranty-like parts, whichever is less, covering repairs made no more than 180 days before the submission and declaring the average percentage markup. The average of the parts markup rate and the average labor rate shall both be presumed to be reasonable, however, a manufacturer or distributor may, not later than 30 days after submission, rebut that presumption by reasonably substantiating that the rate is unfair and unreasonable in light of the retail rates charged for parts and labor by all other franchised motor vehicle dealers located in the dealer's relevant market area offering the same line-make vehicles. In the event there are no other franchised dealers offering the same line-make of vehicle in the dealer's relevant market area, the manufacturer or distributor may compare the dealer's retail rate for parts and labor with the retail rates charged for parts and labor by other same segment franchised dealers who are selling competing line-makes of vehicles within the dealer's relevant market area. In the event there is also no other same segment franchised dealer who is selling a competing line-make of vehicle within the dealer's relevant market area, the manufacturer or distributor may then compare the dealer's retail rate for parts and labor with the retail rates charged for parts and labor by other same line-make dealers or same segment franchised dealers who are selling competing line-makes of vehicles that are located within the relevant market area of the franchised dealer who is located in closest proximity, measured by straight-line distance, to the dealer, provided they are not all owned, operated, or controlled by the subject dealer. For the purposes of this section, the term "relevant market area" shall have the same meaning as set forth in G.S. 20-286(13b). The retail rate and the average labor rate shall go into effect 30 days following the manufacturer's approval, but in no event later than 60 days following the declaration, subject to audit of the submitted repair orders by the

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manufacturer or distributor and a rebuttal of the declared rate as described above. If the declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the average percentage markup based on that rebuttal not later than 30 days after such audit, but in no event later than 60 days after submission. If the dealer does not agree with the proposed average percentage markup, the dealer may file a protest with the Commissioner not later than 30 days after receipt of that proposal by the manufacturer or distributor. If such a protest is filed, the Commissioner shall inform the manufacturer or distributor that a timely protest has been filed and that a hearing will be held on such protest. In any hearing held pursuant to this subsection, the manufacturer or distributor shall have the burden of proving by a preponderance of the evidence that the rate declared by the dealer was unreasonable as described in this subsection and that the proposed adjustment of the average percentage markup is reasonable pursuant to the provisions of this subsection. If the dealer prevails at a protest hearing, the dealer's proposed rate, affirmed at the hearing, shall be effective as of 60 days after the date of the dealer's initial submission of the customer-paid service orders to the manufacturer or distributor. If the manufacturer or distributor prevails at a protest hearing, the rate proposed by the manufacturer or distributor, that was affirmed at the hearing, shall be effective beginning 30 days following issuance of the final order.

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

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

(a3) If a manufacturer or distributor furnishes a part or component to a dealer, at reduced or no cost, to use in performing repairs under a recall, campaign service action, or warranty repair, the manufacturer or distributor shall compensate the dealer for the part or component in the same manner as warranty parts compensation under this section by compensating the dealer on the basis of the dealer's average markup on the cost for the part or component as listed in the manufacturer's or distributor's price schedule less the cost for the part or component.

(a4) A manufacturer or distributor may not require a dealer to establish the retail rate customarily charged by the dealer for parts and labor by an unduly burdensome or time-consuming method or by requiring information that is unduly burdensome or time consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations.

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

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

(b1) All claims made by motor vehicle dealers pursuant to this section for compensation for delivery, preparation, warranty, and recall work, including compensation for a qualifying used motor vehicle in accordance with subsection (i) of this section, labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after receipt of claim from the dealer. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. Any claim not specifically disapproved in writing within 30 days after receipt shall be considered approved and payment is due immediately. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the claim either in accordance with the manufacturer's reasonable written procedures or by other reasonable means. A manufacturer or distributor shall

not deny a claim or reduce the amount to be reimbursed to the dealer as long as the dealer has provided reasonably sufficient documentation that the dealer:

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

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

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

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

(b2) A manufacturer may not deny a motor vehicle dealer's claim for sales incentives, service incentives, rebates, or other forms of incentive compensation, reduce the amount to be paid to the dealer, or charge a dealer back subsequent to the payment of the claim unless it can be shown that the claim was false or fraudulent or that the dealer failed to reasonably substantiate the claim either in accordance with the manufacturer's reasonable written procedures or by other reasonable means.

- (b3) (1) For purposes of this subsection, the term "manufacturer" shall include the terms "manufacturer," "manufacturer branch," "distributor," and "distributor branch," as those terms are defined in G.S. 20-286.
- (2) Notwithstanding the terms of any franchise or other agreement, or the terms of any program, policy, or procedure of any manufacturer, it shall be unlawful for any manufacturer to take or threaten to take any adverse action against a dealer located in this State, or to otherwise discriminate against any dealer located in this State when:

- a. The dealer failed to ensure that the purchaser or lessee paid personal property tax on the vehicle purchased or leased from the dealer;
- b. The dealer failed to ensure that the vehicle being purchased or leased had been permanently registered in this State or in any other state in which the dealer was not required to ensure that the vehicle's permanent registration was processed or submitted at the time of the vehicle's purchase or lease;
- c. The manufacturer extrapolated the imposition of any adverse action based on a certain number or percentage of the vehicles sold or leased by a dealer over a specified period of time having been exported or brokered; or
- d. The dealer sold or leased a motor vehicle to a customer who either exported the vehicle to a foreign country or who resold the vehicle to a third party, unless:
 - 1. The dealer reasonably should have known that the customer intended to export or resell the motor vehicle prior to the customer's purchase or lease of the vehicle from the dealer;
 - 2. The vehicle sold or leased by the dealer was exported to a foreign country within 180 days after the date of sale or lease by the dealer; and
 - 3. The affected manufacturer provided written notification to the affected motor vehicle dealer of the resale or export within 12 months from the date of sale or lease.

Notwithstanding the provisions of sub-subdivision d. of this subdivision, a manufacturer may take adverse action against a dealer located in this State if the dealer sold or leased a motor vehicle to a customer who either exported the vehicle to a foreign country or who resold the vehicle to a third party and the dealer, prior to the customer's purchase or lease of the vehicle from the dealer, had actual knowledge that the customer intended to export or resell the motor vehicle.

- (3) The adverse action and discrimination prohibited under this subsection includes, but is not limited to, a manufacturer's actual or threatened:
 - a. Failure or refusal to allocate, sell, or deliver motor vehicles to the dealer;
 - b. Discrimination against any dealer in the allocation of vehicles;
 - c. Charging back or withholding payments or other compensation or consideration that a dealer is otherwise entitled to receive and that is not otherwise the subject of a dispute for warranty reimbursement or under a sales promotion, incentive program, contest, or other program or policy that would provide any compensation or support for the dealer;
 - d. Disqualification of a dealer from participating in, or discrimination against any dealer relating to, any sales promotion, incentive program, contest, or other program or policy that would provide any compensation or support for the dealer;
 - e. Termination of a franchise; or
 - f. The imposition of any fine, penalty, chargeback, or other disciplinary or punitive measure.

- (4) In any proceeding brought pursuant to this subsection, the affected manufacturer shall have the burden of proving that the dealer knew or

reasonably should have known that the customer intended to export or resell the motor vehicle prior to the customer's purchase or lease of the vehicle from the dealer, subject to the following provisions:

- a. There shall be a rebuttable presumption that the dealer, prior to the customer's purchase or lease of the vehicle, did not know nor should have reasonably known that the customer intended to export or resell the motor vehicle, if:
 1. Following the sale or lease, the dealer submitted the requisite documentation to the appropriate governmental entity to enable the vehicle to be titled, registered and, where applicable, sales or highway use tax paid in any state or territory within the United States in the name of a customer who was physically present at the dealership at or prior to the time of sale or lease; and
 2. The customer's identifying information was not included on a list of known or suspected exporters or resellers identified and made readily accessible to the dealer by the applicable manufacturer at the time of the sale or lease.
 - b. There shall be a rebuttable presumption that the dealer, prior to the customer's purchase or lease of the vehicle, knew or reasonably should have known that the customer intended to export or resell the motor vehicle if the customer's identifying information was included on a list of known or suspected exporters or resellers identified and made readily accessible to the dealer by the applicable manufacturer at the time of the sale or lease.
 - c. Nothing contained in subdivision (2) of this subsection shall be deemed to prevent or prohibit the Commissioner or the affected manufacturer from considering one or more of the factors delineated in sub-subdivisions a. through c. of subdivision (2) of this subsection in determining whether the dealer knew or reasonably should have known that the customer intended to export or resell the motor vehicle prior to the customer's purchase or lease of the vehicle from the dealer.
- (5) Any audit of a dealer by a manufacturer for sales or leases made to known exporters or brokers may only be conducted one time within any 12-month period and shall only be for the 12-month period immediately preceding the audit, provided, however, that nothing in this subsection shall prohibit or limit the ability of a manufacturer, factory branch, distributor, or distributor branch to conduct any audit of sales or leases made by one of its franchised dealers to known exporters or brokers for cause at any time during the permitted time period. For purposes of this subdivision, the term "for cause" means the dealer's sale or lease of motor vehicles to individuals identified on a list of known motor vehicle exporters or brokers previously provided by or posted on a Web site made accessible to the dealer by the manufacturer, factory branch, distributor, or distributor branch or reasonable evidence that the dealer knew or reasonably should have known that the customer intended to export or resell the motor vehicle.

(b4) Any person or other entity employed or contracted by a manufacturer, factory branch, distributor, or distributor branch to conduct an audit of a motor vehicle dealer regulated by this section shall comply with all the requirements of this section. It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to contract with or employ any

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person or other entity to conduct an audit of any motor vehicle dealer located in this State regulated under this section for which the person or other entity conducting the audit of the dealer would be in any part compensated on the basis of the dollar amount, volume, or number of chargebacks that would result to the dealer from the audit.

(c) In the event there is a dispute between the manufacturer, factory branch, distributor, or distributor branch, and the dealer with respect to any matter referred to in subsection (a), (b), (b1), (b2), (b3), (b4), (d), or (i) of this section, either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing on the subject and the decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Chapter 150B of the General Statutes; provided, however, that nothing contained herein shall give the Commissioner any authority as to the content of any manufacturer's or distributor's warranty. Upon the filing of a petition before the Commissioner under this subsection, any chargeback to or any payment required of a dealer by a manufacturer relating to warranty or recall parts or service compensation, or to sales incentives, service incentives, rebates, other forms of incentive compensation, or the withholding or chargeback of other compensation or support that a dealer would otherwise be eligible to receive, shall be stayed during the pendency of the determination by the Commissioner.

(d) Transportation damages. –

- (1) Notwithstanding the terms, provisions or conditions of any agreement or franchise, the manufacturer is liable for all damages to motor vehicles before delivery to a carrier or transporter.
- (2) If a new motor vehicle dealer determines the method of transportation, the risk of loss passes to the dealer upon delivery of the vehicle to the carrier.
- (3) In every other instance, the risk of loss remains with the manufacturer until such time as the new motor vehicle dealer or his designee accepts the vehicle from the carrier.
- (4) Whenever a motor vehicle is damaged while in transit when the carrier or the means of transportation is designated by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to the dealer, the dealer must:
 - a. Notify the manufacturer or distributor of such damage within three working days or within such additional time as authorized by the franchise agreement of the occurrence of the delivery of the motor vehicle as defined in subsection (1) of this section; and
 - b. Must request from the manufacturer or distributor authorization to repair the damages sustained or to replace the parts or accessories damaged.
- (5) In the event the manufacturer or distributor refuses or fails to authorize repair or replacement of any such damage within ten working days after receipt of notification of damage by the dealer, ownership of the motor vehicle shall revert to the manufacturer or distributor, and the dealer shall incur no obligation, financial or otherwise, for such damage to the motor vehicle.
- (5a) No manufacturer shall fail to disclose in writing to a new motor vehicle dealer, at the time of delivery of a new motor vehicle, the nature and extent of any and all damage and post-manufacturing repairs made to such motor vehicle while in the possession or under the control of the manufacturer if the cost of such post-manufacturing repairs exceeds three percent (3%) of the manufacturer's suggested retail price. A manufacturer is not required to disclose to a new motor vehicle dealer that any glass, tires or bumper of a new motor vehicle

was damaged at any time if the damaged item has been replaced with original or comparable equipment.

- (6) Nothing in this subsection (d) shall relieve the dealer of the obligation to cooperate with the manufacturer as necessary in filing any transportation damage claim with the carrier.

(e) **Damage/Repair Disclosure.** – Notwithstanding the provisions of subdivision (d)(4) of this section and in supplementation thereof, a new motor vehicle dealer shall disclose in writing to a purchaser of the new motor vehicle prior to entering into a sales contract any damage and repair to the new motor vehicle if the damage exceeds five percent (5%) of the manufacturer's suggested retail price as calculated at the rate of the dealer's authorized warranty rate for labor and parts.

- (1) A new motor vehicle dealer is not required to disclose to a purchaser that any damage of any nature occurred to a new motor vehicle at any time if the total cost of all repairs fails to exceed five percent (5%) of the manufacturer's suggested retail price as calculated at the time the repairs were made based upon the dealer's authorized warranty rate for labor and parts and the damaged item has been replaced with original or comparable equipment.
- (2) If disclosure is not required under this section, a purchaser may not revoke or rescind a sales contract or have or file any cause of action or claim against the dealer or manufacturer for breach of contract, breach of warranty, fraud, concealment, unfair and deceptive acts or practices, or otherwise due solely to the fact that the new motor vehicle was damaged and repaired prior to completion of the sale.
- (3) For purposes of this section, "manufacturer's suggested retail price" means the retail price of the new motor vehicle suggested by the manufacturer including the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer which is not included within the retail price suggested by the manufacturer for the new motor vehicle.

(f) The provisions of subsections (a), (b), (b1), (d) and (e) shall not apply to manufacturers and dealers of "motorcycles" as defined in G.S. 20-4.01(27).

(f1) The provisions of subsections (a), (b), (b1), (b2), and (c) of this section applicable to a motor vehicle manufacturer shall also apply to a component parts manufacturer. For purposes of this section, a component parts manufacturer means a person, resident, or nonresident of this State who manufactures or assembles new motor vehicle "component parts" and directly warrants the component parts to the consumer. For purposes of this section, component parts means an engine, power train, rear axle, or other part of a motor vehicle that is not warranted by the final manufacturer of the motor vehicle.

(f2) The provisions of subsections (d) and (e) of this section shall not apply to a State agency that assists the United States Department of Defense with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad.

(g) **Truck Dealer Cost Reimbursement.** – Every manufacturer, manufacturer branch, distributor, or distributor branch of new motor vehicles, or any affiliate or subsidiary thereof, which manufactures or distributes new motor vehicles with a gross vehicle weight rating of 16,000 pounds or more shall compensate its new motor vehicle dealers located in this State for the cost of special tools, equipment, and training for which its dealers are liable when the applicable manufacturer, manufacturer branch, distributor, or distributor branch sells a portion of its vehicle inventory to converters and other nondealer retailers. The purpose of this reimbursement is to compensate truck dealers for special additional costs these dealers are

required to pay for servicing these vehicles when the dealers are excluded from compensation for these expenses at the point of sale. The compensation which shall be paid pursuant to this subsection shall be applicable only with respect to new motor vehicles with a gross vehicle weight rating of 16,000 pounds or more which are registered to end users within this State and that are sold by a manufacturer, manufacturer branch, distributor, or distributor branch to either of the following:

- (1) Persons or entities other than new motor vehicle dealers with whom the manufacturer, manufacturer branch, distributor, or distributor branch has entered into franchises.
- (2) Persons or entities that install custom bodies on truck chassis, including, but not limited to, mounted equipment or specialized bodies for concrete distribution, firefighting equipment, waste disposal, recycling, garbage disposal, buses, utility service, street sweepers, wreckers, and rollback bodies for vehicle recovery; provided, however, that no compensation shall be required to be paid pursuant to this subdivision with respect to vehicles sold for purposes of manufacturing or assembling school buses. Additionally, no compensation shall be required to be paid pursuant to this subdivision with respect to any vehicles that were sold to the end user by a franchised new motor vehicle dealer.

The amount of compensation that shall be payable by the applicable manufacturer, manufacturer branch, distributor, or distributor branch shall be one thousand five hundred dollars (\$1,500) per new motor vehicle registered in this State whose chassis has a gross vehicle weight rating of 16,000 pounds or more. The compensation required pursuant to this subsection shall be paid by the applicable manufacturer, manufacturer branch, distributor, or distributor branch to its franchised new motor vehicle dealer in closest proximity to the registered address of the end user to whom the motor vehicle has been registered within 30 days after registration of the vehicle. Upon receiving a request in writing from one of its franchised dealers located in this State, a manufacturer, manufacturer branch, distributor, or distributor branch shall promptly make available to the dealer its records relating to the registered addresses of its new motor vehicles registered in this State for the previous 12 months and its payment of compensation to dealers as provided in this subsection.

(h) Right to Return Unnecessary Parts or Accessories. – Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to deny a franchised new motor vehicle dealer the right to return any part or accessory that the dealer has not sold after 15 months where the part or accessory was not obtained through a specific order initiated by the franchised new motor vehicle dealer, but instead was specified for, sold to, and shipped to the dealer pursuant to an automated ordering system, provided that the part or accessory is in the condition required for return to the manufacturer, factory branch, distributor, or distributor branch and the dealer returns the part within 60 days of it becoming eligible under this subsection. For purposes of this subsection, an "automated ordering system" shall be a computerized system required by the manufacturer that automatically specifies parts and accessories for sale and shipment to the dealer without specific order thereof initiated by the dealer. The manufacturer, factory branch, distributor, or distributor branch shall not charge a restocking or handling fee for any part or accessory being returned under this subsection.

(i) Compensation for Used Motor Vehicle Recall. – Notwithstanding the terms of any franchise or other agreement other than an agreement permitted by this subsection (i) of this section, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to compensate a franchised motor vehicle dealer for any qualifying used motor vehicle in the inventory of a dealer authorized to sell new motor vehicles of the same

line-make or by a dealer authorized to perform recall repairs on vehicles of the same line-make in the manner specified in this subsection. The manufacturer, factory branch, distributor, or distributor branch shall compensate the dealer for any qualifying used motor vehicle in the inventory of the dealer at the prorated rate of at least one and one-half percent (1.5%) per month of the average trade-in value of the qualifying used motor vehicle beginning on the date the vehicle becomes a qualifying used motor vehicle and ending on and including the date the vehicle ceases to be a qualifying used motor vehicle pursuant to subsection (j) of this section. Any claim by a dealer for compensation owed under this subsection may be submitted by the dealer on a monthly basis, and the manufacturer, factory branch, distributor, or distributor branch shall approve or disapprove the claim within 30 days of receipt of the claim and shall process and pay the claim within 60 days after the approval of the claim. Every manufacturer, manufacturer branch, distributor, and distributor branch licensed by the Commissioner under this Article shall establish a simple, convenient, and efficient process for its franchised dealers to submit claims for compensation under this subsection on a monthly basis. Such process shall provide for a manner and method for a dealer to demonstrate the inventory status of a qualifying used motor vehicle, provided the manner and method is reasonable and does not require information that is unduly burdensome. Nothing in this subsection shall prohibit a manufacturer, factory branch, distributor, or distributor branch from compensating a dealer for a qualifying used motor vehicle under a national recall compensation program instead of the basis established in this section, provided that the compensation paid to dealers under the program is equal to or exceeds the level of compensation required by this subsection on a monthly basis and the compensation payments are made within the time periods required by this section. Nothing in this subsection shall prohibit a dealer and a manufacturer, factory branch, distributor, or distributor branch from voluntarily entering an agreement the sole subject matter of which is compensation for a dealer for a used motor vehicle subject to a recall and which provides a compensation amount or other related terms that differ from the compensation amount and other requirements specified in subsection (j) of this section provided that the dealer's ability to participate in or qualify for any incentive program offered or sponsored by the manufacturer or distributor or to otherwise receive any discounts, credits, rebates, or incentives of any kind is not conditioned upon the dealer's willingness to enter such an agreement. Nothing in this subsection shall require a manufacturer, factory branch, distributor, or distributor branch to provide total compensation in excess of the total average trade-in value of the qualifying used motor vehicle.

(j) Definitions – The following definitions apply in this section:

- (1) "Average trade-in value" means the value of a used motor vehicle as determined by reference to a generally accepted, nationally published, third-party used vehicle valuation guide book.
- (2) "Qualifying used motor vehicle" means a motor vehicle that meets all of the following: (i) a used motor vehicle of a line-make for which the dealer holds an active franchise with the manufacturer to sell and service new motor vehicles; (ii) a used motor vehicle of a model subject to a recall notice and subject to or covered under a stop-sale or do-not-drive order issued by the manufacturer of the motor vehicle or issued by the National Highway Traffic Safety Administration; (iii) parts or other remedy sufficient to fully repair the underlying defect that resulted in the recall of the motor vehicle to the extent that the motor vehicle is no longer subject to or covered by a stop-sale or do-not-drive order issued by the manufacturer of the motor vehicle were not made available to the dealer within 30 days of the date of the notice of recall by the manufacturer; (iv) a motor vehicle in the dealer's inventory or otherwise owned by the dealer at the time a stop-sale or do-not-drive order is issued or taken into the used motor vehicle inventory of the dealer as a consumer

trade-in incident to the purchase of a motor vehicle from the dealer after the stop-sale or do-not-drive order is issued. A motor vehicle meeting the definition of a "qualifying used motor vehicle" pursuant to this subdivision shall cease to be a "qualifying used motor vehicle" on the earlier of the following: (i) the date the remedy or parts to fully repair the underlying defect that resulted in the recall of the motor vehicle to an extent that the motor vehicle is no longer subject to or covered by a stop-sale or do-not-drive order issued by the manufacturer of the motor vehicle are made available to the dealer; (ii) the date the dealer sells, trades, or otherwise disposes of the qualifying used motor vehicle; or (iii) the date the manufacturer provides notice to the dealer that the stop-sale or do-not-drive order is no longer in effect.

- (3) "Stop-sale or do-not-drive order" means a notification, directive, or order issued by a manufacturer, factory branch, distributor, or distributor branch to its franchised dealers or issued by the National Highway Traffic Safety Administration stating that motor vehicle models of certain used vehicles in inventory shall not be sold or leased, at either retail or wholesale, due to a federal safety recall for a defect or a noncompliance recall, or a federal emissions recall.

Nothing in this subsection shall be construed as excluding from the definition of a qualifying used motor vehicle a motor vehicle on which a previously issued notice of recall or a stop-sale or do-not-drive order remains in effect as of the effective date of this subsection, or a motor vehicle that becomes subject to a notice of recall or a stop-sale or do-not-drive order on or after the effective date of this subsection, provided that the motor vehicle otherwise meets the criteria for a qualifying used motor vehicle. Subsections (i) and (j) of this section shall not be applicable to any manufacturer, factory branch, distributor, or distributor branch that manufactures or distributes recreational vehicles.

(k) Any compensation provided to the dealer that meets the minimum requirements of subsection (i) of this section is exclusive and may not be combined with any other state or federal recall compensation civil remedy for used motor vehicles subject to recall. (1973, c. 88, s. 3; c. 1331, s. 3; 1983, c. 704, ss. 11-13; 1987, c. 827, s. 1; 1989, c. 614, ss. 1, 2; 1991, c. 561, ss. 1-4; 1993, c. 116, ss. 1, 2; 1995, c. 156, s. 1; 1997-319, s. 4; 1999-335, ss. 3, 3.1, 4; 2003-113, s. 5; 2003-258, s. 4; 2007-513, ss. 5-7, 11; 2009-338, ss. 3, 4; 2009-550, s. 2(c); 2011-290, s. 10; 2013-302, s. 10; 2015-209, ss. 6, 7, 8, 9.; 2017-148, s. 3; 2018-27, s. 2; 2019-125, ss. 6, 9; 2021-147, s. 9; 2023-116, s. 5.)