

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

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HOUSE BILL 447  
Committee Substitute Favorable 4/26/23

Short Title: Clarify Motor Vehicle Dealer Laws.

(Public)

Sponsors:

Referred to:

March 23, 2023

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY VARIOUS MOTOR VEHICLE DEALER LAWS.  
3 The General Assembly of North Carolina enacts:

4  
5 **DEALER INDEPENDENCE AND INCREASING THE AVAILABILITY OF ELECTRIC**  
6 **VEHICLES FOR RURAL CONSUMERS**

7 **SECTION 1.(a)** G.S. 20-305(53) reads as rewritten:

8 "(53) Notwithstanding the terms of any franchise or agreement, or the terms of any  
9 program or policy, to do any of the following if it has any franchised dealers  
10 in this ~~State and if State:~~

11 a. ~~If it permits retail customers the option of reserving or requesting to~~  
12 ~~purchase or lease a vehicle directly from such manufacturer or~~  
13 ~~distributor; distributor, to do any of the following:~~

14 ~~a-1.~~ Fail to assign any retail vehicle reservation or request to  
15 purchase or lease received by the manufacturer or distributor  
16 from a resident of this State to the franchised dealer authorized  
17 to sell that make and model which is designated by the  
18 customer, or if none is designated, to its franchised dealer  
19 authorized to sell that make and model located in closest  
20 proximity to the customer's location, provided that if the  
21 customer does not purchase or lease the vehicle from that  
22 dealer within 10 days of the vehicle being assigned to the  
23 dealer, or if the customer requests that the transaction be  
24 assigned to another dealer, then the manufacturer or distributor  
25 may assign the transaction to another franchised dealer  
26 authorized to sell that make and model.

27 ~~b-2.~~ Prohibit a retail customer that has reserved or requested to  
28 purchase or lease a vehicle directly from the manufacturer or  
29 distributor from negotiating the final purchase price of the  
30 vehicle directly with the dealer if the dealer is authorized to sell  
31 that make and model and to agree on a final price for a new  
32 motor vehicle which varies from the MSRP established by the  
33 manufacturer or distributor.

34 ~~e-3.~~ Prohibit a retail customer that has reserved or requested to  
35 purchase or lease a vehicle directly from the manufacturer or  
36 distributor from using any vehicle financing or leasing source



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1 available from or through the dealer to whom the customer's  
2 vehicle reservation or request to purchase or lease has been  
3 assigned or to prohibit a franchised dealer in this State from  
4 offering and negotiating directly with the customer the terms  
5 of vehicle financing or leasing through all sources available to  
6 the dealer.

7 ~~d.4.~~ Prohibit a retail customer that has reserved or requested to  
8 purchase or lease a vehicle directly from the manufacturer or  
9 distributor from purchasing on terms negotiated or agreed to  
10 directly between the customer and the dealer to whom the  
11 customer's reservation or request to purchase or lease has been  
12 assigned, any service contract, extended warranty, vehicle  
13 maintenance contract, or guaranteed asset protection (GAP)  
14 agreement, or any other vehicle-related products and services  
15 offered by the dealer, provided that a manufacturer, distributor,  
16 or captive finance source shall not be required to finance any  
17 such product or service that is not offered or supported by the  
18 manufacturer or distributor.

19 ~~e.5.~~ Prohibit a retail customer that has reserved or requested to  
20 purchase or lease a vehicle directly from the manufacturer or  
21 distributor and the dealer to whom the customer's reservation  
22 or request to purchase or lease has been assigned from directly  
23 negotiating the trade-in value the customer will receive, or to  
24 prohibit the dealer from conducting an on-site inspection of the  
25 condition of a trade-in vehicle before the dealer becomes  
26 contractually obligated to accept the trade-in value negotiated.

27 ~~f.6.~~ Use a third party to accomplish what would otherwise be  
28 prohibited by this subdivision.

29 b. Fail or refuse to do any of the following:

30 1. Allow consumers located in this State the ability to directly  
31 purchase from any of its franchised dealers in this State all  
32 makes and models of new vehicles the dealer is authorized to  
33 sell; provided that this sub-subdivision is not violated to the  
34 extent that the inability of the manufacturer or distributor to  
35 provide vehicles to the dealer is based on acts of God, labor  
36 strikes, unavailability of parts, recalls, or material shortages.

37 2. Require that all of the new vehicles manufactured or  
38 distributed by the manufacturer or distributor that are sold or  
39 leased to purchasers or lessees located in this State be  
40 physically delivered to the ultimate purchaser or lessee by the  
41 same line-make franchised dealer selected by the purchaser or  
42 lessee, or in the absence of such selection, by the same  
43 line-make dealer from whom the vehicle was purchased or  
44 leased, or by the same line-make dealer that is located in  
45 closest proximity to the purchaser or lessee.

46 c. Fail or refuse to allow all of its franchised dealers located in this State  
47 to do any of the following:

48 1. Subject to availability, have the ability to maintain on the  
49 ground and in the dealer's stock a reasonable supply of all  
50 makes and models of new vehicles the dealer is authorized to  
51 sell; provided, however, that this sub-sub-subdivision is not

- 1 violated to the extent that the inability of the manufacturer to  
2 provide a reasonable on-the-ground supply of new vehicles to  
3 dealers is based on Acts of God, labor strikes, unavailability of  
4 parts, recalls, material shortages, or other factors and events  
5 beyond the control of the manufacturer or distributor.
- 6 2. Have the right to store new and used batteries used for electric  
7 vehicles and hybrid electric vehicles at a safe and secure  
8 location selected and paid for by the dealer that is separate from  
9 the dealership premises or fail or refuse to compensate dealers  
10 for the full cost of storing used batteries more than 30 days  
11 after the manufacturer or distributor has been notified by the  
12 dealer of their availability to be picked up.
- 13 3. Have the opportunity to purchase used vehicle inventory  
14 distributed or made available by that manufacturer or  
15 distributor without imposing any additional conditions or  
16 requirements on their dealers; provided that a manufacturer or  
17 distributor may uniformly restrict dealers to purchase through  
18 such program only used vehicles for which the dealer holds a  
19 franchise.
- 20 4. Have the opportunity to order from or through the  
21 manufacturer or distributor, receive, and maintain in stock a  
22 reasonable supply of parts required for service and repair of the  
23 manufacturer's or distributor's vehicles based on the volume of  
24 service work performed by the dealer; provided that this  
25 sub-sub-subdivision is not violated to the extent that the failure  
26 of the manufacturer or distributor to provide parts is caused by  
27 the occurrence of product shortages resulting from natural  
28 disasters, unavailability of parts, labor strikes, or product  
29 recalls beyond the control of the manufacturer or distributor.
- 30 5. Have, if the manufacturer or distributor has not contributed  
31 money or content toward the dealer's advertising, the right to  
32 independently determine the types of physical and digital  
33 advertising media the dealer chooses to advertise for all brands,  
34 models, and types of vehicles offered for sale by the dealer as  
35 well as the content and format of the advertising and all  
36 locations where the dealer chooses to establish, publish,  
37 broadcast, circulate, or display such advertising and the  
38 individuals to whom advertising is targeted or directed;  
39 provided that nothing in this sub-sub-subdivision allows a  
40 dealer to infringe upon or to interfere with the intellectual  
41 property rights of manufacturers and distributors or to  
42 advertise the products offered by the manufacturer or  
43 distributor in a manner that disparages or violates the  
44 reasonable brand image requirements of the manufacturer or  
45 distributor.
- 46 d. Engage in any of the following actions:
- 47 1. Retain ownership of new motor vehicles until they are sold or  
48 leased to retail customers located in this State, except for fleet  
49 sales to a fleet customer that has a designation as such by the  
50 manufacturer or distributor.



1 manufacturer's or distributor's TAVs to determine the  
2 minimum TAV investment each dealer would need to  
3 make for training, facilities, tools, parts, equipment,  
4 and charging stations for vehicle service and for  
5 training dealership employees and customers.  
6 Charging stations for use by the public and all other  
7 charges or expenditures not technically essential to sell  
8 and service the manufacturer's or distributor's TAVs  
9 shall not be required or included in determining a  
10 dealer's minimum TAV investment. The minimum  
11 TAV investment established for each dealer must be  
12 scaled based on the estimated number of the  
13 manufacturer's or distributor's new TAVs the dealer  
14 would be anticipated to sell and the number of TAVs  
15 the dealer would be expected to service within the  
16 following three-year period. In the event that a  
17 manufacturer or distributor had performed an  
18 individualized dealer assessment required in this  
19 sub-sub-sub-subdivision prior to July 1, 2023, the  
20 assessment shall be deemed to satisfy the requirements  
21 contained in this sub-sub-sub-subdivision as long as it  
22 complies with all of the requirements of an individual  
23 TAV assessment established in this  
24 sub-sub-sub-subdivision and the TAV assessment  
25 contains no charges in excess of those charges  
26 includable under this sub-sub-sub-subdivision. It shall  
27 be unlawful for a manufacturer or distributor to require  
28 a dealer to pay for an assessment of the type required  
29 under this sub-sub-sub-subdivision if the manufacturer  
30 or distributor requires that an assessment be performed  
31 as a prerequisite for the dealer to sell or lease TAVs that  
32 the manufacturer or distributor sells or distributes.

33 II. To charge a dealer or require that a dealer located in  
34 this State invest or spend more than ten percent (10%)  
35 above the minimum TAV investment determined in  
36 sub-sub-sub-subdivision I. of this sub-sub-subdivision  
37 in order to sell and service any and all TAV models that  
38 the manufacturer or distributor makes available for  
39 purchase or lease in this State by or through its same  
40 line-make dealers. Any requirement that a dealer invest  
41 or spend more than ten percent (10%) above the TAV  
42 investment determined in sub-sub-sub-subdivision I. of  
43 this sub-sub-subdivision shall be void and of no effect,  
44 and the affected manufacturer or distributor shall be  
45 required to allocate TAVs to the dealer and otherwise  
46 comply with all of the requirements contained in this  
47 sub-subdivision as if such excessive requirement had  
48 been satisfied.

49 III. To fail or refuse to allocate all TAV models offered by  
50 the manufacturer or distributor for sale or lease in this  
51 State in accordance with the requirements of this

sub-sub-subdivision to each of its same line-make  
franchised dealers located in this State that has made  
the minimum TAV investment determined pursuant to  
sub-sub-sub-subdivision I. of this sub-sub-subdivision.

7. Withhold all or any portion of any incentive payment from any of its dealers located in this State on the basis of a dealer's failure to comply with any condition or requirement that is unlawful, prohibited, contrary, or inconsistent with any of the provisions of this subdivision.

8. Require, coerce, or attempt to coerce a dealer to make expenditures related to achieving CO2 reductions or neutrality at the dealer's facility at the expense of the dealer.

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

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

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

a. ~~displaying~~ Displaying in the dealer's showroom or elsewhere within the dealership facility any sports-related honors, awards, photographs, 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 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

1 corporate stock; add one or more new managers, members, or shareholders;  
2 purchase or sell franchises or line-makes of vehicles; acquire or sell real  
3 estate; invest in new or substantially remodeled or updated facilities; borrow  
4 money in the name of the dealer; select a new or successor dealer principal;  
5 file a petition in bankruptcy or receivership; or require that owners contribute  
6 additional capital. Nothing in this subdivision shall prohibit a manufacturer or  
7 distributor from requiring the dealer or dealer applicant to designate a single  
8 natural person that the manufacturer or distributor may contact and who shall  
9 be responsible for all business communications and day-to-day business  
10 decisions with the manufacturer or distributor, or from requiring that the  
11 designated person own a minimum percentage of ownership reasonably  
12 determined by the manufacturer or distributor."  
13

## 14 DEALER AND MANUFACTURER WEBSITES

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

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

18 a. Dealer websites. – It is unlawful for any manufacturer or distributor to  
19 unreasonably interfere with the establishment, maintenance,  
20 operation, or control of either a single location dealer website or a  
21 dealer group website. For purposes of this subdivision, the term "single  
22 location dealer website" means a website that is owned or operated by  
23 a new motor vehicle dealer or an entity that is affiliated with a new  
24 motor vehicle dealer licensed in this State and that advertises, markets,  
25 displays, sells, or leases new and used motor vehicles that are only  
26 available for sale or lease at a single dealership location within this  
27 State. For purposes of this subdivision, the term "dealer group  
28 website" means a website that is owned or operated by one or more  
29 affiliated new motor vehicle dealers or one or more affiliated entities  
30 licensed in this State and that advertises, markets, displays, sells, or  
31 leases new and used motor vehicles that are available for sale or lease  
32 at more than one dealership location within this State. For purposes of  
33 this sub-subdivision, the term "unreasonably interfere" includes, but is  
34 not limited to, any contractual prohibition or any policy or any bonus  
35 or incentive program created or sponsored by a manufacturer or  
36 distributor that does any of the following:

37 1. Prohibits or in any way disincentivizes any of its franchised  
38 dealers in this State that own or operate either a single location  
39 dealer website or a dealer group website from prominently  
40 displaying throughout the website the name and logo of the  
41 applicable dealer or dealer group.

42 2. Requires or provides bonuses or incentives for any dealer or  
43 dealer group located in this State to use a digital platform or  
44 digital retailing tool provided, recommended, endorsed, or  
45 approved by the manufacturer or distributor; provided,  
46 however, that the digital platform or digital retailing tool  
47 selected by the dealer possesses substantially the same level of  
48 quality and performs substantially the same functions as the  
49 digital platform or digital retailing tool provided,  
50 recommended, endorsed, or approved by the manufacturer or  
51 distributor.





1 manufacturer or distributor shall be entitled to receive the full amount  
 2 of the bonus or incentive being offered by the manufacturer or  
 3 distributor whether or not the dealer has complied with the terms or  
 4 conditions of any such bonus or incentive program that are  
 5 inconsistent with the provisions of this subdivision.

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

8 1. Fail to give, to the extent technologically feasible, substantially  
 9 equivalent visibility to all of the manufacturer's or distributor's  
 10 franchised dealers that are located in this State, on any website  
 11 owned, operated, or controlled by the manufacturer or  
 12 distributor on which customers are permitted to order or  
 13 reserve vehicles for purchase or lease.

14 2. Maintain a website or other electronic or digital means of  
 15 communication for negotiating or otherwise establishing prices  
 16 or other binding terms of sale or lease of new vehicles directly  
 17 between the manufacturer or distributor and retail customers  
 18 located in this State, provided that a manufacturer, factory  
 19 branch, distributor, or distributor branch may maintain a  
 20 website or other electronic or digital means of communication  
 21 if the final selling or lease price of the new vehicles is  
 22 determined by eligible dealers, and provided further that a  
 23 dealer may not be required to set a non-negotiable price as a  
 24 condition for the dealer's inclusion on any website owned,  
 25 controlled, or maintained by a manufacturer or distributor."

26  
 27 **PROHIBITING UNFAIR COMPETITION/PREVENTING DEALERS FROM SELLING**  
 28 **ELECTRIC VEHICLES AND OTHER VEHICLES WITH ADVANCED**  
 29 **TECHNOLOGIES**

30 **SECTION 3.** G.S. 20-305.2 is amended by adding a new subsection to read:

31 "(g) It is unlawful for any manufacturer or distributor that has any franchised dealers in  
 32 this State to sell, lease, or otherwise distribute one or more models, brands, or series of motor  
 33 vehicles in this State that are propelled solely or primarily by electric or hydrogen, or vehicles  
 34 that utilize autonomous self-driving technology rated at Level 3, 4, or 5 by the Society of  
 35 Automotive Engineers, without making some vehicles utilizing the same or substantially similar  
 36 advanced technology functionally available for purchase by all of its franchised dealers located  
 37 in this State within 12 months of the date vehicles possessing such advanced technology are first  
 38 delivered to any of the manufacturer's or distributor's dealers in this State or at such time as the  
 39 manufacturer or distributor has sold at least 2,500 vehicles utilizing such advanced technology  
 40 in this State, whichever date occurs first. The Commissioner shall promptly investigate any  
 41 complaint brought by a franchised dealer that a manufacturer or distributor with whom the dealer  
 42 holds a franchise or any affiliated entity has violated this subsection, and, if the Commissioner  
 43 determines that this subsection has been violated, the Commissioner shall take appropriate action  
 44 against the subject manufacturer or distributor."

45  
 46 **RURAL DEALER MINIMUM EARNED ALLOCATION RIGHTS**

47 **SECTION 4.** G.S. 20-305(14) reads as rewritten:

48 "(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or  
 49 accessories in reasonable quantities relative to the new motor vehicle dealer's  
 50 facilities and sales potential in the new motor vehicle dealer's market area as  
 51 determined in accordance with reasonably applied economic principles, or

1 within a reasonable time, after receipt of an order from a dealer having a  
2 franchise for the retail sale of any new motor vehicle sold or distributed by the  
3 manufacturer or distributor, any new vehicle, parts or accessories to new  
4 vehicles as are covered by such franchise, and such vehicles, parts or  
5 accessories as are publicly advertised as being available or actually being  
6 delivered. The delivery to another dealer of a motor vehicle of the same model  
7 and similarly equipped as the vehicle ordered by a motor vehicle dealer who  
8 has not received delivery thereof, but who has placed his written order for the  
9 vehicle prior to the order of the dealer receiving the vehicle, shall be prima  
10 facie evidence of a delayed delivery of, or refusal to deliver, a new motor  
11 vehicle to a motor vehicle dealer within a reasonable time, without cause.  
12 Additionally, except as may be required by any consent decree of the  
13 Commissioner or other order of the Commissioner or court of competent  
14 jurisdiction, any sales objectives which a manufacturer, factory branch,  
15 distributor, or distributor branch establishes for any of its franchised dealers  
16 in this State must be reasonable, and every manufacturer, factory branch,  
17 distributor, or distributor branch must allocate its products within this State in  
18 a manner that does all of the following:

- 19 a. Provides each of its franchised dealers in this State an adequate supply  
20 of vehicles by series, product line, and model in a fair, reasonable, and  
21 equitable manner based on each dealer's historical selling pattern and  
22 reasonable sales standards as compared to other same line-make  
23 dealers in the State.
- 24 b. Allocates an adequate supply of vehicles to each of its dealers by  
25 series, product line, and model so as to allow the dealer to achieve any  
26 performance standards established by the manufacturer and  
27 distributor.
- 28 b1. Allocates vehicles to each of its dealers that are configured in a manner  
29 and that contain options that take into consideration the dealer's  
30 historical experience and success in selling vehicles similarly  
31 configured and that contain similar options.
- 32 c. Is fair and equitable to all of its franchised dealers in this State.
- 33 d. Makes available to each of its franchised dealers in this State a  
34 minimum of one of each vehicle series, model, or product line that the  
35 manufacturer makes available to any dealer in this State and advertises  
36 in the State as being available for purchase.
- 37 e. Does not unfairly discriminate among its franchised dealers in its  
38 allocation process.
- 39 f. Discloses to all of its franchised dealers handling the same line-make  
40 both its system of allocation and the actual new vehicle allocation that  
41 occurred during the previous calendar month and during the previous  
42 12 calendar months, including, but not limited to, a complete  
43 breakdown by model, color, equipment, and other items or terms; a  
44 concise listing of same line-make dealerships broken down by same  
45 line-make dealers within each dealer's area of responsibility, district,  
46 region, and the State; and an explanation of the derivation of the  
47 allocation system, including its mathematical formula or formulae, in  
48 a clear and comprehensible form. The data provided by the  
49 manufacturer or distributor pursuant to this sub-subdivision is required  
50 to reflect all new vehicles allocated to its franchised dealers in this  
51 State pursuant to a mathematical formula or on a discretionary basis.

1 All of the allocation data that a manufacturer or distributor is required  
2 to provide to each of its same line-make dealers in this State pursuant  
3 to this sub-subdivision shall either be made available for its dealers to  
4 review online at their discretion or be provided to dealers regularly, at  
5 least on a quarterly basis, as well as promptly upon the email, online,  
6 or other written request of a dealer or in the event a manufacturer or  
7 distributor has changed its allocation formula, process, or policies.

8 g. Provides each of its franchised dealers in this State a process for a  
9 dealer to appeal the dealer's vehicle allocation should the dealer  
10 believe it was not allocated or did not receive vehicle inventory in a  
11 manner that complies with both this subdivision and the  
12 manufacturer's or distributor's uniformly applied allocation formula.  
13 Participation in the appeal process does not waive or impair any rights,  
14 claims, or defenses available to the dealer, manufacturer, or distributor  
15 under applicable law. All in-person meetings, mediations, or other  
16 proceedings related to the appeal process shall be conducted in this  
17 State unless otherwise agreed to by the parties.

18 h. If, during the immediately preceding 12 calendar months, a new motor  
19 vehicle dealer located in this State sold a total of 250 or fewer new  
20 motor vehicles manufactured or distributed by a particular  
21 manufacturer or distributor, that manufacturer or distributor shall be  
22 required to allocate to the dealer and deliver in a timely manner,  
23 monthly and on a model-by-model or series basis, no fewer than the  
24 number of new motor vehicles of each such model or series that dealer  
25 sold at retail during the immediately previous calendar month, not to  
26 exceed five vehicles per month of any given model. The minimum  
27 vehicle allocation rights of dealers pursuant to this sub-subdivision  
28 shall be filled by a manufacturer or distributor from the entire  
29 allocation of all new motor vehicles that the manufacturer or  
30 distributor has designated for distribution within this State without  
31 regard to any allocation or distribution levels, tiers, pools, groups, or  
32 priorities the manufacturer or distributor has established for dealers, or  
33 whether such other sales are retail, wholesale, or fleet. The minimum  
34 vehicle allocation rights of dealers pursuant to this sub-subdivision  
35 shall not be applicable with respect to any model or series of vehicle  
36 for which a manufacturer or distributor has sold fewer than 1,000 units  
37 in this State within the previous 12 months.

38 This subdivision is not violated, however, if such failure is caused solely by  
39 the occurrence of temporary international, national, or regional product  
40 shortages resulting from natural disasters, unavailability of parts, labor strikes,  
41 product recalls, and other factors and events beyond the control of the  
42 manufacturer that temporarily reduce a manufacturer's product supply. In the  
43 event of any such shortages in vehicle availability, each manufacturer or  
44 distributor shall be required to allocate and distribute all available new motor  
45 vehicles to its franchised dealers in this State in accordance with the allocation  
46 priorities established in this subdivision and in a fair, equitable, and  
47 nondiscriminatory manner. The willful or malicious maintenance, creation, or  
48 alteration of a vehicle allocation process or formula by a manufacturer, factory  
49 branch, distributor, or distributor branch that is in any part designed or  
50 intended to force or coerce a dealer in this State to close or sell the dealer's  
51 franchise, cause the dealer financial distress, or to relocate, update, or renovate

1 the dealer's existing dealership facility shall constitute an unfair and deceptive  
2 trade practice under G.S. 75-1.1."  
3

#### 4 **ECONOMIC COERCION**

5 **SECTION 5.** G.S. 20-305 is amended by adding a new subdivision to read:

6 "(57) To use economic coercion to influence a dealer to participate in or comply  
7 with any program or policy sponsored, endorsed, or supported by the  
8 manufacturer or distributor, in order to sell any model, type, or series of  
9 vehicle or other products or services, or to take or refuse to take any action or  
10 to engage in or refuse to engage in any conduct. For purposes of this Chapter,  
11 the terms "economic coercion," "coerce," and "attempt to coerce" shall include  
12 the manufacturer's or distributor's use of rebates, credits, incentive payments,  
13 or other consideration that has the effect of causing a variance in the price of  
14 new motor vehicles offered to its franchised dealers located in the State or that  
15 offers participating or compliant dealers the ability to sell or receive any  
16 model, type, or series of vehicle or other products or services offered by or  
17 through the manufacturer or distributor. Each of the manufacturer's or  
18 distributor's franchised dealers in this State shall be entitled to receive the  
19 maximum rebate, credit, incentive payment, or other consideration the  
20 manufacturer or distributor is offering under its program or policy, or to sell  
21 or receive any model, type, or series of vehicle or other products or services  
22 offered by or through the manufacturer or distributor, regardless of whether  
23 the dealer has complied with any or all of the conditions or requirements of  
24 the manufacturer's program or policy.

25 Nothing contained in this subdivision shall be deemed to prohibit a  
26 manufacturer or distributor from establishing for each dealer reasonable  
27 requirements for training, facilities, parts, and equipment necessary to sell and  
28 service any model, type, or series of vehicle or other products or services  
29 offered by or through the manufacturer or distributor, as long as these  
30 requirements are scaled to take into consideration that dealer's reasonably  
31 anticipated sales volumes of these products or services over the following  
32 three-year period."

#### 33 **ADD DEFINITION OF "SELL" OR "SELLING"**

34 **SECTION 6.** G.S. 20-286 reads as rewritten:

##### 35 **"§ 20-286. Definitions.**

36 The following definitions apply in this Article:

37 ...

38  
39 (15a) Sell or selling. – Includes taking deposits or receiving payment for the retail  
40 purchase, lease, exchange, or subscription of a motor vehicle; accepting a  
41 reservation for a specific motor vehicle identified by Vehicle Identification  
42 Number or other product identifier from a retail customer; setting the retail  
43 price for the retail purchase, lease, or exchange of a motor vehicle; offering or  
44 negotiating terms for the purchase, lease, finance, or exchange of a motor  
45 vehicle directly with a retail customer; negotiating directly with a retail  
46 customer the value of a motor vehicle being traded in as part of the purchase,  
47 lease, exchange, or subscription of a motor vehicle; offering or negotiating  
48 directly with a retail customer any service contract, extended warranty,  
49 vehicle maintenance contract, guaranteed asset protection agreement, or any  
50 other vehicle-related products and services in connection with the purchase,  
51 lease, or exchange of a motor vehicle; any transaction where the title of a new

1 motor vehicle or a used motor vehicle is transferred to a retail customer; and  
2 also any retail lease transaction where a retail customer leases a vehicle for a  
3 period of at least 12 months. The terms "sell," "selling," "sold," "exchange,"  
4 "retail sales," "selling activities," and "leases" are synonymous.

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

10 ...."

## 11 12 **MANUFACTURER SALE OR SUBSCRIPTION OF ADD-ON PRODUCTS**

13 **SECTION 7.(a)** G.S. 20-305 is amended by adding a new subdivision to read:

14 "(58) To engage in this State in any of the activities of a motor vehicle dealer as  
15 defined in G.S. 20-286, except as expressly permitted by G.S. 20-305.2, or to  
16 compete with any of its same line-make dealers in this State with respect to  
17 the sale of any products or services that the dealer is authorized to sell pursuant  
18 to the dealer's franchise with the manufacturer or distributor, by the  
19 manufacturer's or distributor's remote electronic transmission to the retail  
20 customer of any motor vehicle accessory, option, add-on, feature,  
21 improvement, or upgrade."

22 **SECTION 7.(b)** G.S. 20-305 is amended by adding a new subdivision to read:

23 "(59) To sell or lease any motor vehicle of a line-make for which it has any  
24 franchised dealers in this State directly to an end user located in this State or  
25 to activate for a fee any permanent or temporary motor vehicle accessory,  
26 option, add-on, feature, improvement, or upgrade, on or to any vehicle owned  
27 or leased by an end user located in this State within a five-year period  
28 subsequent to the sale or lease of the vehicle to the retail customer, in a manner  
29 other than through a same line-make dealer."

30 **SECTION 7.(c)** Subsection (a) of G.S. 20-305.2 is amended by adding a new  
31 subdivision to read:

32 "(9) Notwithstanding the provisions of G.S. 20-305(59), and provided that the new  
33 motor vehicle dealers of the line-make located in this State are permitted to  
34 sell retail customers the same motor vehicle accessory, option, add-on,  
35 feature, improvement, or upgrade for a motor vehicle of the line-make  
36 manufactured, imported, or distributed by the manufacturer or distributor, the  
37 manufacturer or distributor may, on the same terms offered to the dealer, also  
38 sell to the retail customer or activate for a fee a permanent or temporary motor  
39 vehicle accessory, option, add-on, feature, improvement, or upgrade for a  
40 motor vehicle of a line-make manufactured, imported, or distributed by the  
41 manufacturer or distributor; provided, however, that the accessory, option,  
42 add-on, feature, improvement, or upgrade is activated or installed directly on  
43 the retail customer's motor vehicle through remote electronic transmission,  
44 and further provided that if such motor vehicle was sold or leased as new by  
45 a franchised new motor vehicle dealer in this State within the five-year period  
46 preceding such remote electronic transmission, then the manufacturer or  
47 distributor must pay such franchised new motor vehicle dealer a minimum of  
48 twenty percent (20%) of the gross revenue received by the manufacturer,  
49 distributor, agent, or common entity for such sale or activation and renewals  
50 during such five-year period. The manufacturer or distributor must provide  
51 each of its franchised dealers with a quarterly statement of the revenue

1           received by the manufacturer or distributor, its agent, or its common entity  
2           during that quarter for such remote sales or activations and renewals relating  
3           to those vehicles sold or leased by the dealer during the five-year period  
4           subsequent to the sale or lease of the vehicle to the retail customer. When  
5           providing a new motor vehicle to a dealer for offer or sale to the public, it shall  
6           be unlawful for the manufacturer or distributor to fail to provide to the dealer  
7           a written disclosure that may be provided to a potential buyer of the new motor  
8           vehicle of each accessory or function of the vehicle that may be initiated,  
9           updated, changed, or maintained by the manufacturer or distributor through  
10           over the air or remote means and the charge to the customer for initiation,  
11           update, change, or maintenance. A manufacturer or distributor may comply  
12           with this subdivision by notifying the dealer that the information is available  
13           on a website or by other digital means."  
14

## 15 **WARRANTY REIMBURSEMENT CLARIFICATION**

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

### 17 **"§ 20-305.1. Automobile dealer warranty and recall obligations.**

18           ...

19           (a1) The retail rate customarily charged by the dealer for parts and labor may be  
20 established at the election of the dealer by the dealer submitting to the manufacturer or distributor  
21 100 sequential nonwarranty customer-paid service repair orders which contain warranty-like  
22 parts, or 60 consecutive days of nonwarranty customer-paid service repair orders which contain  
23 warranty-like parts, whichever is less, covering repairs made no more than 180 days before the  
24 submission and declaring the average percentage markup. The average of the parts markup rate  
25 and the average labor rate shall both be presumed to be ~~reasonable, accurate,~~ however, a  
26 manufacturer or distributor may, not later than 30 days after submission, rebut that presumption  
27 by reasonably substantiating that the rate is ~~unfair and unreasonable in light of the retail rates~~  
28 ~~charged for parts and labor by all other franchised motor vehicle dealers located in the dealer's~~  
29 ~~relevant market area offering the same line make vehicles. In the event there are no other~~  
30 ~~franchised dealers offering the same line make of vehicle in the dealer's relevant market area, the~~  
31 ~~manufacturer or distributor may compare the dealer's retail rate for parts and labor with the retail~~  
32 ~~rates charged for parts and labor by other same segment franchised dealers who are selling~~  
33 ~~competing line makes of vehicles within the dealer's relevant market area. In the event there is~~  
34 ~~also no other same segment franchised dealer who is selling a competing line make of vehicle~~  
35 ~~within the dealer's relevant market area, the manufacturer or distributor may then compare the~~  
36 ~~dealer's retail rate for parts and labor with the retail rates charged for parts and labor by other~~  
37 ~~same line make dealers or same segment franchised dealers who are selling competing~~  
38 ~~line makes of vehicles that are located within the relevant market area of the franchised dealer~~  
39 ~~who is located in closest proximity, measured by straight line distance, to the dealer, provided~~  
40 ~~they are not all owned, operated, or controlled by the subject dealer. For the purposes of this~~  
41 ~~section, the term "relevant market area" shall have the same meaning as set forth in~~  
42 ~~G.S. 20-286(13b).~~ requested is either (i) not supported by the submission and by declaring the  
43 accurate rate based upon the submission repair orders or (ii) fraudulent. The retail rate and the  
44 average labor rate shall go into effect 30 days following the manufacturer's approval, but in no  
45 event later than 60 days following the declaration, subject to ~~audit review~~ of the accuracy of the  
46 submitted repair orders by the manufacturer or distributor and a rebuttal of the declared rate as  
47 described above. If the declared rate is rebutted, the manufacturer or distributor shall propose an  
48 adjustment of the average percentage markup based on that rebuttal not later than 30 days after  
49 such audit, but in no event later than 60 days after submission. If the dealer does not agree with  
50 the proposed average percentage markup, the dealer may file a protest with the Commissioner  
51 not later than 30 days after receipt of that proposal by the manufacturer or distributor. If the

1 manufacturer or distributor believes the dealer's submission is fraudulent, the manufacturer or  
 2 distributor may file a protest with the Commissioner not later than 30 days following the dealer's  
 3 rejection of the rebuttal rate. If such a protest is filed, the Commissioner shall inform the  
 4 ~~manufacturer or distributor parties~~ that a timely protest has been filed and that a hearing will be  
 5 held on such protest. In any hearing held pursuant to this subsection, the manufacturer or  
 6 distributor shall have the burden of proving by a preponderance of the evidence that the rate  
 7 declared by the dealer was ~~unreasonable~~ either (i) inaccurate as described in this subsection and  
 8 that the proposed adjustment of the average percentage markup is reasonable pursuant to the  
 9 ~~provisions of this subsection. correct or (ii) that the rate claimed is fraudulent.~~ If the dealer  
 10 prevails at a protest hearing, the dealer's proposed rate, affirmed at the hearing, shall be effective  
 11 as of 60 days after the date of the dealer's initial submission of the customer-paid service orders  
 12 to the manufacturer or distributor. If the manufacturer or distributor prevails at a protest hearing,  
 13 the rate proposed by the manufacturer or distributor, that was affirmed at the hearing, shall be  
 14 effective beginning 30 days following issuance of the final order.

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

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

30 ...."

## 31 **GRANDFATHER EXTENSION**

32 **SECTION 9.** G.S. 20-305(30) reads as rewritten:

33 "(30) To vary the price charged to any of its franchised new motor vehicle dealers  
 34 located in this State for new motor vehicles based on the dealer's purchase of  
 35 new facilities, supplies, tools, equipment, or other merchandise from the  
 36 manufacturer, the dealer's relocation, remodeling, repair, or renovation of  
 37 existing dealerships or construction of a new facility, the dealer's participation  
 38 in training programs sponsored, endorsed, or recommended by the  
 39 manufacturer, whether or not the dealer is dualed with one or more other line  
 40 makes of new motor vehicles, or the dealer's sales penetration. Except as  
 41 provided in this subdivision, it shall be unlawful for any manufacturer, factory  
 42 branch, distributor, or distributor branch, or any field representative, officer,  
 43 agent, or any representative whatsoever of any of them to vary the price  
 44 charged to any of its franchised new motor vehicle dealers located in this State  
 45 for new motor vehicles based on the dealer's sales volume, the dealer's level  
 46 of sales or customer service satisfaction, the dealer's purchase of advertising  
 47 materials, signage, nondiagnostic computer hardware or software,  
 48 communications devices, or furnishings, or the dealer's participation in used  
 49 motor vehicle inspection or certification programs sponsored or endorsed by  
 50 the manufacturer.  
 51

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

5           Notwithstanding the foregoing, nothing in this subdivision shall be  
6 deemed to preclude a manufacturer from establishing sales contests or  
7 promotions that provide or award dealers or consumers rebates or incentives;  
8 provided, however, that the manufacturer complies with all of the following  
9 conditions:

- 10          a.       With respect to manufacturer to consumer rebates and incentives, the  
11 manufacturer's criteria for determining eligibility shall:
- 12               1.       Permit all of the manufacturer's franchised new motor vehicle  
13               dealers in this State to offer the rebate or incentive; and
  - 14               2.       Be uniformly applied and administered to all eligible  
15               consumers.
- 16          b.       With respect to manufacturer to dealer rebates and incentives, the  
17 rebate or incentive program shall:
- 18               1.       Be based solely on the dealer's actual or reasonably anticipated  
19               sales volume or on a uniform per vehicle sold or leased basis;
  - 20               2.       Be uniformly available, applied, and administered to all of the  
21               manufacturer's franchised new motor vehicle dealers in this  
22               State; and
  - 23               3.       Provide that any of the manufacturer's franchised new motor  
24               vehicle dealers in this State may, upon written request, obtain  
25               the method or formula used by the manufacturer in establishing  
26               the sales volumes for receiving the rebates or incentives and  
27               the specific calculations for determining the required sales  
28               volumes of the inquiring dealer and any of the manufacturer's  
29               other franchised new motor vehicle dealers located within 75  
30               miles of the inquiring dealer.

31           Nothing contained in this subdivision shall prohibit a manufacturer from  
32 providing assistance or encouragement to a franchised dealer to remodel,  
33 renovate, recondition, or relocate the dealer's existing facilities, provided that  
34 this assistance, encouragement, or rewards are not determined on a per vehicle  
35 basis.

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

40           In the event that as of October 1, 1999, a manufacturer was operating a  
41 program that varied the price charged to its franchised dealers in this State in  
42 a manner that would violate this subdivision, or had in effect a documented  
43 policy that had been conveyed to its franchised dealers in this State and that  
44 varied the price charged to its franchised dealers in this State in a manner that  
45 would violate this subdivision, it shall be lawful for that program or policy,  
46 including amendments to that program or policy that are consistent with the  
47 purpose and provisions of the existing program or policy, or a program or  
48 policy similar thereto implemented after October 1, 1999, to continue in effect  
49 as to the manufacturer's franchised dealers located in this State until ~~June 30,~~  
50 2025-June 30, 2028.



1           In the event that as of June 30, 2001, a manufacturer was operating a  
2           program that varied the price charged to its franchised dealers in this State in  
3           a manner that would violate this subdivision, or had in effect a documented  
4           policy that had been conveyed to its franchised dealers in this State and that  
5           varied the price charged to its franchised dealers in this State in a manner that  
6           would violate this subdivision, and the program or policy was implemented in  
7           this State subsequent to October 1, 1999, and prior to June 30, 2001, and  
8           provided that the program or policy is in compliance with this subdivision as  
9           it existed as of June 30, 2001, it shall be lawful for that program or policy,  
10          including amendments to that program or policy that comply with this  
11          subdivision as it existed as of June 30, 2001, to continue in effect as to the  
12          manufacturer's franchised dealers located in this State until ~~June 30, 2025~~June  
13          30, 2028.

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

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

#### 22 23 **SEVERABILITY CLAUSE**

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

#### 28 29 **EFFECTIVE DATE**

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