

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023**

**SESSION LAW 2023-116
HOUSE BILL 447**

AN ACT TO CLARIFY VARIOUS MOTOR VEHICLE DEALER LAWS.

The General Assembly of North Carolina enacts:

DEALER INDEPENDENCE AND INCREASING THE AVAILABILITY OF ELECTRIC VEHICLES FOR RURAL CONSUMERS

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

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

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

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

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

e.3. Prohibit a retail customer that has reserved or requested to purchase or lease a vehicle directly from the manufacturer or distributor from using any vehicle financing or leasing source available from or through the dealer to whom the customer's vehicle reservation or request to purchase or lease has been assigned or to prohibit a franchised dealer in this State from offering and negotiating directly with the customer the terms of vehicle financing or leasing through all sources available to the dealer.



- ~~d.~~4. Prohibit a retail customer that has reserved or requested to purchase or lease a vehicle directly from the manufacturer or distributor from purchasing on terms negotiated or agreed to directly between the customer and the dealer to whom the customer's reservation or request to purchase or lease has been assigned, any service contract, extended warranty, vehicle maintenance contract, or guaranteed asset protection (GAP) agreement, or any other vehicle-related products and services offered by the dealer, provided that a manufacturer, distributor, or captive finance source shall not be required to finance any such product or service that is not offered or supported by the manufacturer or distributor.
- ~~e.~~5. Prohibit a retail customer that has reserved or requested to purchase or lease a vehicle directly from the manufacturer or distributor and the dealer to whom the customer's reservation or request to purchase or lease has been assigned from directly negotiating the trade-in value the customer will receive, or to prohibit the dealer from conducting an on-site inspection of the condition of a trade-in vehicle before the dealer becomes contractually obligated to accept the trade-in value negotiated.
- ~~f.~~6. Use a third party to accomplish what would otherwise be prohibited by this subdivision.
- b. Fail or refuse to do any of the following:
 - 1. Allow retail customers located in this State the ability to directly purchase from any of its franchised dealers in this State all makes and models of new vehicles the dealer is authorized to sell; provided, however, that this sub-sub-subdivision is not violated to the extent that the inability of the manufacturer or distributor to provide vehicles to the dealer is based on acts of God, labor strikes, unavailability of parts, recalls, material shortages, natural disasters, or other factors or events beyond the control of the manufacturer or distributor.
 - 2. Require that all of the new vehicles manufactured or distributed by the manufacturer or distributor that are sold or leased to retail customers located in this State be physically delivered to the retail customer by an authorized same line-make franchised dealer selected by the retail customer, or in the absence of such selection, by the authorized same line-make dealer that is located in closest proximity to the retail customer. This provision shall not apply to fleet sales to a fleet customer that has a designation as such by the manufacturer or distributor.
- c. Fail or refuse to allow all of its franchised dealers located in this State to do any of the following:
 - 1. Subject to availability, have the ability to maintain on the ground and in the dealer's stock a reasonable supply of all makes and models of new vehicles the dealer is authorized to sell; provided, however, that this sub-sub-subdivision is not violated to the extent that the inability of the manufacturer to provide a reasonable on-the-ground supply of new vehicles to dealers is based on acts of God, labor strikes, unavailability of

- parts, recalls, material shortages, natural disasters, or other factors and events beyond the control of the manufacturer or distributor.
2. Have the right to store new and used propulsion batteries used for electric vehicles and hybrid electric vehicles at a safe and secure location selected and paid for by the dealer that is separate from the dealership premises or fail or refuse to compensate dealers for the reasonable pro rata cost of storing used batteries for a period of more than 30 days after the manufacturer or distributor has been notified by the dealer of their availability to be picked up. Nothing in this sub-sub-subdivision shall be deemed to grant a dealer the right to purchase new or used propulsion batteries from a manufacturer or distributor to maintain in the dealer's inventory. A dealer's right to order propulsion batteries from or through a manufacturer or distributor and maintain a reasonable supply of such batteries in stock is governed by the same provisions, limitations, and availability as the dealer's right to order and stock other parts, as delineated in sub-sub-subdivision 4. of this sub-subdivision.
 3. Have the opportunity to purchase, on the same terms, used vehicle inventory distributed or made available by that manufacturer or distributor without imposing any unrelated or unreasonable conditions or requirements on their dealers; provided that a manufacturer or distributor may uniformly restrict dealers to purchase through such program only used vehicles for which the dealer holds a franchise.
 4. Subject to availability, have the opportunity to order from or through the manufacturer or distributor, receive, and maintain in stock a reasonable supply of parts required for service and repair of the manufacturer's or distributor's vehicles based on the volume of warranty service work performed by the dealer; provided that this sub-sub-subdivision is not violated to the extent that the failure of the manufacturer or distributor to provide parts is caused by the occurrence of product shortages resulting from acts of God, natural disasters, unavailability of parts, material shortages, labor strikes, product recalls, or other factors or events beyond the control of the manufacturer or distributor. Notwithstanding the requirements of this sub-sub-subdivision, a manufacturer or distributor may impose reasonable restrictions and limitations on a dealer's ability to order and maintain in inventory certain parts exclusively used for a particular model of motor vehicle, provided that (i) the model is publicly designated by the manufacturer or distributor as being a specialty or limited production motor vehicle and (ii) worldwide production of the motor vehicle model is less than 10,000 vehicles in any given model year.
 5. Have, if the manufacturer or distributor has not contributed money, tangible items of property or resources owned or paid for by the manufacturer or distributor, or content toward the specific dealer advertising material, the right to independently

determine the types of physical and digital advertising media the dealer chooses to advertise for all brands, models, and types of vehicles offered for sale by the dealer as well as the content and format of the advertising and all locations where the dealer chooses to establish, publish, broadcast, circulate, or display such advertising and the individuals to whom advertising is targeted or directed; provided that nothing in this sub-sub-subdivision allows a dealer to infringe upon or to interfere with the intellectual property rights of manufacturers and distributors or to advertise the products offered by the manufacturer or distributor in a disparaging or misleading manner.

d. Engage in any of the following actions:

1. Retain ownership of new motor vehicles until they are sold or leased to retail customers located in this State, provided, a manufacturer, factory branch, distributor, or distributor branch may retain ownership of new motor vehicles held in a common supply of new vehicles until such vehicles are sold to its authorized franchised dealers. This provision shall not apply to fleet sales to a fleet customer that has a designation as such by the manufacturer or distributor.
2. Except for the sale or lease of a vehicle in connection with a repurchase or replacement under Article 15A of this Chapter, or for display purposes, consign new motor vehicles to its franchised dealers in this State for dealer inventory or for sale or lease to retail customers located in this State.
3. Reserve the right to negotiate binding terms of sale or lease directly with retail customers purchasing or leasing new motor vehicles located in this State; provided that a manufacturer or distributor may engage in fleet sales to a fleet customer that has a designation as such by the manufacturer or distributor.
4. Designate its franchised dealers in this State to be only delivery agents for new motor vehicles and service and parts outlets, reserving for the respective manufacturer or distributor the right to establish the binding terms of vehicle sales or leases or the right to negotiate the binding terms of vehicle sales or leases directly with retail customers located in this State; provided that a manufacturer or distributor may engage in fleet sales with a fleet customer that has a designation as such by the manufacturer or distributor. Nothing in this sub-sub-subdivision shall prohibit a manufacturer or distributor from:
 - I. Setting or advertising a suggested retail price, minimum advertised price, employee or supplier discount price, or special finance, lease, or other promotional offers.
 - II. Stating an estimated trade-in valuation of a customer's vehicle that is designated as such and based on a valuation guide whose identity is conspicuously disclosed; provided that in close proximity to any such stated estimated trade-in valuation, the manufacturer or

distributor conspicuously discloses that the actual valuation of any used vehicle is dependent on many factors and the dealer is not obligated to accept the estimated trade-in valuation.

- III. Displaying prices that dealers voluntarily set and choose to display.
5. Unreasonably impede or interfere with the ability of its rural and other franchised dealers located in this State to obtain from that manufacturer or distributor and sell or lease any series or models of technologically advanced vehicles that the manufacturer or distributor makes available for sale or lease to retail customers in this State by or through its same line-make dealers and which the dealer is authorized to sell. For purposes of this sub-sub-subdivision, the term "technologically advanced vehicle" or "TAV" means a motor vehicle that is an electric vehicle (EV) or hydrogen vehicle. For purposes of this sub-sub-subdivision, the term "EV" means any plug-in electric vehicle that does not rely on any nonelectric source of power in all modes of operation. For purposes of this sub-sub-subdivision, the term "unreasonably impede or interfere with" includes, but is not limited to, any of the following:
 - I. If a manufacturer or distributor has established any training, infrastructure, capital, or equipment requirements as a condition for a dealer to sell TAVs, to fail or refuse to promptly cause, at a dealer's request, a detailed, itemized, individual dealer assessment to determine the minimum TAV investment each dealer would need to make for training, facilities, tools, parts, equipment, and charging stations for vehicle service and for training dealership employees and customers. Charging stations for use by the public and all other charges or expenditures not technically essential to sell and service the manufacturer's or distributor's TAVs shall not be required or included in determining a dealer's minimum TAV investment. The minimum TAV investment established for each dealer must be scaled based on the estimated number of the manufacturer's or distributor's new TAVs the dealer would be anticipated to sell and the number of TAVs the dealer would be expected to service within the following three-year period. In the event that a manufacturer or distributor had performed an individualized dealer assessment required in this sub-sub-sub-subdivision prior to July 1, 2023, the assessment shall be deemed to satisfy the requirements contained in this sub-sub-sub-subdivision as long as it complies with all of the requirements of an individual TAV assessment established in this sub-sub-sub-subdivision and the TAV assessment contains no charges in excess of those charges

includable under this sub-sub-sub-subdivision. It shall be unlawful for a manufacturer or distributor to require a dealer to pay for an assessment of the type required under this sub-sub-sub-subdivision if the manufacturer or distributor requires that an assessment be performed as a prerequisite for the dealer to sell or lease TAVs that the manufacturer or distributor sells or distributes.

- II. To fail or refuse to allocate all TAV models offered by the manufacturer or distributor for sale or lease in this State in accordance with the requirements of this sub-sub-sub-subdivision to each of its same line-make franchised dealers located in this State that has made the minimum TAV investment determined pursuant to sub-sub-sub-subdivision I. of this sub-sub-sub-subdivision.
- 6. Withhold all or any portion of any incentive payment from any of its dealers located in this State on the basis of a dealer's failure to comply with any unlawful or prohibited condition or requirement.
- 7. Require, coerce, or attempt to coerce a dealer to make expenditures related to achieving or making progress toward achieving CO2 neutrality at the dealer's facility at the expense of the dealer.

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

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

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

- a. ~~displaying~~ Displaying in the dealer's showroom or elsewhere within the dealership facility any sports-related honors, awards, photographs, displays, or other artifacts or memorabilia; provided, however, that such sports-related honors, awards, photographs, displays, or other artifacts or memorabilia (i) pertain to an owner, investor, or executive manager of the dealership; (ii) relate to professional sports; (iii) do not reference or advertise a competing brand of motor vehicles; and (iv) do not conceal or disparage any of the required branding elements that are part of the dealership facility.

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

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

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

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

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

...

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

DEALER AND MANUFACTURER WEBSITES

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

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

- a. Dealer websites. – It is unlawful for any manufacturer or distributor to unreasonably interfere with the establishment, maintenance, operation, or control of either a single location dealer website or a dealer group website. For purposes of this subdivision, the term "single location dealer website" means a website that is owned or operated by or on behalf of a new motor vehicle dealer that is licensed in this State and that advertises, markets, displays, sells, or leases new and used motor vehicles that are only available for sale or lease at the dealership owned by that dealer. For purposes of this subdivision, the term "dealer group website" means a website that is owned or operated by or on behalf of a new motor vehicle dealer licensed in this State and

that advertises, markets, displays, sells, or leases new and used motor vehicles that are available for sale or lease at more than one dealership location within this State. For purposes of this sub-subdivision, the term "unreasonably interfere" includes, but is not limited to, any contractual or other prohibition or any policy that does any of the following:

1. Prohibits any of its franchised dealers in this State that own or operate either a single location dealer website or a dealer group website from prominently displaying throughout the website the name and logo of the applicable dealer or dealer group.
2. Requires any dealer or dealer group located in this State to use a digital platform or digital retailing tool provided, recommended, endorsed, or approved by the manufacturer or distributor; provided, however, that the digital platform or digital retailing tool selected by the dealer possesses substantially the same level of quality and performs the same essential functions as the digital platform or digital retailing tool provided, recommended, endorsed, or approved by the manufacturer or distributor.
3. Requires, as a condition to sell any line-make, brand, model, or series of vehicles, any single location dealer or dealer group located in this State to use, on either a single location dealer website or a dealer group website, one or more chat tools, appraisal tools, payment calculators, or other online digital tools provided, recommended, endorsed, or approved by the manufacturer or distributor, provided, however, that any such digital retailing tools selected by the dealer possess substantially the same quality and perform the same essential functions as the digital retailing tools provided, recommended, endorsed, or approved by the manufacturer or distributor.
4. Restricts any of its franchised dealers in this State that own or operate either a single location dealer website or a dealer group website from using any method, procedure, or protocol selected by the dealer for communicating with the dealer's customers or permitting or allowing customers to make an appointment to see or test drive a vehicle, hold or reserve a vehicle in the dealer's inventory, or negotiate the purchase or lease price of a vehicle directly with the dealer through a dealer-owned website or other digital retail process.
5. Restricts any of its franchised dealers in this State that own or operate a single location dealer website from displaying, selling, or leasing all brands and line-makes of new and used motor vehicles offered for sale or lease at that dealership location, including the dealer's display of manufacturer logos and marks for all such brands and line-makes of new motor vehicles the dealer is authorized by the manufacturer or distributor to offer for sale or lease, to the extent such display of manufacturer logos and marks does not interfere with the intellectual property rights of the manufacturer or advertise the products offered by the manufacturer or distributor in a disparaging or misleading manner.

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

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

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

1. Fail to give, to the extent technologically feasible and practicable, substantially equivalent visibility to all of the manufacturer's or distributor's authorized same line-make franchised dealers that are located in this State, on any website owned, operated, or controlled by the manufacturer or distributor on which customers are permitted to order or reserve vehicles for purchase or lease, provided such visibility may be limited (i) at the election of the customer or (ii) in relation to the distance of the authorized dealer to the customer or the location at which the customer appears to be.
2. Maintain a website or other electronic or digital means of communication for negotiating or otherwise establishing binding terms of sale or lease of new vehicles directly between the manufacturer or distributor and retail customers located in this State, provided that a manufacturer, factory branch, distributor, or distributor branch may maintain a website or other electronic or digital means of communication if the final selling or lease price of the new vehicles is determined by eligible dealers, and provided further that a dealer may not be required to set a nonnegotiable price as a condition for the dealer's inclusion on any website owned, controlled, or maintained by a manufacturer or distributor. Nothing in this sub-sub-subdivision shall prevent a manufacturer or distributor from engaging in fleet sales to a fleet customer that has a designation as such by the manufacturer or distributor, or establishing or offering employee or supplier discount pricing, provided the dealer is not required to participate in such program."

SECTION 2.(b) G.S. 20-305(56)b., as enacted by subsection (a) of this section, becomes effective November 1, 2023, and applies to all current and future franchises and other

agreements in existence between any new motor vehicle dealer located in this State and a manufacturer or distributor as of that date.

DEALER ALLOCATION RIGHTS

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

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

- a. Provides each of its franchised dealers in this State an adequate supply of vehicles by series, product line, and model in a fair, reasonable, and equitable manner based on each dealer's historical selling pattern and reasonable sales standards as compared to other same line-make dealers in the State.
- b. Allocates an adequate supply of vehicles to each of its dealers by series, product line, and model so as to allow the dealer to achieve any performance standards established by the manufacturer and distributor.
- b1. Allocates available vehicle features and options to each of its authorized same line-make dealers in a fair, reasonable, and equitable manner that takes into consideration the dealer's historical experience and success in selling vehicles similarly configured and that contain similar options.
- c. Is fair and equitable to all of its franchised dealers in this State.
- d. Makes available to each of its franchised dealers in this State a minimum of one of each vehicle series, model, or product line that the manufacturer makes available to any dealer in this State and advertises in the State as being available for purchase.
- e. Does not unfairly discriminate among its franchised dealers in its allocation process.
- f. Discloses to each of its franchised dealers handling the same line-make both its system of allocation and the dealer's actual new vehicle allocation that occurred during the previous calendar month and

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

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

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

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

MANUFACTURER SALE OR SUBSCRIPTION OF ADD-ON PRODUCTS

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

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

- a. The manufacturer or distributor permits all of its franchised same line-make dealers that are located in this State to sell the same motor vehicle accessory, option, add-on, service, upgrade, feature, or improvement to retail customers on the same terms offered by the manufacturer or distributor.
- b. The permanent or temporary motor vehicle accessory, option, add-on, service, upgrade, feature, or improvement is activated or installed directly on the retail customer's motor vehicle through remote electronic transmission.
- c. If the sale or activation of the permanent or temporary motor vehicle accessory, option, add-on, service, upgrade, feature, or improvement by either the manufacturer or the direct involvement of the dealer who sells or leases the vehicle to the retail customer occurs at the time of the new motor vehicle sale or lease, or within the 12-month period immediately following the sale or lease of the new motor vehicle by a North Carolina franchised motor vehicle dealer, the manufacturer or distributor provides the franchised motor vehicle dealer that sold the new motor vehicle reasonable compensation for the sale or activation of the accessory, option, add-on, service, upgrade, feature, or improvement to the original North Carolina vehicle owner or lessee when the cost of which would equal or exceed (i) fifty dollars (\$50.00), if the cost or purchase price to the retail customer involves a single, one-time payment, or (ii) seventy-five dollars (\$75.00) in cumulative cost or purchase price over any 12-month period, if the retail customer is making multiple or periodic payments.
- d. If the sale or activation of the permanent or temporary motor vehicle accessory, option, add-on, service, upgrade, feature, or improvement did not occur as provided in sub-subdivision c. of this subdivision, and a North Carolina franchised new motor vehicle dealer of the manufacturer or distributor was directly involved in the sale of the feature or improvement, the manufacturer or distributor provides reasonable compensation to the North Carolina franchised new motor vehicle dealer that sold the accessory, option, add-on, service, upgrade, feature, or improvement to a North Carolina resident when the cost of which would equal or exceed (i) fifty dollars (\$50.00), if the cost or purchase price to the retail customer involves a single, one-time payment, or (ii) seventy-five dollars (\$75.00) in cumulative cost or purchase price over any 12-month period, if the retail customer is making multiple or periodic payments.
- e. The manufacturer or distributor provides compensation consistent with G.S. 20-305.1 to an authorized dealer for providing assistance or

repair at the dealership for a failed, damaged, nonfunctioning, or defective over-the-air or remote accessory, option, add-on, service, upgrade, feature or improvement, change, or repair, administered by the vehicle manufacturer to any part, system, accessory, or function of the customer's vehicle at the request of the customer.

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

WARRANTY REIMBURSEMENT CLARIFICATION

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

"(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."

GRANDFATHER EXTENSION

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

"(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility, the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer, whether or not the dealer is dualed with one or more other line makes of new motor vehicles, or the dealer's sales penetration. Except as provided in this subdivision, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them to vary the price

charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's sales volume, the dealer's level of sales or customer service satisfaction, the dealer's purchase of advertising materials, signage, nondiagnostic computer hardware or software, communications devices, or furnishings, or the dealer's participation in used motor vehicle inspection or certification programs sponsored or endorsed by the manufacturer.

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

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

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

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

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

In the event that as of October 1, 1999, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that

would violate this subdivision, it shall be lawful for that program or policy, including amendments to that program or policy that are consistent with the purpose and provisions of the existing program or policy, or a program or policy similar thereto implemented after October 1, 1999, to continue in effect as to the manufacturer's franchised dealers located in this State until ~~June 30, 2025~~ June 30, 2028.

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

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

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

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

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

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

No license shall be suspended, revoked, denied, placed on probation, or renewal thereof refused, until a written notice of the complaint made has been furnished to the licensee against whom the same is directed, and a hearing thereon has been had before the Commissioner, or a person designated by him. At least 10 days' written notice of the time and place of ~~such the~~ hearing shall be given to the licensee by certified mail with return receipt requested to ~~his the~~ licensee's last known address as shown on his the licensee's license or other record of information in possession of the Division. At any such hearing, the licensee shall have the right to be heard personally or by counsel. After hearing, the Division shall have power to suspend, revoke, place on probation, or refuse to renew the license in question. Immediate notice of any such action shall be given to the licensee in accordance with G.S. 1A-1, Rule 4(j) of the Rules of Civil Procedure. For each alleged violation, the Division shall determine in its sole and unappealable discretion whether entering into a settlement agreement or consent order with the applicable licensee or license applicant either prior to or subsequent to the hearing would promote the interests of justice and administrative efficiency."

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

CLARIFY LAW GOVERNING CONDITIONAL DELIVERY OF MOTOR VEHICLES

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

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

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

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

MOTOR VEHICLE DEALERS AND MANUFACTURERS/PUBLISH NOTICE OF LICENSE APPLICATION

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

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

- (1) An application for a new motor vehicle dealer license must be accompanied by an application for a dealer license plate. In addition, the Division shall require each applicant for a new motor vehicle dealer license to certify on the application whether the applicant or any parent, subsidiary, affiliate, or any other entity related to the applicant is a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative. In the event the applicant indicates on the application that the applicant or any parent, subsidiary, affiliate, or any other entity related to the applicant is a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, the Division shall not issue a motor

vehicle dealer license to the applicant until ~~both~~all of the following conditions are satisfied:

- a. The applicant states on the application the specific exception or exceptions to the prohibition on the issuance of a motor vehicle dealer license to any manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative for which the applicant contends it qualifies under G.S. 20-305.2(a).
 - a1. Upon receipt of a motor vehicle dealer license application by a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, the Division shall promptly publish notice of the license application in the North Carolina Register. The notice shall include the applicant's name, address, application date, and the names and titles of any individual listed on the application as an owner, partner, member, or officer of the applicant. The notice shall also include the specific exception or exceptions to the prohibition on the issuance of a motor vehicle dealer license to any manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative for which the applicant contends it qualifies under G.S. 20-305.2(a) that are included on the license application.
 - b. If the applicant does not currently hold a motor vehicle dealer license issued by the Division, the Commissioner determines, after an evidentiary ~~hearing,~~hearing held no earlier than 30 days from the date of publication of the notice required in sub-subdivision a1. of this subdivision, that the applicant qualifies under one or more of the exceptions to the prohibition against the issuance of a motor vehicle dealer license to any manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative provided in G.S. 20-305.2(a). The applicant shall bear the burden of proving the applicant's qualification for the exception or exceptions claimed.
- (2) Upon ~~submission~~receipt of a license application by a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative that has not previously been issued a license by the Division, the Division shall promptly publish notice of the license application in the North Carolina Register. The notice shall include the applicant's name, address, application date, and the names and titles of any individual listed on the application as an owner, partner, member, or officer of the applicant. The Division shall not approve or issue any license for a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative earlier than 15 days from the date the notice of the license or license renewal application was published in the North Carolina Register."

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

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

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

SEVERABILITY CLAUSE

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

EFFECTIVE DATE

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

In the General Assembly read three times and ratified this the 17th day of August, 2023.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 11:55 a.m. this 24th day of August, 2023