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

UPDATE DEFINITIONS

SECTION 1. G.S. 20-286 is amended by adding a new subdivision to read:
"(15a) Special tool or essential tool. — A tool designed by the manufacturer or
distributor and not readily available from another source that is utilized for the
purpose of performing service repairs on a motor vehicle sold by a
manufacturer or distributor to its franchised new motor vehicle
dealers in this State."

CLARIFY DIAGNOSTIC EQUIPMENT EXCEPTION AND ADDRESS SPECIAL
TOOLS FOR SMALLER DEALERS

SECTION 2.(a) G.S. 20-305(9) reads as rewritten:
"(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this
State to purchase nondiagnostic or lease computer equipment or programs
hardware or software used for any purpose other than the maintenance or
repair of motor vehicles, to participate monetarily in an advertising campaign
or contest, or to purchase unnecessary or unreasonable quantities of any
promotional materials, training materials, training programs, showroom or
other display decorations, materials, computer equipment or programs, or
special tools at the expense of the new motor vehicle dealer, provided that
nothing in this subsection shall preclude a manufacturer or distributor from
including an unitemized uniform charge in the base price of the new motor
vehicle charged to the dealer where such charge is attributable to advertising
costs incurred or to be incurred by the manufacturer or distributor in the
ordinary courses of its business. Notwithstanding the terms or conditions of
any franchise or other agreement, in lieu of purchasing or leasing any special
tools required by any manufacturer, factory branch, distributor, or distributor
branch, a dealer may share access to special tools with other dealers; provided,
however, that (i) all the participating dealers have franchises with the same
manufacturer, factory branch, distributor, or distributor branch; (ii) the
participating dealers share access to the special tools pursuant to a written
agreement executed by all of the participating dealers which lists with
specificity all of the special tools to be shared, (iii) all of the participating dealers are located within a 75-mile radius of one another, and (iv) the sharing of tools will not unreasonably delay completion of repairs."

SECTION 2.(b)  G.S. 20-305(46) reads as rewritten:

"(46) To require, coerce, or attempt to coerce a dealer located in this State to purchase goods or services of any nature from a vendor selected, identified, or designated by a manufacturer, distributor, affiliate, or captive finance source when the dealer may obtain goods or services of substantially similar quality and design from a vendor selected by the dealer, provided the dealer obtains prior approval from the manufacturer, distributor, affiliate, or captive finance source, for the use of the dealer's selected vendor. Such approval by the manufacturer, distributor, affiliate, or captive finance source may not be unreasonably withheld. For purposes of this subdivision, the term "goods" does not include moveable displays, brochures, and promotional materials containing material subject to the intellectual property rights of a manufacturer or distributor, or special tools or parts as reasonably required by the manufacturer, or parts manufacturer to be used in repairs under warranty obligations of a manufacturer or distributor. If the manufacturer, distributor, affiliate, or captive finance source claims that a vendor chosen by the dealer cannot supply goods and services of substantially similar quality and design, the dealer may file a protest with the Commissioner. When a protest is filed, the Commissioner shall promptly inform the manufacturer, distributor, affiliate, or captive finance source that a protest has been filed. The Commissioner shall conduct a hearing on the merits of the protest within 90 days following the filing of a response to the protest. The manufacturer, distributor, affiliate, or captive finance source shall bear the burden of proving that the goods or services chosen by the dealer are not of substantially similar quality and design to those required by the manufacturer, distributor, affiliate, or captive finance source."

AREA OF RESPONSIBILITY PROTEST RIGHTS

SECTION 3.  G.S. 20-305(38) reads as rewritten:

"(38) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver, or other written instrument, to assign or change a franchised new motor vehicle dealer's area of responsibility under the franchise arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registrations within the dealer's market and without having provided the affected dealer with written notice of the change in the dealer's area of responsibility and a detailed description of the change in writing by registered or certified mail, return receipt requested. A franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer has entered into a franchise has assigned or changed the dealer's area of responsibility, is proposing to assign or change the dealer's area of responsibility arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registrations within the dealer's market, or failed to provide the dealer with the notice required under this subdivision may file a petition within 60 days of receiving notice of a manufacturer, factory branch, distributor, or distributor branch's proposed assignment or change to the dealer's area of responsibility and have an evidentiary hearing before the Commissioner as provided in G.S. 20-301(b) contesting the franchised new
motor vehicle dealer's assigned area of responsibility. A franchised new motor vehicle dealer who at any point in time believes that it is unreasonable for a manufacturer, factory branch, distributor, or distributor branch with whom that dealer has entered into a franchise to include one or more portions of the dealer's existing area of responsibility previously assigned to that dealer by the manufacturer, factory branch, distributor, or distributor branch may request the elimination of the contested territory from the dealer's area of responsibility by submitting the request in writing to the manufacturer, factory branch, distributor, or distributor branch. The dealer's request shall be deemed accepted by the manufacturer, factory branch, distributor, or distributor branch if the manufacturer, factory branch, distributor, or distributor branch has not sent the dealer notice of objection to the dealer's request via U.S. registered or certified mail, return receipt requested, within 30 days after receipt of the dealer's request. A dealer may file a petition within 60 days of receiving notice from the manufacturer, factory branch, distributor, or distributor branch of the manufacturer's rejection, in whole or in part, of the dealer's request for the elimination of the contested territory from the dealer's area of responsibility and have an evidentiary hearing before the Commissioner as provided in G.S. 20-301(b) contesting the manufacturer's rejection, in whole or in part, of the dealer's request for the elimination of the contested territory from the franchised new motor vehicle dealer's assigned area of responsibility. In determining at the evidentiary hearing requested under this subdivision whether a manufacturer, factory branch, distributor, or distributor branch has assigned or changed the dealer's area of responsibility or is proposing to assign or change the dealer's area of responsibility all or any portion of the existing or proposed area of responsibility assigned to the dealer is unreasonable or has been assigned arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registrations within the dealer's market, the Commissioner may take into consideration the relevant circumstances, including, but not limited to:

a. The investment of time, money, or other resources made for the purpose of developing the market for the vehicles of the same line-make in the existing or proposed area of responsibility by the petitioning dealer, other same line-make dealers who would be affected by the change in the area of responsibility, or by the manufacturer, factory branch, distributor, distributor branch, or any dealer or regional advertising association.

b. The present and future projected traffic patterns and drive times between consumers and the same line-make franchised dealers of the affected manufacturer, factory branch, distributor, or distributor branch who are located within the market.

c. The historical and projected future pattern of new vehicle sales and registrations of the affected manufacturer, factory branch, distributor, or distributor branch within various portions of the area of responsibility and within the market as a whole.

d. The growth or decline in population, density of population, and new car registrations in the market.

e. If the affected manufacturer, factory branch, distributor, or distributor branch has removed territory from a dealer's area of responsibility or is proposing to remove territory from a dealer's area of responsibility, the projected economic effects, if any, that these changes in the dealer's
area of responsibility will have on the petitioning dealer, other same
line-make dealers, the public, and the manufacturer, factory branch,
distributor, or distributor branch.

f. The projected effects that the changes in the petitioning dealer's area
of responsibility that have been made or proposed by the affected
manufacturer, manufacturer branch, distributor, or distributor branch
will have on the consuming public within the market.

g. The presence or absence of natural geographical obstacles or
boundaries, such as mountains and rivers.

h. The proximity of census tracts or other geographic units used by the
affected manufacturer, factory branch, distributor, or distributor
branch in determining same line-make dealers' respective areas of
responsibility.

i. The public interest, consumer welfare, and customer convenience.

j. The reasonableness of the change or proposed change to the dealer's
area of responsibility considering the benefits and harm to the
petitioning dealer, other same line-make dealers, and the
manufacturer, factory branch, distributor, or distributor branch.

At the evidentiary hearing before the Commissioner, the affected
manufacturer, factory branch, distributor, or distributor branch shall have the
burden of proving that all portions of its current or proposed area of
responsibility for the petitioning franchised new motor vehicle dealer are
reasonable in light of the present or projected future pattern of motor vehicle
sales and registrations within the franchised new motor vehicle dealer's
market. A policy or protocol of a manufacturer, factory branch, distributor, or
distributor branch that determines a dealer's area of responsibility based solely
on the proximity of census tracts or other geographic units to its franchised
dealers and the existence of natural boundaries fails to satisfy the burden of
proof on the affected manufacturer, factory branch, distributor, or distributor
branch under this subdivision. Upon the filing of a petition before the
Commissioner under this subdivision, any changes in the petitioning
franchised new motor vehicle dealer's area of responsibility that have been
proposed by the affected manufacturer, factory branch, distributor, or
distributor branch shall be stayed during the pendency of the determination by
the Commissioner. If a protest is or has been filed under G.S. 20-305(5) and
the franchised new motor vehicle dealer's area of responsibility is included in
the relevant market area under the protest, any protest filed under this
subdivision shall be consolidated with that protest for hearing and joint
disposition of all of the protests. Nothing in this subdivision shall apply to the
determination of whether good cause exists for the establishment by a
manufacturer, factory branch, distributor, or distributor branch of an
additional new motor vehicle dealer or relocation of an existing new motor
vehicle dealer, which shall be governed in accordance with the requirements
and criteria contained in G.S. 20-305(5) and not this subdivision."

PERFORMANCE MEASURES

SECTION 4. G.S. 20-305(51) reads as rewritten:

"(51) To establish, implement, or enforce criteria for measuring the sales or service
performance of any of its franchised new motor vehicle dealers in this State
for the purpose of cancelling, terminating or nonrenewing a franchise
agreement which (i) are unfair, unreasonable, arbitrary, or inequitable; (ii)
do not consider available relevant and material local, State, and regional
criteria, data, and facts. Relevant facts, relevant and material criteria, data, or
facts include those of motor vehicle dealerships of comparable size in
comparable markets; and (iii) if such performance measurement criteria are
based, in whole or in part, on a survey, such survey must be based on a
statistically significant and valid random sample. In any proceeding under this
subdivision, the applicable manufacturer or distributor shall bear the burden
of proof (i) with regard to all issues raised in the proceeding and (ii) that the
dealer performance measurements comply with all of the provisions hereof
and are, and have been, implemented and enforced uniformly by the
applicable manufacturer or distributor among its franchised dealers in this
State. In the event it is determined that the performance criteria employed by
a manufacturer or distributor for measuring the sales, service, or customer
satisfaction performance of any of its franchised motor vehicle dealers in this
State for the purpose of cancelling, terminating or nonrenewing a franchise
agreement are unfair, unreasonable, arbitrary, or inequitable, or that the
performance criteria does not consider available local, State, and regional
criteria, data, and facts required in this subsection, or that the performance
criteria have not been implemented and enforced uniformly by the applicable
manufacturer or distributor among its franchised dealers in this State, the
performance criteria of the manufacturer or distributor may not constitute any
part of the basis for a determination in any franchise-related decision
pertaining to whether good cause exists for the termination of a dealer's
franchise pursuant to G.S. 20-305(6), any of the following:

a. Determining eligibility for compensation or any other benefits under
   any incentive, bonus, or other policy or program.

b. Whether to allow a dealer's proposed transfer of ownership, change in
   executive management, or relocation pursuant to subdivision (4) of
   this section.

c. Whether good cause exists for the establishment of an additional new
   motor vehicle dealer or relocation of an existing dealer pursuant to
   subdivision (5) of this section.

d. Whether good cause exists for the termination of a dealer's franchise
   pursuant to subdivision (6) of this section.

e. Whether to allow appointment of a designated successor to a franchise
   pursuant to subdivision (7) of this section."

DEALER'S RIGHT TO SELL PARTS AND ACCESSORIES OVER THE INTERNET

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

"(52) To prohibit or to in any way limit or restrict a dealer from selling over the
   Internet, including online e-commerce marketplaces, parts and accessories
   obtained by the dealer from the manufacturer, factory branch, distributor, or
distributor branch, or from any source recommended or approved by the
manufacturer, factory branch, distributor, or distributor branch."

AUDITS LIMITED TO ONE PER 12-MONTH PERIOD/PROHIBITION ON
CONTINGENCY AUDITS

SECTION 6. G.S. 20-305.1 reads as rewritten:

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

..."
(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of its warranty or recall obligations with respect to a motor vehicle, to fail to fully compensate its motor vehicle dealers licensed in this State for a qualifying used motor vehicle pursuant to subsections (i) and (j) of this section or warranty parts other than parts used to repair the living facilities of recreational vehicles, including motor homes, travel trailers, fifth-wheel trailers, camping trailers, and truck campers as defined in G.S. 20-4.01(32b), at the prevailing retail rate according to the factors in subsection (a) of this section, or, in service in accordance with the schedule of compensation provided the dealer pursuant to subsection (a) of this section, or to otherwise recover all or any portion of its costs for compensating its motor vehicle dealers licensed in this State for warranty recall parts and service or for payments for a qualifying used motor vehicle pursuant to subsections (i) and (j) of this section either by reduction in the amount due to the dealer, or by separate charge, surcharge, or other imposition, and to fail to indemnify and hold harmless its franchised dealers licensed in this State against any judgment for damages or settlements agreed to by the manufacturer, including, but not limited to, court costs and reasonable attorneys’ fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or recission or revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer. Any audit for warranty or recall parts or service compensation, or compensation for a qualifying used motor vehicle in accordance with subsections (i) and (j) of this section may only be conducted one time within any 12-month period and shall only be for the 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation may only be conducted one time within any 12-month period and shall only be for the 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch pursuant to a sales incentives program, service incentives program, rebate program, or other form of incentive compensation program. Provided, however, these limitations shall not be effective in the case of fraudulent claims.

(5) Any audit of a dealer by a manufacturer for sales or leases made to exporters or brokers may only be conducted one time within any 12-month period and shall only be for the 12-month period immediately preceding the audit.

(b4) Any person or other entity employed or contracted by a manufacturer, factory branch, distributor, or distributor branch to conduct an audit of a motor vehicle dealer regulated by this section shall comply with all the requirements of this section. It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to contract with or employ any person or other entity to conduct an audit of any motor vehicle dealer located in this State regulated under this section for which the person or other entity conducting the audit of the dealer would be in any part compensated on the basis of the dollar amount, volume, or number of chargebacks that would result to the dealer from the audit.

MOTOR VEHICLE SUBSCRIPTIONS

SECTION 7. G.S. 20-305.2(a) reads as rewritten:

"(a) It is unlawful for any motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, to directly or indirectly through any subsidiary or affiliated entity, own any ownership interest in, operate, or control any motor vehicle dealership
DEALERSHIP DATA

SECTION 8. G.S. 20-305.7 reads as rewritten:

"(a) Except as expressly authorized in this section, no manufacturer, factory branch, distributor, or distributor branch shall require a new motor vehicle dealer to provide its customer lists, customer information, consumer contact information, transaction data, or service files. Any requirement by a manufacturer, factory branch, distributor, or distributor branch that a new motor vehicle dealer provide its customer lists, customer information, consumer contact information, transaction data, or service files to the manufacturer, factory branch, distributor, or distributor branch, or to any third party as a condition to the dealer's participation in any incentive program or contest that is either required or voluntary on the part of the dealer, for a customer or dealer to receive any incentive payments otherwise earned under an incentive program or contest, for the dealer to obtain consumer or customer leads, or for the dealer to receive any other benefits, rights, merchandise, or services for which the dealer would otherwise be entitled to obtain under the franchise or any other contract or agreement, or which shall customarily be provided to dealers, shall be voidable at the option of the dealer, void and the dealer shall automatically be entitled to the benefits offered under the applicable incentive program or contest or any other contract or agreement, unless all of the following conditions are satisfied: (i) the customer information requested relates solely to the specific program requirements or goals associated with such manufacturer's or distributor's own vehicle makes and does not require that the dealer provide general customer information or other information related to the dealer; (ii) such requirement is lawful and would also not require the dealer to allow any customer the right to opt out under the federal Gramm-Leach-Bliley Act, 15 U.S.C., Subchapter I, § 1608, et seq.; and (iii) the dealer is not required to allow the manufacturer or distributor or any third party to have direct access to its either permitted to restrict the data fields that may be accessed in the dealer's computer system, but or the dealer is instead permitted to provide the same dealer, consumer, or customer data or information specified by the manufacturer or distributor by timely obtaining and pushing or otherwise furnishing the required data in a widely accepted file format such as comma delimited in accordance with subsection (g1) of this section. Nothing contained in this section shall limit the ability of the manufacturer, factory branch, distributor, or distributor branch to require that the dealer provide, or use in accordance with the law, such customer information related solely to such manufacturer's or distributor's own vehicle makes to the extent necessary to do any of the following:

(1) Satisfy any safety or recall notice obligations.
(2) Complete the sale and delivery of a new motor vehicle to a customer.
(3) Validate and pay customer or dealer incentives.
(4) Submit to the manufacturer, factory branch, distributor, or distributor branch claims for any services supplied by the dealer for any claim for warranty parts or repairs.

At the request of a manufacturer or distributor or of a third party acting on behalf of a manufacturer or distributor, a dealer may only be required to provide customer information related solely to such manufacturer's or distributor's own vehicle makes for reasonable marketing purposes, market research, consumer surveys, market analysis, and dealership performance analysis, but the dealer is only required to provide such customer information to the extent lawfully permissible; to the extent the requested information relates solely to specific program requirements or goals associated with such manufacturer's or distributor's own vehicle makes and does not require the dealer to provide general customer information or other information related to the dealer; and to the extent the requested information can be provided without requiring that
the dealer allow any customer the right to opt out under the federal Gramm-Leach-Bliley Act, 15 U.S.C., Subchapter I, § 6801, et seq.

No manufacturer, factory branch, distributor, or distributor branch shall access or obtain dealer or customer data from or write dealer or customer data to a dealer management computer system utilized by a motor vehicle dealer located in this State, or require or coerce a motor vehicle dealer located in this State to utilize a particular dealer management computer system, unless the dealer management computer system allows the dealer to reasonably maintain the security, integrity, and confidentiality of the data maintained in the system. No manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor shall prohibit a dealer from providing a means to regularly and continually monitor the specific data accessed from or written to the dealer's computer system and from complying with applicable State and federal laws and any rules or regulations promulgated thereunder. These provisions shall not be deemed to impose an obligation on a manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor to provide such capability. Notwithstanding the terms or conditions of any incentive program or contest that is either required or voluntary on the part of the dealer, or the terms or conditions of any other contract or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to fail or refuse to provide dealer notice, in a standalone written document, at least 60 days prior to making any changes in any of the dealer or customer data the dealer is requested or required to share with a manufacturer, factory branch, distributor, or distributor branch, or any third party. The changes in any of the dealer or customer data the dealer is requested or required to provide shall be void unless the applicable manufacturer, factory branch, distributor, or distributor branch complies with the notice requirements contained in this paragraph.

(b1) It shall be unlawful for any manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party having access to any dealer management computer system, to:

(1) Take any action, by contract, by technical means, or otherwise, that would prohibit or limit a dealer's ability to protect, store, copy, share, or use any customer or dealer information maintained in a dealer management computer system utilized by a new motor vehicle dealer located in this State. Unlawful conduct prohibited by this section includes, but is not limited to:

a. Imposing any unreasonable fees or other restrictions of any kind on the dealer or any third party for access to or sharing of customer or dealer information, or for writing data to a dealer management computer system. For purposes of this section, the term "unreasonable fees" means charges for access to customer or dealer data beyond any direct costs incurred by any dealer management computer system vendor in providing access to the dealer's customer or dealer data to a third party that the dealer has authorized to access its dealer management computer system or allowing any third party that the dealer has authorized to access its dealer management computer system to write data to its dealer management computer system. Any charges must be (i) disclosed to the dealer and (ii) justified by documentary evidence of the costs associated with access or it will be deemed a prohibited unreasonable fee under this section.
b. Prohibiting any third party that the dealer has authorized to access its dealer management computer system from integrating into that dealer's dealer management computer system, or placing unreasonable restrictions on integration by any authorized third party that the dealer has selected to access its dealer management computer system. Examples of unreasonable restrictions include, but are not limited to, any of the following:

1. Unreasonable restrictions on the scope or nature of the data shared with a third party authorized by the dealer to access the dealer's dealer management computer system.

2. Unreasonable restrictions on the ability of a third party authorized by the dealer to access the dealer's dealer management computer system to write data to a dealer management computer system.

3. Unreasonable restrictions or conditions on a third party authorized by the dealer to access the dealer's dealer management computer system to share customer or dealer information.

4. Requiring unreasonable access to sensitive, competitive, or other confidential business information of a third party as a condition for access to customer or dealer information or sharing customer or dealer information with any third party authorized by the dealer to access the dealer's dealer management computer system.

(2) Engage in any act of cyber ransom. For purposes of this section, the term "cyber ransom" shall mean to encrypt, restrict or prohibit access, or threaten or attempt to encrypt, restrict, or prohibit access to a dealer's customer or dealer data for monetary gain or for political or ideological purposes.

(b2) It is unlawful for any dealer management computer system vendor or other third party who has access to any dealer management computer system to fail or refuse to:

1. Adopt and make available a standardized framework for the exchange, integration, and sharing of data from dealer management computer systems with any party authorized to access a dealer management computer system, and retrieval of such data by any party authorized to access a dealer management computer system (use of the Standards for Technology in Automotive Retail (STAR) or a standard compatible with the STAR Standards shall be deemed to be in compliance with this requirement).

2. Provide access to open application programming interfaces (APIs) to any party authorized to access a dealer management computer system. In the event that APIs are no longer the reasonable commercial or technical standard for secure data integration, a similar open access integration method may be provided, to the extent it provides the same or better access to any party authorized to access a dealer management computer system as an API and utilizes the required standardized framework.
(3) Access, use, store, or share any data from a dealer management computer system only to the extent permitted in its written agreement with the dealer.

(4) Make any agreement regarding access to, sharing or selling of, copying, using, or transmitting data on any dealer management computer system terminable upon no more than 90 days' notice from the dealer.

(5) Upon receipt of notice of the dealer's intent to terminate its contract and in order to prevent any risk of consumer harm or inconvenience, work to ensure a secure transition to a successor dealer management computer system vendor or any other party authorized to access a dealer management computer system. This includes, but is not limited to: (i) providing unrestricted access to all data maintained on the dealer management computer system in a commercially reasonable time and format that a successor dealer management computer system vendor or other party authorized to access a dealer management computer system can access and use and (ii) returning to the dealer all confidential or proprietary information obtained from the dealer management computer system prior to termination of the contract pursuant to any written directions of the dealer.

(6) Promptly provide a dealer, upon the dealer's request, with a listing of all entities with whom it is sharing any data from the dealer management computer system, or to whom it has allowed access to any data from the dealer management computer system.

(7) Allow and facilitate a dealer to audit the dealer management computer system vendor's access and use of its dealer management computer system and any data obtained or obtainable from its dealer management computer system.

(b3) The rights conferred on dealers in this section are not waivable and may not be reduced or otherwise modified by any contract or agreement.

STANDING TO INITIATE AN ACTION

SECTION 9. G.S. 20-308.1(d) reads as rewritten:

"(d) Any association that is comprised of a minimum of 400 new motor vehicle dealers, or a minimum of 10 motorcycle dealers, substantially all of whom are new motor vehicle dealers located within North Carolina, and which represents the collective interests of its members, shall have standing to initiate an action or participate as a party to any civil or administrative proceeding in any of the courts or administrative agencies of this State, including the right to file a petition before the Commissioner or a cause of action in any court of competent jurisdiction for itself, or on behalf of any or all of its members, seeking declaratory and injunctive relief. Prior to bringing an action, the association and manufacturer, factory branch, distributor, or distributor branch shall initiate mediation as set forth in G.S. 20-301.1(b). An action brought pursuant to this subsection may seek a determination whether one or more manufacturers, factory branches, distributors, or distributor branches doing business in this State have violated any of the provisions of this Article, or for the determination of any rights created or defined by this Article, so long as the association alleges an injury to the collective interest of its members cognizable under this section. A cognizable injury to the collective interest of the members of the association shall be deemed to occur if a manufacturer, factory branch, distributor, or distributor branch doing business in this State engages in any conduct or takes any action which actually harms or affects all of the franchised new motor vehicle dealers holding franchises with that manufacturer, factory branch, distributor, or distributor branch in this State, engages in any conduct or takes any action which has harmed or would harm or which has affected or would affect all or a substantial number of franchised new motor vehicle dealers in this State. With respect to any administrative or civil action filed by an association pursuant to this subsection,
the relief granted shall be limited to declaratory and injunctive relief and in no event shall the
Commissioner or court enter an award of monetary damages."

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. This act is effective when it becomes law 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 the effective date of this act.