

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

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HOUSE BILL 403  
Committee Substitute Favorable 5/5/21  
Senate Commerce and Insurance Committee Substitute Adopted 8/24/21

Short Title: Clarify Motor Vehicle Franchise Laws.

(Public)

Sponsors:

Referred to:

March 25, 2021

1 A BILL TO BE ENTITLED  
2 AN ACT TO REVISE AND CLARIFY THE LAWS GOVERNING NEW MOTOR VEHICLE  
3 DEALER FRANCHISES.

4 The General Assembly of North Carolina enacts:

5  
6 **DEALERSHIP TRANSFERS/RIGHT OF FIRST REFUSAL CLARIFICATION**

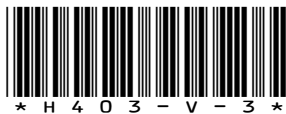
7 **SECTION 1.(a)** G.S. 20-305(4) reads as rewritten:

8 "(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to  
9 approve the sale or transfer of the ownership of a dealership by the sale of the  
10 business, stock transfer, or otherwise, or the transfer, sale or assignment of a  
11 dealer franchise, or a change in the executive management or principal  
12 operator of the dealership, change in use of an existing facility to provide for  
13 the sales or service of one or more additional line-makes of new motor  
14 vehicles, or relocation of the dealership to another site within the dealership's  
15 relevant market area, if the Commissioner has determined, if requested in  
16 writing by the dealer within 30 days after receipt of an objection to the  
17 proposed transfer, sale, assignment, relocation, or change, and after a hearing  
18 on the matter, that the failure to permit or honor the transfer, sale, assignment,  
19 relocation, or change is unreasonable under the circumstances.

20 a. No franchise may be transferred, sold, assigned, relocated, or the  
21 executive management or principal operators changed, or the use of an  
22 existing facility changed, unless the franchisor has been given at least  
23 30 days' prior written notice ~~as to the~~ of all of the following:

- 24 1. The proposed transferee's name and address, financial ability,  
25 and qualifications of the proposed transferee, a copy of the  
26 purchase agreement between the dealership and the proposed  
27 transferee, ~~the transferee.~~  
28 2. The identity and qualifications of the persons proposed to be  
29 involved in executive management or as principal ~~operators,~~  
30 and ~~the operators.~~  
31 3. The location and site plans of any proposed relocation or  
32 change in use of a dealership facility.

33 b. The ~~If the franchisor objects to the proposed transfer, sale, assignment,~~  
34 relocation, or change, the franchisor shall send the dealership and the  
35 proposed transferee notice of objection, by registered or certified mail,



1 return receipt requested, to the proposed transfer, sale, assignment,  
2 relocation, or change within 30 days after receipt of notice from the  
3 dealer, as provided in this section. The notice of objection shall state  
4 in detail all factual and legal bases for the objection on the part of the  
5 franchisor to the proposed transfer, sale, assignment, relocation, or  
6 change that is specifically referenced in this subdivision. An objection  
7 to a proposed transfer, sale, assignment, relocation, or change in the  
8 executive management or principal operator of the dealership or  
9 change in the use of the facility may only be premised upon the factual  
10 and legal bases specifically referenced in this subdivision or  
11 G.S. 20-305(11), as it relates to change in the use of a facility. A  
12 manufacturer's notice of objection which is based upon factual or legal  
13 issues that are not specifically referenced in this subdivision or  
14 G.S. 20-305(11) with respect to a change in the use of an existing  
15 facility as being issues upon which the Commissioner shall base his  
16 determination shall not be effective to preserve the franchisor's right  
17 to object to the proposed transfer sale, assignment, relocation, or  
18 change, provided the dealership or proposed transferee has submitted  
19 written notice, as required above, as to the proposed transferee's name  
20 and address, financial ability, and qualifications of the proposed  
21 transferee, a copy of the purchase agreement between the dealership  
22 and the proposed transferee, the identity and qualifications of the  
23 persons proposed to be involved in the executive management or as  
24 principal operators, and the location and site plans of any proposed  
25 relocation or change in the use of an existing facility.

26 c. Failure by the franchisor to send notice of objection within 30 days  
27 shall constitute waiver by the franchisor of any right to object to the  
28 proposed transfer, sale, assignment, relocation, or change. If the  
29 franchisor requires additional information to complete its review, the  
30 franchisor shall notify the dealership within 15 days after receipt of the  
31 ~~proposed transferee's name and address, financial ability, and~~  
32 ~~qualifications, a copy of the purchase agreement between the~~  
33 ~~dealership and the proposed transferee, the identity and qualifications~~  
34 ~~of the persons proposed to be involved in executive management or as~~  
35 ~~principal operators, and the location and site plans of any proposed~~  
36 ~~relocation or change in use of the dealership facility. notice to~~  
37 franchisor under sub-subdivision a. of this subdivision. If the  
38 franchisor fails to request additional information from the dealer or  
39 proposed transferee within 15 days of receipt of this initial  
40 information, the 30-day time period within which the franchisor may  
41 provide notice of objection shall be deemed to run from the initial  
42 receipt date. Otherwise, the 30-day time period within which the  
43 franchisor may provide notice of objection shall run from the date the  
44 franchisor has received the supplemental information requested from  
45 the dealer or proposed transferee; provided, however, that failure by  
46 the franchisor to send notice of objection within 60 days of the  
47 franchisor's receipt of the initial information from the dealer shall  
48 constitute waiver by the franchisor of any right to object to the  
49 proposed transfer, sale, assignment, relocation, or change.

50 d. With respect to a proposed transfer of ownership, sale, or assignment,  
51 the sole issue for determination by the Commissioner and the sole

1 issue upon which the Commissioner shall hear or consider evidence is  
2 whether, by reason of lack of good moral character, lack of general  
3 business experience, or lack of financial ability, the proposed  
4 transferee is unfit to own the dealership. For purposes of this  
5 subdivision, the refusal by the manufacturer to accept a proposed  
6 transferee who is of good moral character and who otherwise meets  
7 the written, reasonable, and uniformly applied business experience and  
8 financial requirements, if any, required by the manufacturer of owners  
9 of its franchised automobile dealerships is presumed to demonstrate  
10 the manufacturer's failure to prove that the proposed transferee is unfit  
11 to own the dealership.

12 e. With respect to a proposed change in the executive management or  
13 principal operator of the dealership, the sole issue for determination  
14 by the Commissioner and the sole issue on which the Commissioner  
15 shall hear or consider evidence shall be whether, by reason of lack of  
16 training, lack of prior experience, poor past performance, or poor  
17 character, the proposed candidate for a position within the executive  
18 management or as principal operator of the dealership is unfit for the  
19 position. For purposes of this subdivision, the refusal by the  
20 manufacturer to accept a proposed candidate for executive  
21 management or as principal operator who is of good moral character  
22 and who otherwise meets the written, reasonable, and uniformly  
23 applied standards or qualifications, if any, of the manufacturer relating  
24 to the business experience and prior performance of executive  
25 management required by the manufacturers of its dealers is presumed  
26 to demonstrate the manufacturer's failure to prove the proposed  
27 candidate for executive management or as principal operator is unfit  
28 to serve the capacity.

29 f. With respect to a proposed change in use of a dealership facility to  
30 provide for the sales or service of one or more additional line-makes  
31 of new motor vehicles, the sole issue for determination by the  
32 Commissioner is whether the new motor vehicle dealer has a  
33 reasonable line of credit for each make or line of motor vehicle and  
34 remains in compliance with any reasonable capital standards and  
35 facilities requirements of the manufacturer or distributor. The  
36 reasonable facilities requirements of the manufacturer or distributor  
37 shall not include any requirement that a new motor vehicle dealer  
38 establish or maintain exclusive facilities, personnel, or display space.

39 g. With respect to a proposed relocation or other proposed change, the  
40 issue for determination by the Commissioner is whether the proposed  
41 relocation or other change is unreasonable under the circumstances.  
42 For purposes of this subdivision, the refusal by the manufacturer to  
43 agree to a proposed relocation which meets the written, reasonable,  
44 and uniformly applied standards or criteria, if any, of the manufacturer  
45 relating to dealer relocations is presumed to demonstrate that the  
46 manufacturer's failure to prove the proposed relocation is unreasonable  
47 under the circumstances.

48 h. The manufacturer shall have the burden of proof before the  
49 Commissioner under this subdivision.

50 i. It is unlawful for a manufacturer to, in any way, ~~condition its~~ do any  
51 of the following:

- 1                     1.     Condition its approval of a proposed transfer, sale, assignment,  
2                     change in the dealer's executive management, principal  
3                     operator, or appointment of a designated successor, on the  
4                     existing or proposed dealer's willingness to construct a new  
5                     facility, renovate the existing facility, acquire or refrain from  
6                     acquiring one or more line-makes of vehicles, separate or  
7                     divest one or more line-makes of vehicle, or establish or  
8                     maintain exclusive facilities, personnel, or display space.
- 9                     2.     ~~It is unlawful for a manufacturer to, in any way, condition~~  
10                    Condition its approval of a proposed relocation on the existing  
11                    or proposed dealer's willingness to acquire or refrain from  
12                    acquiring one or more line-makes of vehicles, separate or  
13                    divest one or more line-makes of vehicle, or establish or  
14                    maintain exclusive facilities, personnel, or display space. The  
15                    opinion or determination of a franchisor that the continued  
16                    existence of one of its franchised dealers situated in this State  
17                    is not viable, or that the dealer holds or fails to hold licensing  
18                    rights for the sale of other line-makes of vehicles in a manner  
19                    consistent with the franchisor's existing or future distribution  
20                    or marketing plans, shall not constitute a lawful basis for the  
21                    franchisor to fail or refuse to approve a dealer's proposed  
22                    change in use of a dealership facility or relocation: provided,  
23                    however, that nothing contained in this subdivision shall be  
24                    deemed to prevent or prohibit a franchisor from failing to  
25                    approve a dealer's proposed relocation on grounds that the  
26                    specific site or facility proposed by the dealer is otherwise  
27                    unreasonable under the circumstances. Approval of a  
28                    relocation pursuant to this subdivision shall not in itself  
29                    constitute the franchisor's representation or assurance of the  
30                    dealer's viability at that location.
- 31                    3.     Condition, directly or indirectly, the approval of the sale or  
32                    transfer of the ownership of a dealership by the sale of the  
33                    business, stock transfer, or otherwise, or the transfer, sale,  
34                    succession, or assignment of a dealer's franchise, or a change  
35                    in the executive management or principal operator of the  
36                    dealership upon the existing or proposed dealer's willingness  
37                    to renovate, construct, or relocate the dealership facility, or to  
38                    enroll in a facility program; provided, however, that this  
39                    provision shall not apply to or affect the validity of an  
40                    ownership transfer or change in executive management or  
41                    principal operator of the dealership that occurred prior to July  
42                    1, 2021. This sub-sub-subdivision shall not be construed to  
43                    annul or impair an existing agreement regarding the  
44                    renovation, construction, or relocation of a dealership facility  
45                    that existed prior to the transfer, sale, succession, assignment  
46                    of the dealer's franchise, change in executive management or  
47                    change in principal operator. This sub-sub-subdivision does  
48                    not prevent a manufacturer or distributor from requiring  
49                    changes to a facility that are necessary in order to sell or service  
50                    a motor vehicle.

1                                   4.     Condition, directly or indirectly, the approval of the sale or  
 2                                   transfer of the ownership of a dealership by the sale of the  
 3                                   business, stock transfer, or otherwise, or the transfer, sale,  
 4                                   succession, or assignment of a dealer's franchise, or a change  
 5                                   in the executive management or principal operator of the  
 6                                   dealership, or a dealer's proposed relocation of the dealership  
 7                                   facility, or a dealer's satisfaction of the terms of any incentive  
 8                                   program or contest, upon the existing or proposed dealer's  
 9                                   willingness to enter into a right of first refusal in favor of the  
 10                                   manufacturer."

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

12     "(7)   Notwithstanding the terms of any contract or agreement, to prevent or refuse  
 13           to honor the succession to a dealership, including the franchise, by a motor  
 14           vehicle dealer's designated successor as provided for under this subsection.

15           ...

16     b.     Any objections by a manufacturer or distributor to an owner's  
 17           appointment of a designated successor shall be asserted in accordance  
 18           with the following procedure:

19           ...

20           3.     The Commissioner shall endeavor to hold the evidentiary  
 21           hearing required under this sub-subdivision and render a  
 22           determination within 180 days after receipt of the written  
 23           request from the owner or designated successor. In  
 24           determining whether good cause exists for rejection of the  
 25           owner's appointed designated successor, the manufacturer or  
 26           distributor has the burden of proving that the designated  
 27           successor is a person who is not of good moral character or  
 28           does not meet the franchisor's existing written and reasonable  
 29           standards and, considering the volume of sales and service of  
 30           the new motor vehicle dealer, uniformly applied minimum  
 31           business experience standards in the market ~~area~~area for  
 32           the proposed principal operator of the dealership.

33           ...

34     d.     Within 60 days after the death or incapacity of the owner or principal  
 35           operator, a designated successor appointed in substantial compliance  
 36           with this section shall give the affected manufacturer or distributor  
 37           written notice of his or her succession to the position of owner or  
 38           principal operator of the new motor vehicle dealership; provided,  
 39           however, that the failure of the designated successor to give the  
 40           manufacturer or distributor written notice as provided above within 60  
 41           days of the death or incapacity of the owner or principal operator shall  
 42           not result in the waiver or termination of the designated successor's  
 43           right to succeed to the ownership of the new motor vehicle dealership  
 44           unless the manufacturer or distributor gives written notice of this  
 45           provision to either the designated successor or the deceased or  
 46           incapacitated owner's executor, administrator, guardian or other  
 47           fiduciary by certified or registered mail, return receipt requested, and  
 48           said written notice grants not less than ~~30 days~~time ~~days~~ within which  
 49           the designated successor may give the notice required hereunder,  
 50           provided the designated successor or the deceased or incapacitated  
 51           owner's executor, administrator, guardian or other fiduciary has given

1 the manufacturer reasonable notice of death or incapacity. Within 30  
2 days of receipt of the notice by the manufacturer or distributor from  
3 the designated successor provided in this sub-subdivision, the  
4 manufacturer or distributor may request that the designated successor  
5 complete the application forms generally utilized by the manufacturer  
6 or distributor to review the designated successor's qualifications to  
7 establish a successor dealership. Within 30 days of receipt of the  
8 completed forms, the manufacturer or distributor shall send a letter by  
9 certified or registered mail, return receipt requested, advising the  
10 designated successor of facts and circumstances which have changed  
11 since the manufacturer's or distributor's original approval of the  
12 designated successor, and which have caused the manufacturer or  
13 distributor to object to the designated successor. Upon receipt of such  
14 notice, the designated successor may either designate an alternative  
15 successor or may file a request for evidentiary hearing in accordance  
16 with the procedures provided in sub-subdivisions b.2. -5. of this  
17 subdivision. In any such hearing, the manufacturer or distributor shall  
18 be limited to facts and circumstances which did not exist at the time  
19 the designated successor was originally approved or evidence which  
20 was originally requested to be produced by the designated successor  
21 at the time of the original request and was fraudulent.

22 ...."

23 **SECTION 1.(c)** G.S. 20-305(18) reads as rewritten:

24 "(18) To prevent or attempt to prevent a dealer from receiving fair and reasonable  
25 compensation for the value of the franchised business transferred in  
26 accordance with G.S. 20-305(4) above, or to prevent or attempt to prevent,  
27 through the exercise of any contractual right of first ~~refusal~~-refusal, option to  
28 purchase, or otherwise, a dealer located in this State from transferring the  
29 franchised business to such persons or other entities as the dealer shall  
30 designate in accordance with G.S. 20-305(4). The opinion or determination of  
31 a manufacturer that the existence or location of one of its franchised dealers  
32 situated in this State is not viable or is not consistent with the manufacturer's  
33 distribution or marketing forecast or plans shall not constitute a lawful basis  
34 for the manufacturer to fail or refuse to approve a dealer's proposed transfer  
35 of ownership submitted in accordance with G.S. 20-305(4), or "good cause"  
36 for the termination, cancellation, or nonrenewal of the franchise under  
37 G.S. 20-305(6) or grounds for the objection to an owner's designated  
38 successor appointed pursuant to G.S. 20-305(7)."

## 40 **ELECTRIC VEHICLES/FACILITATE SALES OF ELECTRIC VEHICLES**

41 **SECTION 2.(a)** G.S. 20-305(6)g. reads as rewritten:

42 "g. A franchise shall continue in full force and operation notwithstanding  
43 a change, in whole or in part, of an established plan or system of  
44 distribution of the motor vehicles offered for sale under the franchise.  
45 The appointment of a new manufacturer, factory branch, distributor,  
46 or distributor branch for motor vehicles offered for sale under the  
47 franchise agreement shall be deemed to be a change of an established  
48 plan or system of distribution.

49 Upon the occurrence of the change, the Division shall deny an  
50 application of a manufacturer, factory branch, distributor, or  
51 distributor branch for a license or license renewal unless the applicant

1 for a license as a manufacturer, factory branch, distributor, or  
2 distributor branch offers to each motor vehicle dealer who is a party to  
3 a franchise for that ~~line make~~ line make, without any separate or  
4 additional fee or charge, a new franchise agreement containing  
5 substantially the same provisions which were contained in the  
6 previous franchise agreement or files an affidavit with the Division  
7 acknowledging its undertaking to assume and ~~fulfill~~ fulfill, without  
8 any separate or additional fee or charge to its dealers, the rights, duties,  
9 and obligations of its predecessor under the previous franchise  
10 agreement. Should the Division fail to deny an application following  
11 the change, as required by this subsection, the Division shall then deny  
12 any subsequent renewal of such license until such time as the  
13 manufacturer, factory branch, distributor, or distributor branch offers  
14 to each motor vehicle dealer who is a party to a franchise for that line  
15 make a new franchise agreement on substantially the same provisions  
16 which were contained in the previous franchise agreement."

17 **SECTION 2.(b)** G.S. 20-305(9) reads as rewritten:

18 "(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this  
19 State to purchase or lease a specific dealer management computer system for  
20 communication with the manufacturer, factory branch, distributor, or  
21 distributor branch or any computer hardware or software used for any purpose  
22 other than the maintenance or repair of motor vehicles, to participate  
23 monetarily in an advertising campaign or contest, or to purchase unnecessary  
24 or unreasonable quantities of any promotional materials, training materials,  
25 training programs, showroom or other display decorations, materials,  
26 computer equipment or programs, charging stations, or special tools at the  
27 expense of the new motor vehicle dealer, provided that nothing in this  
28 subsection shall preclude a manufacturer or distributor from including an  
29 unitemized uniform charge in the base price of the new motor vehicle charged  
30 to the dealer where such charge is attributable to advertising costs incurred or  
31 to be incurred by the manufacturer or distributor in the ordinary courses of its  
32 business.

33 Notwithstanding the terms or conditions of any franchise or other  
34 agreement, policy, or incentive program, it is unlawful for any manufacturer  
35 or distributor to require, coerce, or attempt to coerce any of its franchised  
36 dealers in this State to purchase or lease any electric vehicle charging stations  
37 at the dealer's expense unless the dealer has notified the manufacturer or  
38 distributor of the dealer's intention to begin selling and servicing electric  
39 vehicles manufactured or distributed by that manufacturer or distributor. If the  
40 dealer is actually offering for sale to the public or providing warranty service  
41 on electric vehicles manufactured or distributed by that manufacturer or  
42 distributor, the dealer may not be required to purchase or lease, at the dealer's  
43 expense, (a) more than the number of electric vehicle charging stations for use  
44 by service technicians and customer education than would reasonably be  
45 necessary for the dealer to perform these functions based on the dealer's  
46 estimated sales and service volume during the following three-year period or  
47 (b) to make electric vehicle charging stations located at the dealership  
48 available for use by the general public. Nothing in this subdivision shall  
49 prohibit a manufacturer or distributor from establishing an incentive program  
50 for its dealers within this State that provides financial assistance to dealers that  
51 purchase or install electric charging stations; provided, however, that the

1 incentive compensation paid to the dealer for the dealer's purchase or lease  
2 and installation of all charging stations is reasonable and the amount paid  
3 separately reflects incentive compensation related to the charging stations.

4 Notwithstanding the terms or conditions of any franchise or other  
5 agreement, policy, or incentive program, it is unlawful for any manufacturer  
6 or distributor to require that any of its franchised dealers in this State purchase  
7 or lease any diagnostic equipment or tool for the maintenance, servicing, or  
8 repair of electric vehicles if the dealer has other diagnostic equipment or tools  
9 available for servicing another brand or line make of vehicle manufactured or  
10 distributed by that manufacturer or distributor that can perform the work to  
11 the standards required by and which have been approved by the applicable  
12 manufacturer or distributor; provided that approval by the manufacturer or  
13 distributor shall not be unreasonably withheld.

14 Notwithstanding the terms or conditions of any franchise or other  
15 agreement, a franchised dealer that sells fewer than 250 new motor vehicles  
16 per year may request approval from the manufacturer to enter into a tool loaner  
17 agreement with another dealer, in lieu of purchasing or leasing any special  
18 tools required by any manufacturer, factory branch, distributor, or distributor  
19 branch, provided, however, that all of the following conditions are satisfied:

20 ...."

21 **SECTION 2.(c)** G.S. 20-286(10) reads as rewritten:

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

26 ...."

## 27 **REQUIREMENT TO PURCHASE PRE-OWNED VEHICLES**

28 **SECTION 3.(a)** G.S. 20-305(9) reads as rewritten:

29 "(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this  
30 State to purchase or lease a specific dealer management computer system for  
31 communication with the manufacturer, factory branch, distributor, or  
32 distributor branch or any computer hardware or software used for any purpose  
33 other than the maintenance or repair of motor vehicles, to participate  
34 monetarily in an advertising campaign or contest, to purchase off-lease or  
35 other pre-owned vehicles, or to purchase unnecessary or unreasonable  
36 quantities of any promotional materials, training materials, training programs,  
37 showroom or other display decorations, materials, computer equipment or  
38 programs, or special tools at the expense of the new motor vehicle dealer,  
39 provided that nothing in this subsection shall preclude a manufacturer or  
40 distributor from including an unitemized uniform charge in the base price of  
41 the new motor vehicle charged to the dealer where such charge is attributable  
42 to advertising costs incurred or to be incurred by the manufacturer or  
43 distributor in the ordinary courses of its business. Notwithstanding the terms  
44 or conditions of any franchise or other agreement, a franchised dealer that sells  
45 fewer than 250 new motor vehicles per year may request approval from the  
46 manufacturer to enter into a tool loaner agreement with another dealer, in lieu  
47 of purchasing or leasing any special tools required by any manufacturer,  
48 factory branch, distributor, or distributor branch, provided, however, that all  
49 of the following conditions are satisfied:

50 ...."



1           **SECTION 3.(b)** G.S. 20-305(28) reads as rewritten:

2           "(28) To require, coerce, or attempt to coerce any new motor vehicle dealer to  
3           ~~purchase or order any purchase, order, or accept any pre-owned or~~ new motor  
4           vehicle as a precondition to purchasing, ordering, or receiving any other new  
5           motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from  
6           requiring that a new motor vehicle dealer fairly represent and inventory the  
7           full line of current model year new motor vehicles which are covered by the  
8           franchise agreement, provided that such inventory representation  
9           requirements are not unreasonable under the circumstances."

10  
11           **CLARIFICATION OF DEALER'S RIGHT TO CONTROL LOCATION**

12           **SECTION 4.** G.S. 20-305(12) reads as rewritten:

13           "(12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this  
14           State to change location of the dealership, or to make any substantial  
15           alterations to the dealership premises or facilities, when to do so would be  
16           unreasonable, or without written assurance of a sufficient supply of new motor  
17           vehicles so as to justify such ~~an expansion, expense,~~ in light of the current  
18           market and economic conditions. If a dealer is required by the manufacturer  
19           or distributor to change the location of the dealership and has not sold its  
20           existing dealership facility and real estate within the later of 180 days of listing  
21           the property for sale or 90 days after the facility relocation, then, upon the  
22           written request of the dealer, the manufacturer or distributor shall purchase  
23           the dealer's existing dealership facility and real estate at its fair market value  
24           as determined by an independent appraiser agreed upon by the dealer and the  
25           manufacturer or distributor. If a manufacturer or distributor purchases a  
26           dealership facility and real estate, then it shall be entitled to sole ownership,  
27           possession, use, and control of any items, buildings, or property that were  
28           included in the contract to purchase."

29  
30           **GRANDFATHER EXTENSION**

31           **SECTION 5.** G.S. 20-305(30) reads as rewritten:

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

50           The price of the vehicle, for purposes of this subdivision shall include the  
51           manufacturer's use of rebates, credits, or other consideration that has the effect

1 of causing a variance in the price of new motor vehicles offered to its  
2 franchised dealers located in the State.

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

8 a. With respect to manufacturer to consumer rebates and incentives, the  
9 manufacturer's criteria for determining eligibility shall:

- 10 1. Permit all of the manufacturer's franchised new motor vehicle  
11 dealers in this State to offer the rebate or incentive; and
- 12 2. Be uniformly applied and administered to all eligible  
13 consumers.

14 b. With respect to manufacturer to dealer rebates and incentives, the  
15 rebate or incentive program shall:

- 16 1. Be based solely on the dealer's actual or reasonably anticipated  
17 sales volume or on a uniform per vehicle sold or leased basis;
- 18 2. Be uniformly available, applied, and administered to all of the  
19 manufacturer's franchised new motor vehicle dealers in this  
20 State; and
- 21 3. Provide that any of the manufacturer's franchised new motor  
22 vehicle dealers in this State may, upon written request, obtain  
23 the method or formula used by the manufacturer in establishing  
24 the sales volumes for receiving the rebates or incentives and  
25 the specific calculations for determining the required sales  
26 volumes of the inquiring dealer and any of the manufacturer's  
27 other franchised new motor vehicle dealers located within 75  
28 miles of the inquiring dealer.

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

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

38 In the event that as of October 1, 1999, a manufacturer was operating a  
39 program that varied the price charged to its franchised dealers in this State in  
40 a manner that would violate this subdivision, or had in effect a documented  
41 policy that had been conveyed to its franchised dealers in this State and that  
42 varied the price charged to its franchised dealers in this State in a manner that  
43 would violate this subdivision, it shall be lawful for that program or policy,  
44 including amendments to that program or policy that are consistent with the  
45 purpose and provisions of the existing program or policy, or a program or  
46 policy similar thereto implemented after October 1, 1999, to continue in effect  
47 as to the manufacturer's franchised dealers located in this State until June 30,  
48 ~~2022-2025~~.

49 In the event that as of June 30, 2001, a manufacturer was operating a  
50 program that varied the price charged to its franchised dealers in this State in  
51 a manner that would violate this subdivision, or had in effect a documented

1 policy that had been conveyed to its franchised dealers in this State and that  
2 varied the price charged to its franchised dealers in this State in a manner that  
3 would violate this subdivision, and the program or policy was implemented in  
4 this State subsequent to October 1, 1999, and prior to June 30, 2001, and  
5 provided that the program or policy is in compliance with this subdivision as  
6 it existed as of June 30, 2001, it shall be lawful for that program or policy,  
7 including amendments to that program or policy that comply with this  
8 subdivision as it existed as of June 30, 2001, to continue in effect as to the  
9 manufacturer's franchised dealers located in this State until June 30,  
10 ~~2022-2025~~.

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

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

## 20 VEHICLE ALLOCATION/APEAL PROCESS

21 **SECTION 6.** G.S. 20-305(14) reads as rewritten:

22 "(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or  
23 accessories in reasonable quantities relative to the new motor vehicle dealer's  
24 facilities and sales potential in the new motor vehicle dealer's market area as  
25 determined in accordance with reasonably applied economic principles, or  
26 within a reasonable time, after receipt of an order from a dealer having a  
27 franchise for the retail sale of any new motor vehicle sold or distributed by the  
28 manufacturer or distributor, any new vehicle, parts or accessories to new  
29 vehicles as are covered by such franchise, and such vehicles, parts or  
30 accessories as are publicly advertised as being available or actually being  
31 delivered. The delivery to another dealer of a motor vehicle of the same model  
32 and similarly equipped as the vehicle ordered by a motor vehicle dealer who  
33 has not received delivery thereof, but who has placed his written order for the  
34 vehicle prior to the order of the dealer receiving the vehicle, shall be evidence  
35 of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor  
36 vehicle dealer within a reasonable time, without cause. Additionally, except  
37 as may be required by any consent decree of the Commissioner or other order  
38 of the Commissioner or court of competent jurisdiction, any sales objectives  
39 which a manufacturer, factory branch, distributor, or distributor branch  
40 establishes for any of its franchised dealers in this State must be reasonable,  
41 and every manufacturer, factory branch, distributor, or distributor branch must  
42 allocate its products within this State in a manner that does all of the following:  
43 a. Provides each of its franchised dealers in this State an adequate supply  
44 of vehicles by series, product line, and model in a fair, reasonable, and  
45 equitable manner based on each dealer's historical selling pattern and  
46 reasonable sales standards as compared to other same line-make  
47 dealers in the State.

48 ...

49 f. Provides each of its franchised dealers in this State a process for a  
50 dealer to appeal the dealer's vehicle allocation should the dealer  
51 believe it was not allocated or did not receive vehicle inventory in a

1 manner that complies with both this subdivision and the  
2 manufacturer's or distributor's uniformly applied allocation formula.  
3 Participation in the appeal process does not waive or impair any rights,  
4 claims, or defenses available to the dealer, manufacturer, or distributor  
5 under applicable law. All in-person meetings, mediations, or other  
6 proceedings related to the appeal process shall be conducted in this  
7 State unless otherwise agreed to by the parties.

8 This ~~subsection~~-subdivision is not violated, however, if such failure is caused  
9 solely by the occurrence of temporary international, national, or regional  
10 product shortages resulting from natural disasters, unavailability of parts,  
11 labor strikes, product recalls, and other factors and events beyond the control  
12 of the manufacturer that temporarily reduce a manufacturer's product supply.  
13 The willful or malicious maintenance, creation, or alteration of a vehicle  
14 allocation process or formula by a manufacturer, factory branch, distributor,  
15 or distributor branch that is in any part designed or intended to force or coerce  
16 a dealer in this State to close or sell the dealer's franchise, cause the dealer  
17 financial distress, or to relocate, update, or renovate the dealer's existing  
18 dealership facility shall constitute an unfair and deceptive trade practice under  
19 G.S. 75-1.1."  
20

## 21 **LOANER/RENTAL CAR REIMBURSEMENT**

22 **SECTION 7.** G.S. 20-305(33) reads as rewritten:

23 "(33) To fail to reimburse a dealer located in this State in full for the actual ~~cost~~-cost,  
24 including applicable taxes and third-party fees, of providing a loaner or rental  
25 vehicle to any customer who is having a vehicle serviced at the dealership if  
26 the provision of such a loaner or rental vehicle is required by the manufacturer.  
27 It is unlawful for a manufacturer to fail to reimburse the dealer in full as  
28 provided above (i) whether or not the dealer provides the customer with a  
29 model vehicle similar to the vehicle the customer brought in for service, in the  
30 event the dealer does not have a similar model loaner or rental vehicle  
31 available, or (ii) if the provision of a rental or loaner vehicle to a customer is  
32 required or approved by the manufacturer or distributor and further provided  
33 that all or any portion of the time the dealer has provided the customer with a  
34 loaner or rental vehicle is due to the unavailability of one or more parts sold  
35 or distributed by the manufacturer or through a supplier designated or  
36 approved by the manufacturer."  
37

## 38 **FACILITY EXPENDITURES**

39 **SECTION 8.** G.S. 20-305(50) reads as rewritten:

40 "(50) To require, coerce, or attempt to coerce any new motor vehicle dealer located  
41 in this State to change location of its dealership, or to make any substantial  
42 alterations to its dealership premises or facilities, if the dealer (i) has changed  
43 the location of its dealership or made substantial alterations to its dealership  
44 premises or facilities within the preceding 10 years at a cost of more than two  
45 hundred fifty thousand dollars (\$250,000), indexed to the Consumer Price  
46 Index, over this 10-year period, and (ii) the change in location or alteration  
47 was made toward compliance with a facility initiative or facility program that  
48 was sponsored or supported by the manufacturer, factory branch, distributor,  
49 or distributor branch, with the approval of the manufacturer, factory branch,  
50 distributor, or distributor branch. If a manufacturer, factory branch,  
51 distributor, or distributor branch offers incentives, or other payments under a

1 program that are in any part conditioned on a dealer's construction of a new  
2 facility, facility improvements, or installation of signs or other image  
3 elements, a dealer that constructed a new facility, made facility improvements,  
4 or installed signs or other image elements required by or approved by the  
5 manufacturer that were completed at a cost of more than two hundred fifty  
6 thousand dollars (\$250,000), indexed to the Consumer Price Index, within the  
7 preceding 10 years shall be deemed to be in compliance with any applicable  
8 facility requirements included in the manufacturer's program, and the dealer  
9 shall be entitled to receive all such incentives or other payments awardable  
10 under the program. If, during the 10-year period, the manufacturer revises or  
11 discontinues an existing program, standard, or policy or establishes a new  
12 program, standard, or policy or other benefit relating to construction or  
13 substantial alteration of a dealership, a motor vehicle dealer that completed  
14 construction or alteration of a dealership at a cost of more than two hundred  
15 fifty thousand dollars (\$250,000) as part of a prior program, standard, or  
16 policy and elects not to participate in the new or revised program, standard, or  
17 policy shall not be entitled to the benefits under the new or revised program  
18 but shall remain entitled to all benefits under the prior program, standard, or  
19 policy according to the terms of the prior program, standard, or policy. If the  
20 prior program, standard, or policy under which the dealer completed a  
21 construction or alteration does not contain a specific period of time during  
22 which the manufacturer or distributor must provide payments or benefits to a  
23 dealer, then the manufacturer or distributor may not deny the dealer payment  
24 or benefits under the terms of that prior program, as it existed when the dealer  
25 began to perform under the prior program, for the balance of the 10-year term,  
26 regardless of whether the manufacturer's or distributor's program, standard, or  
27 policy has been revised or discontinued. For any dealer that did not change  
28 the location of its dealership or make substantial alterations to its dealership  
29 premises or facilities within the preceding 10 years at a cost of more than two  
30 hundred fifty thousand dollars (\$250,000), indexed to the Consumer Price  
31 Index, the dealer's obligation to change location of its dealership, or to make  
32 any substantial alteration to its dealership premises or facilities, at the request  
33 of a manufacturer, factory branch, distributor, or distributor branch, or to  
34 satisfy a requirement or condition of an incentive program sponsored by a  
35 manufacturer, factory branch, distributor, or distributor branch, shall be  
36 governed by the applicable provisions of subdivisions (4), (11), (12), (25),  
37 (30), (32), and (42) of this section. This section shall not apply to any facility  
38 or premises improvement or alteration that is voluntarily agreed to by the new  
39 motor vehicle dealer and for which the dealer receives facilities-related  
40 compensation from the manufacturer or distributor for the facility  
41 improvement or alteration equivalent to at least a majority of the cost incurred  
42 by the dealer for the facility improvement or alteration."  
43

## 44 **WARRANTY REQUIREMENTS**

45 **SECTION 9.** G.S. 20-305.1 reads as rewritten:

46 **"§ 20-305.1. Automobile dealer warranty and recall obligations.**

47 (a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch,  
48 shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's  
49 obligations for preparation, delivery, warranty, manufacturer-sponsored maintenance programs,  
50 manufacturer extended warranty, parts exchange programs, and recall service on its products.  
51 The disclosure required under this subsection shall include the schedule of compensation to be

1 paid the dealers for parts, work, and service in connection with preparation, delivery, warranty,  
2 and recall service, and the time allowances for the performance of the work and service. In no  
3 event shall the schedule of compensation fail to include reasonable compensation for diagnostic  
4 ~~work-work, shipping, if required by the manufacturer or distributor, and for battery disposal or~~  
5 other disposal charges and all other associated fees that were actually incurred by the dealer, and  
6 associated administrative requirements as well as repair service and labor. Time allowances for  
7 the performance of preparation, delivery, warranty, and recall work and service shall be  
8 reasonable and adequate for the work to be performed. The compensation paid under this section  
9 shall be reasonable, provided, however, that under no circumstances shall the reasonable  
10 compensation under this section for warranty and recall service be in an amount less than the  
11 dealer's current retail labor rate and the amount charged to retail customers for the manufacturer's  
12 or distributor's original parts for nonwarranty work of like kind, provided the amount is  
13 competitive with the retail rates charged for parts and labor by other franchised dealers of the  
14 same line-make located within the dealer's market. If there is no other same line-make dealer  
15 located in the dealer's market or if all other same line-make dealers in the dealer's market are  
16 owned or operated by the same entities or individuals as the dealership being compared, the retail  
17 rates charged for parts and labor by other franchised dealers located in the dealer's market that  
18 sell competing line-make motor vehicles as the dealer may be considered when determining  
19 whether the dealer's rates are competitive.

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

1 distributor that a timely protest has been filed and that a hearing will be held on such protest. In  
2 any hearing held pursuant to this subsection, the manufacturer or distributor shall have the burden  
3 of proving by a preponderance of the evidence that the rate declared by the dealer was  
4 unreasonable as described in this subsection and that the proposed adjustment of the average  
5 percentage markup is reasonable pursuant to the provisions of this subsection. If the dealer  
6 prevails at a protest hearing, the dealer's proposed rate, affirmed at the hearing, shall be effective  
7 as of 60 days after the date of the dealer's initial submission of the customer-paid service orders  
8 to the manufacturer or distributor. If the manufacturer or distributor prevails at a protest hearing,  
9 the rate proposed by the manufacturer or distributor, that was affirmed at the hearing, shall be  
10 effective beginning 30 days following issuance of the final order.

11 ...

12 (b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor  
13 vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of  
14 its warranty or recall obligations with respect to a motor vehicle, to fail to fully compensate its  
15 motor vehicle dealers licensed in this State for a qualifying used motor vehicle pursuant to  
16 subsections (i) and (j) of this section or warranty and recall parts other than parts used to repair  
17 the living facilities of recreational vehicles, including motor homes, travel trailers, fifth-wheel  
18 trailers, camping trailers, and truck campers as defined in G.S. 20-4.01(32b), at the prevailing  
19 retail rate according to the factors in subsection (a) of this section, or, in service in accordance  
20 with the schedule of compensation provided the dealer pursuant to subsection (a) of this section,  
21 or to otherwise recover all or any portion of its costs for compensating its motor vehicle dealers  
22 licensed in this State for warranty or recall parts and service or for payments for a qualifying  
23 used motor vehicle pursuant to subsections (i) and (j) of this section either by reduction in the  
24 amount due to the dealer, or by separate charge, surcharge, or other imposition, and to fail to  
25 indemnify and hold harmless its franchised dealers licensed in this State against any judgment  
26 for damages or settlements agreed to by the manufacturer, including, but not limited to, court  
27 costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims  
28 or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or  
29 implied warranty, or rescission or revocation of acceptance of the sale of a motor vehicle as defined  
30 in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective or  
31 negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other  
32 functions by the manufacturer, factory branch, distributor or distributor branch, beyond the  
33 control of the dealer. Any audit, other than an audit conducted for cause, for warranty or recall  
34 parts or service compensation, or compensation for a qualifying used motor vehicle in accordance  
35 with subsections (i) and (j) of this section may only be conducted one time within any 12-month  
36 period and shall only be for the 12-month period immediately following the date of the payment  
37 of the claim by the manufacturer, factory branch, distributor, or distributor branch. Any audit,  
38 other than an audit conducted for cause, for sales incentives, service incentives, rebates, or other  
39 forms of incentive compensation may only be conducted one time within any 12-month period  
40 and shall only be for the 12-month period immediately following the date of the payment of the  
41 claim by the manufacturer, factory branch, distributor, or distributor branch pursuant to a sales  
42 incentives program, service incentives program, rebate program, or other form of incentive  
43 compensation program. Provided, however, these limitations shall not be effective in the case of  
44 fraudulent claims. For purposes of this subsection, the term "audit conducted for cause" is defined  
45 as an audit based on any of the following: (i) statistical evidence that the dealer's claims are  
46 unreasonably high in comparison to other dealers similarly situated or the dealer's claim history,  
47 (ii) that the dealer's claims submissions violate reasonable claims documentation or other  
48 requirements of the applicable manufacturer, factory branch, distributor, or distributor branch,  
49 (iii) a follow up to an earlier audit in which the dealer was notified of a claim documentation  
50 procedure violation that occurred within the prior 12-month period, provided the audit and any  
51 chargeback are in compliance with subdivision (b1) or (b2) of this section and are limited in

1 scope to just the specific violation determined previously, or (iv) reasonable evidence of  
2 malfeasance or fraud. In the event a manufacturer, factory branch, distributor, or distributor  
3 branch elects to perform an audit conducted for cause, the manufacturer, factory branch,  
4 distributor, or distributor branch, simultaneously with providing the affected dealer with written  
5 notice of the audit, shall further be required to explain in detail in the notice the data or other  
6 foundation upon which the cause is based.

7 ...

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

22 ...."

## 23 24 **CLARIFY DEFINITION OF MOTOR VEHICLE DEALER**

### 25 **SECTION 10.** G.S. 20-286(11)a. reads as rewritten:

26 "a. A person who does any of the following:

- 27 1. For commission, money, or other thing of value, buys, sells,  
28 leases at retail, or exchanges, whether outright or on  
29 conditional sale, bailment lease, chattel mortgage, or  
30 otherwise, five or more motor vehicles within any 12  
31 consecutive months, regardless of who owns the motor  
32 vehicles.
- 33 2. On behalf of another and for commission, money, or other  
34 thing of value, arranges, offers, attempts to solicit, or attempts  
35 to negotiate the sale, purchase, or exchange of an interest in  
36 five or more motor vehicles within any 12 consecutive months,  
37 regardless of who owns the motor vehicles.
- 38 3. Engages, wholly or in part, in the business of ~~selling~~ selling,  
39 leasing at retail, new motor vehicles or new or used motor  
40 vehicles, or used motor vehicles only, whether or not the motor  
41 vehicles are owned by that person, and sells five or more motor  
42 vehicles within any 12 consecutive months.
- 43 4. Offers to sell, displays, or permits the display for sale for any  
44 form of compensation five or more motor vehicles within any  
45 12 consecutive months.
- 46 5. Primarily engages in the leasing or renting of motor vehicles  
47 to others and sells or offers to sell those vehicles at retail.
- 48 6. For commission, money, or other thing of value, or on behalf  
49 of another person sharing ten percent (10%) or more common  
50 ownership, offers new vehicles as part of a subscription  
51 program. This sub-sub-subdivision shall not apply to any



1 person providing a vehicle subscription or monthly rental  
2 program on or after January 1, 2025."  
3

#### 4 DEALERSHIP FINANCIAL STATEMENTS

5 SECTION 11. G.S. 20-305(20) reads as rewritten:

6 "(20) To release to any outside party, except under subpoena or as otherwise  
7 required by law or in an administrative, judicial or arbitration proceeding  
8 involving the manufacturer or new motor vehicle dealer, any confidential  
9 business, financial, or personal information which may be from time to time  
10 provided by the new motor vehicle dealer to the manufacturer, without the  
11 express written consent of the new motor vehicle dealer. A manufacturer shall  
12 not require, or include in any incentive program, a requirement that any of its  
13 motor vehicle dealers in this State provide an exclusive financial statement for  
14 a franchise or line make when the dealer company operates more than one  
15 franchise or sells more than one line make."  
16

#### 17 DEALER MANUFACTURER PARTNERSHIP FOR ONLINE SALES

18 SECTION 12. G.S. 20-305 is amended by adding a new subdivision to read:

19 "(53) Notwithstanding the terms of any franchise or agreement, or the terms of any  
20 program or policy, to do any of the following if it has any franchised dealers  
21 in this State and if it permits retail customers the option of reserving or  
22 requesting to purchase or lease a vehicle directly from such manufacturer or  
23 distributor:

- 24 a. Fail to assign any retail vehicle reservation or request to purchase or  
25 lease received by the manufacturer or distributor from a resident of  
26 this State to the franchised dealer authorized to sell that make and  
27 model which is designated by the customer, or if none is designated,  
28 to its franchised dealer authorized to sell that make and model located  
29 in closest proximity to the customer's location, provided that if the  
30 customer does not purchase or lease the vehicle from that dealer within  
31 10 days of the vehicle being assigned to the dealer, or if the customer  
32 requests that the transaction be assigned to another dealer, then the  
33 manufacturer or distributor may assign the transaction to another  
34 franchised dealer authorized to sell that make and model.
- 35 b. Prohibit a retail customer that has reserved or requested to purchase or  
36 lease a vehicle directly from the manufacturer or distributor from  
37 negotiating the final purchase price of the vehicle directly with the  
38 dealer if the dealer is authorized to sell that make and model and to  
39 agree on a final price for a new motor vehicle which varies from the  
40 MSRP established by the manufacturer or distributor.
- 41 c. Prohibit a retail customer that has reserved or requested to purchase or  
42 lease a vehicle directly from the manufacturer or distributor from using  
43 any vehicle financing or leasing source available from or through the  
44 dealer to whom the customer's vehicle reservation or request to  
45 purchase or lease has been assigned or to prohibit a franchised dealer  
46 in this State from offering and negotiating directly with the customer  
47 the terms of vehicle financing or leasing through all sources available  
48 to the dealer.
- 49 d. Prohibit a retail customer that has reserved or requested to purchase or  
50 lease a vehicle directly from the manufacturer or distributor from  
51 purchasing on terms negotiated or agreed to directly between the

1 customer and the dealer to whom the customer's reservation or request  
 2 to purchase or lease has been assigned, any service contract, extended  
 3 warranty, vehicle maintenance contract, or guaranteed asset protection  
 4 (GAP) agreement, or any other vehicle-related products and services  
 5 offered by the dealer, provided that a manufacturer, distributor, or  
 6 captive finance source shall not be required to finance any such  
 7 product or service that is not offered or supported by the manufacturer  
 8 or distributor.

9 e. Prohibit a retail customer that has reserved or requested to purchase or  
 10 lease a vehicle directly from the manufacturer or distributor and the  
 11 dealer to whom the customer's reservation or request to purchase or  
 12 lease has been assigned from directly negotiating the trade-in value the  
 13 customer will receive, or to prohibit the dealer from conducting an  
 14 on-site inspection of the condition of a trade-in vehicle before the  
 15 dealer becomes contractually obligated to accept the trade-in value  
 16 negotiated.

17 f. Use a third party to accomplish what would otherwise be prohibited  
 18 by this subdivision.

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

### 33 ELECTRONIC SIGNATURES

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

35 "(54) To prohibit or to in any way unreasonably limit or restrict a dealer from using  
 36 electronic signature technology that conforms to Article 40 of Chapter 66 of  
 37 the General Statutes to facilitate or execute loaner, demonstrator, rental, and  
 38 test drive agreements and forms."  
 39

### 40 CLARIFY VEHICLE INSPECTION REQUIREMENT FOR AFFILIATE DEALER

41 **SECTION 14.** G.S. 20-183.4C reads as rewritten:

42 **"§ 20-183.4C. When a vehicle must be inspected; 10-day temporary license plate.**

43 (a) Inspection. – A vehicle that is subject to a safety inspection, an emissions inspection,  
 44 or both must be inspected as follows:

45 (1) ~~A~~Except as otherwise provided in this subdivision, a new vehicle must be  
 46 inspected before it is delivered to a purchaser at retail in this State. Upon  
 47 purchase, a receipt approved by the Division must be provided to the new  
 48 owner certifying compliance. An inspection is not required if the vehicle was  
 49 previously inspected by an affiliated dealership, or between dealerships  
 50 having common or interrelated ownership, and the inspection occurred either  
 51

1                   within 180 days from the date of sale or within 300 miles from the mileage  
 2                   recorded at the date of sale.

3                   ...

- 4                   (2) A-Except as otherwise provided in this subdivision, a used vehicle must be  
 5                   inspected before it is offered for sale at retail in this State by a dealer. Upon  
 6                   purchase, a receipt approved by the Division must be provided to the new  
 7                   owner certifying compliance. An inspection is not required if the vehicle was  
 8                   previously inspected by an affiliated dealership, or between dealerships  
 9                   having common or interrelated ownership, and the inspection occurred either  
 10                   within 180 days from the date of sale or within 300 miles from the mileage  
 11                   recorded at the date of sale.

12                   ...."

## 13 PERMIT LIMITED OFF-PREMISES SALES ACTIVITIES

14                   SECTION 15. G.S. 20-292 reads as rewritten:

15                   "**§ 20-292. Dealers may display motor vehicles for sale at retail only at established**  
 16                   **salesrooms.**

17                   (a) A new or used motor vehicle dealer may display a motor vehicle for sale at retail only  
 18                   at the dealer's established salesroom, unless the display is of a motor vehicle that meets any of  
 19                   the following descriptions:

- 20                   (1) Contains the dealer's name or other sales information and is used by the dealer  
 21                   as a "demonstrator" for transportation purposes.  
 22                   (2) Is displayed at a trade show or exhibit at which no selling activities relating to  
 23                   the vehicle take place ~~place~~ and contains the dealer's name and business  
 24                   location.  
 25                   (3) Is displayed at the home or place of business of a customer at the request or  
 26                   with the permission or consent of the customer.

27                   (b) Nothing contained in this section or in any other provision contained in Article 12 of  
 28                   this Chapter shall be deemed to prohibit or restrict a new or used motor vehicle dealer or an  
 29                   employee, agent, or contractee of a new or used motor vehicle dealer from doing any of the  
 30                   following:

- 31                   (1) Delivering a motor vehicle purchased or leased by a customer to the  
 32                   customer's home or place of business or having a customer execute forms and  
 33                   other documents relating to vehicle purchase, lease, titling, registration,  
 34                   financing, insurance, and other products and services provided to the customer  
 35                   by or through the dealer that are presented to a customer at the customer's  
 36                   home or place of business by any employee or authorized agent of the dealer;  
 37                   provided, however, that all such forms and other documents have been fully  
 38                   agreed to and were fully completed in advance of their presentation to the  
 39                   customer, no additional negotiations or modifications related to the content of  
 40                   any of these forms or other documents take place, and no modifications are  
 41                   made to the content of any of these forms and other documents other than the  
 42                   correction of clerical or typographical errors.  
 43                   (2) Having any employee or authorized agent of the dealer explain vehicle  
 44                   operation, features, care, and warranties to the customer at the time the  
 45                   customer's vehicle is delivered.  
 46                   (3) Retrieving from the customer's home or place of business a motor vehicle that  
 47                   has been sold by the customer to the dealer.

48                   (c) This section does not apply to recreational vehicles, house trailers, or boat, animal,  
 49                   camping, or other utility trailers."

1 **SEVERABILITY CLAUSE**

2           **SECTION 16.** If any section or provision of this act is declared unconstitutional or  
3 invalid by the courts, it does not affect the validity of this act as a whole or any part other than  
4 the part so declared to be unconstitutional or invalid.

5  
6 **EFFECTIVE DATE**

7           **SECTION 17.** Sections 1 through 11 and Sections 13 through 16 of this act are  
8 effective when they become law and apply to all current and future franchises and other  
9 agreements in existence between any new motor vehicle dealer located in this State and a  
10 manufacturer or distributor as of the effective date of this act. Section 12 of this act becomes  
11 effective January 1, 2022, and applies as of that date to all existing and future programs and  
12 policies of all manufacturers and distributors having any franchised dealers in this State. Except  
13 as otherwise provided, the remainder of this act is effective when it becomes law.