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

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

SECTION 1. (a) G.S. 20-305(53) reads as rewritten:
"(53) Notwithstanding the terms of any franchise or agreement, or the terms of any program or policy, to do any of the following if it has any franchised dealers in this State and if State:

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

   a1. Fail to assign any retail vehicle reservation or request to purchase or lease received by the manufacturer or distributor from a resident of this State to the franchised dealer authorized to sell that make and model which is designated by the customer, or if none is designated, to its franchised dealer authorized to sell that make and model located in closest proximity to the customer's location, provided that if the customer does not purchase or lease the vehicle from that dealer within 10 days of the vehicle being assigned to the dealer, or if the customer requests that the transaction be assigned to another dealer, then the manufacturer or distributor may assign the transaction to another franchised dealer authorized to sell that make and model.

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

c3. Prohibit a retail customer that has reserved or requested to purchase or lease a vehicle directly from the manufacturer or distributor from using any vehicle financing or leasing source
available from or through the dealer to whom the customer's vehicle reservation or request to purchase or lease has been assigned or to prohibit a franchised dealer in this State from offering and negotiating directly with the customer the terms of vehicle financing or leasing through all sources available to the dealer.

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

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

e-6. Use a third party to accomplish what would otherwise be prohibited by this subdivision.

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

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

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

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

1. Subject to availability, have the ability to maintain on the ground and in the dealer's stock a reasonable supply of all makes and models of new vehicles the dealer is authorized to sell; provided, however, that this sub-sub-subdivision is not
violated to the extent that the inability of the manufacturer to
provide a reasonable on-the-ground supply of new vehicles to
dealers is based on Acts of God, labor strikes, unavailability of
parts, recalls, material shortages, or other factors and events
beyond the control of the manufacturer or distributor.

2. Have the right to store new and used batteries used for electric
vehicles and hybrid electric vehicles at a safe and secure
location selected and paid for by the dealer that is separate from
the dealership premises or fail or refuse to compensate dealers
for the full cost of storing used batteries more than 30 days
after the manufacturer or distributor has been notified by the
dealer of their availability to be picked up.

3. Have the opportunity to purchase used vehicle inventory
distributed or made available by that manufacturer or
distributor without imposing any additional conditions or
requirements on their dealers; provided that a manufacturer or
distributor may uniformly restrict dealers to purchase through
such program only used vehicles for which the dealer holds a
franchise.

4. Have the opportunity to order from or through the
manufacturer or distributor, receive, and maintain in stock a
reasonable supply of parts required for service and repair of the
manufacturer's or distributor's vehicles based on the volume of
service work performed by the dealer; provided that this
sub-sub-subdivision is not violated to the extent that the failure
of the manufacturer or distributor to provide parts is caused by
the occurrence of product shortages resulting from natural
disasters, unavailability of parts, labor strikes, or product
recalls beyond the control of the manufacturer or distributor.

5. Have, if the manufacturer or distributor has not contributed
money or content toward the dealer's advertising, the right to
independently determine the types of physical and digital
advertising media the dealer chooses to advertise for all brands,
models, and types of vehicles offered for sale by the dealer as
well as the content and format of the advertising and all
locations where the dealer chooses to establish, publish,
broadcast, circulate, or display such advertising and the
individuals to whom advertising is targeted or directed;
provided that nothing in this sub-sub-subdivision allows a
dealer to infringe upon or to interfere with the intellectual
property rights of manufacturers and distributors or to
advertise the products offered by the manufacturer or
distributor in a manner that disparages or violates the
reasonable brand image requirements of the manufacturer or
distributor.

d. Engage in any of the following actions:

1. Retain ownership of new motor vehicles until they are sold or
leased to retail customers located in this State, except for fleet
sales to a fleet customer that has a designation as such by the
manufacturer or distributor.
2. Except for the sale or lease of a vehicle in connection with a repurchase under Article 15A of this Chapter, consign new motor vehicles to its franchised dealers in this State for dealer inventory or for sale or lease to retail customers located in this State.

3. Reserve the right to negotiate binding terms of sale or lease directly with retail customers purchasing or leasing new motor vehicles located in this State; provided that displaying a manufacturer's or distributor's retail price on a manufacturer or distributor-owned or controlled website or other electronic or digital means of communication shall not be considered negotiating binding terms of sale or lease in violation of this sub-subdivision.

4. Designate its franchised dealers in this State to be only delivery agents for new motor vehicles and service and parts outlets, reserving for the respective manufacturer or distributor the right to establish the binding terms of vehicle sales or leases or the right to negotiate the binding terms of sale or lease directly with retail customers located in this State; provided that a manufacturer or distributor may engage in fleet sales with a fleet customer that has a designation as such by the manufacturer or distributor.

5. Nothing in this subdivision shall prohibit a manufacturer or distributor from setting or advertising a suggested retail price or a minimum advertised price.

6. Unreasonably impede or interfere with the ability of its rural and other franchised dealers located in this State to obtain from that manufacturer or distributor and sell or lease any series or models of technologically advanced vehicles that the manufacturer or distributor makes available for sale or lease in this State by or through its same line-make dealers. For purposes of this sub-subdivision, the term "technologically advanced vehicle" or "TAV" means a vehicle that utilizes an alternative technology other than an internal combustion engine for propulsion, such as an electric vehicle (EV) or hydrogen vehicle, or a vehicle that utilizes autonomous or self-driving technology rated at Level 3, 4, or 5 by the Society of Automotive Engineers. For purposes of this sub-subdivision, the term "EV" means any plug-in electric vehicle that does not rely on any nonelectric source of power in all modes of operation. For purposes of this sub-subdivision, the term "unreasonably impede or interfere with" includes, but is not limited to, any of the following:

I. If a manufacturer or distributor has established any training, infrastructure, capital, or equipment requirements as a condition for a dealer to sell TAVs, to fail or refuse to promptly cause, at a dealer's request, a detailed, itemized, individual dealer assessment to be performed for each of its franchised dealers located in this State that desires to sell and service that
manufacturer's or distributor's TAVs to determine the minimum TAV investment each dealer would need to make for training, facilities, tools, parts, equipment, and charging stations for vehicle service and for training dealership employees and customers. Charging stations for use by the public and all other charges or expenditures not technically essential to sell and service the manufacturer's or distributor's TAVs shall not be required or included in determining a dealer's minimum TAV investment. The minimum TAV investment established for each dealer must be scaled based on the estimated number of the manufacturer's or distributor's new TAVs the dealer would be anticipated to sell and the number of TAVs the dealer would be expected to service within the following three-year period. In the event that a manufacturer or distributor had performed an individualized dealer assessment required in this sub-sub-subdivision prior to July 1, 2023, the assessment shall be deemed to satisfy the requirements contained in this sub-sub-subdivision as long as it complies with all of the requirements of an individual TAV assessment established in this sub-sub-sub-subdivision and the TAV assessment contains no charges in excess of those charges includable under this sub-sub-sub-subdivision. It shall be unlawful for a manufacturer or distributor to require a dealer to pay for an assessment of the type required under this sub-sub-sub-subdivision if the manufacturer or distributor requires that an assessment be performed as a prerequisite for the dealer to sell or lease TAVs that the manufacturer or distributor sells or distributes.

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

III. To fail or refuse to allocate all TAV models offered by the manufacturer or distributor for sale or lease in this State in accordance with the requirements of this
sub-sub-subdivision to each of its same line-make franchised dealers located in this State that has made the minimum TAV investment determined pursuant to sub-sub-sub-subdivision I. of this sub-sub-subdivision.

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

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

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

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

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

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

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

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

"(55) To interfere with the independence and governance of a dealer or dealer applicant having multiple owners by requiring, coercing, or attempting to coerce the dealer or dealer applicant to adopt a corporate structure under which a single individual has the sole legal authority to issue additional
corporate stock; add one or more new managers, members, or shareholders; purchase or sell franchises or line-makes of vehicles; acquire or sell real estate; invest in new or substantially remodeled or updated facilities; borrow money in the name of the dealer; select a new or successor dealer principal; file a petition in bankruptcy or receivership; or require that owners contribute additional capital. Nothing in this subdivision shall prohibit a manufacturer or distributor from requiring the dealer or dealer applicant to designate a single natural person that the manufacturer or distributor may contact and who shall be responsible for all business communications and day-to-day business decisions with the manufacturer or distributor, or from requiring that the designated person own a minimum percentage of ownership reasonably determined by the manufacturer or distributor."

DEALER AND MANUFACTURER WEBSITES

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

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

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

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

2. Requires or provides bonuses or incentives for any dealer or dealer group located in this State to use a digital platform or digital retailing tool provided, recommended, endorsed, or approved by the manufacturer or distributor; provided, however, that the digital platform or digital retailing tool selected by the dealer possesses substantially the same level of quality and performs substantially the same functions as the digital platform or digital retailing tool provided, recommended, endorsed, or approved by the manufacturer or distributor."
3. Requires as a condition to sell any line-make, brand, model, or series of vehicles or participate in a program, or that provides bonuses or incentives, for any dealer or dealer group located in this State to use, on either a single location dealer website or a dealer group website, one or more chat tools, appraisal tools, payment calculators, or other online digital tools provided, recommended, endorsed, or approved by the manufacturer or distributor, provided, however, that any such digital retailing tools selected by the dealer possess substantially the same quality and perform substantially the same functions as the digital retailing tools provided, recommended, endorsed, or approved by the manufacturer or distributor.

4. Restricts or in any way disincentivizes any of its franchised dealers in this State that own or operate either a single location dealer website or a dealer group website from using any method, procedure, or protocol selected by the dealer for communicating with the dealer's customers or permitting or allowing customers to make an appointment to see or test drive a vehicle, hold or reserve a vehicle, or negotiate the price of or purchase or lease a vehicle directly with the dealer through a dealer-owned website or other digital retail process.

5. Restricts or in any way disincentivizes any of its franchised dealers in this State that own or operate a single location dealer website from displaying, selling, or leasing all brands and line-makes of new and used motor vehicles offered for sale or lease at that dealership location, including the dealer's display of manufacturer logos and marks for all such brands and line-makes of vehicles offered for sale or lease, to the extent such display of manufacturer logos and marks does not interfere with the intellectual property rights of the manufacturer.

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

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

Any requirement, term, or condition contained in any bonus or incentive program established by a manufacturer or distributor that is inconsistent with any of the provisions contained in this sub-subdivision shall be void and unenforceable, and all dealers located in this State that are franchised or licensed by such
manufacturer or distributor shall be entitled to receive the full amount
of the bonus or incentive being offered by the manufacturer or
distributor whether or not the dealer has complied with the terms or
conditions of any such bonus or incentive program that are
inconsistent with the provisions of this subdivision.

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

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

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

PROHIBITING UNFAIR COMPETITION/PREVENTING DEALERS FROM SELLING
ELECTRIC VEHICLES AND OTHER VEHICLES WITH ADVANCED
TECHNOLOGIES

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

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

RURAL DEALER MINIMUM EARNED ALLOCATION RIGHTS

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

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

a. Provides each of its franchised dealers in this State an adequate supply of vehicles by series, product line, and model in a fair, reasonable, and equitable manner based on each dealer's historical selling pattern and reasonable sales standards as compared to other same line-make dealers in the State.

b. Allocates an adequate supply of vehicles to each of its dealers by series, product line, and model so as to allow the dealer to achieve any performance standards established by the manufacturer and distributor.

b1. Allocates vehicles to each of its dealers that are configured in a manner and that contain options that take into consideration the dealer's historical experience and success in selling vehicles similarly configured and that contain similar options.

c. Is fair and equitable to all of its franchised dealers in this State.

d. Makes available to each of its franchised dealers in this State a minimum of one of each vehicle series, model, or product line that the manufacturer makes available to any dealer in this State and advertises in the State as being available for purchase.

e. Does not unfairly discriminate among its franchised dealers in its allocation process.

f. Discloses to all of its franchised dealers handling the same line-make both its system of allocation and the actual new vehicle allocation that occurred during the previous calendar month and during the previous 12 calendar months, including, but not limited to, a complete breakdown by model, color, equipment, and other items or terms; a concise listing of same line-make dealerships broken down by same line-make dealers within each dealer's area of responsibility, district, region, and the State; and an explanation of the derivation of the allocation system, including its mathematical formula or formulae, in a clear and comprehensible form. The data provided by the manufacturer or distributor pursuant to this sub-subdivision is required to reflect all new vehicles allocated to its franchised dealers in this State pursuant to a mathematical formula or on a discretionary basis.
All of the allocation data that a manufacturer or distributor is required
to provide to each of its same line-make dealers in this State pursuant
to this sub-subdivision shall either be made available for its dealers to
review online at their discretion or be provided to dealers regularly, at
least on a quarterly basis, as well as promptly upon the email, online,
or other written request of a dealer or in the event a manufacturer or
distributor has changed its allocation formula, process, or policies.

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

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

This subdivision is not violated, however, if such failure is caused solely by
the occurrence of temporary international, national, or regional product
shortages resulting from natural disasters, unavailability of parts, labor strikes,
product recalls, and other factors and events beyond the control of the
manufacturer that temporarily reduce a manufacturer's product supply. In the
event of any such shortages in vehicle availability, each manufacturer or
distributor shall be required to allocate and distribute all available new motor
vehicles to its franchised dealers in this State in accordance with the allocation
priorities established in this subdivision and in a fair, equitable, and
nondiscriminatory manner. The willful or malicious maintenance, creation, or
alteration of a vehicle allocation process or formula by a manufacturer, factory
branch, distributor, or distributor branch that is in any part designed or
intended to force or coerce a dealer in this State to close or sell the dealer's
franchise, cause the dealer financial distress, or to relocate, update, or renovate
the dealer's existing dealership facility shall constitute an unfair and deceptive trade practice under G.S. 75-1.1."

ECONOMIC COERCION

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

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

Nothing contained in this subdivision shall be deemed to prohibit a manufacturer or distributor from establishing for each dealer reasonable requirements for training, facilities, parts, and equipment necessary to sell and service any model, type, or series of vehicle or other products or services offered by or through the manufacturer or distributor, as long as these requirements are scaled to take into consideration that dealer's reasonably anticipated sales volumes of these products or services over the following three-year period."
motor vehicle or a used motor vehicle is transferred to a retail customer; and
also any retail lease transaction where a retail customer leases a vehicle for a
period of at least 12 months. The terms "sell," "selling," "sold," "exchange,"
"retail sales," "selling activities," and "leases" are synonymous.
(15b) Special tool or essential tool. – A tool designed and required 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.

MANUFACTURER SALE OR SUBSCRIPTION OF ADD-ON PRODUCTS

SECTION 7.(a) G.S. 20-305 is amended by adding a new subdivision to read:
"(58) To engage in this State in any of the activities of a motor vehicle dealer as
defined in G.S. 20-286, except as expressly permitted by G.S. 20-305.2, or to
compete with any of its same line-make dealers in this State with respect to
the sale of any products or services that the dealer is authorized to sell pursuant
to the dealer's franchise with the manufacturer or distributor, by the
manufacturer's or distributor's remote electronic transmission to the retail
customer of any motor vehicle accessory, option, add-on, feature,
improvement, or upgrade."

SECTION 7.(b) G.S. 20-305 is amended by adding a new subdivision to read:
"(59) To sell or lease any motor vehicle of a line-make for which it has any
franchised dealers in this State directly to an end user located in this State or
to activate for a fee any permanent or temporary motor vehicle accessory,
option, add-on, feature, improvement, or upgrade, on or to any vehicle owned
or leased by an end user located in this State within a five-year period
subsequent to the sale or lease of the vehicle to the retail customer, in a manner
other than through a same line-make dealer."

SECTION 7.(c) Subsection (a) of G.S. 20-305.2 is amended by adding a new
subdivision to read:
"(9) Notwithstanding the provisions of G.S. 20-305(59), and provided that the new
motor vehicle dealers of the line-make located in this State are permitted to
sell retail customers the same motor vehicle accessory, option, add-on,
feature, improvement, or upgrade for a motor vehicle of the line-make
manufactured, imported, or distributed by the manufacturer or distributor, the
manufacturer or distributor may, on the same terms offered to the dealer, also
sell to the retail customer or activate for a fee a permanent or temporary motor
vehicle accessory, option, add-on, feature, improvement, or upgrade for a
motor vehicle of a line-make manufactured, imported, or distributed by the
manufacturer or distributor; provided, however, that the accessory, option,
add-on, feature, improvement, or upgrade is activated or installed directly on
the retail customer's motor vehicle through remote electronic transmission,
and further provided that if such motor vehicle was sold or leased as new by
a franchised new motor vehicle dealer in this State within the five-year period
preceding such remote electronic transmission, then the manufacturer or
distributor must pay such franchised new motor vehicle dealer a minimum of
twenty percent (20%) of the gross revenue received by the manufacturer,
distributor, agent, or common entity for such sale or activation and renewals
during such five-year period. The manufacturer or distributor must provide
each of its franchised dealers with a quarterly statement of the revenue
received by the manufacturer or distributor, its agent, or its common entity during that quarter for such remote sales or activations and renewals relating to those vehicles sold or leased by the dealer during the five-year period subsequent to the sale or lease of the vehicle to the retail customer. When providing a new motor vehicle to a dealer for offer or sale to the public, it shall be unlawful for the manufacturer or distributor to fail to provide to the dealer a written disclosure that may be provided to a potential buyer of the new motor vehicle of each accessory or function of the vehicle that may be initiated, updated, changed, or maintained by the manufacturer or distributor through over the air or remote means and the charge to the customer for initiation, update, change, or maintenance. A manufacturer or distributor may comply with this subdivision by notifying the dealer that the information is available on a website or by other digital means."

WARRANTY REIMBURSEMENT CLARIFICATION
SECTION 8. G.S. 20-305.1 reads as rewritten:
"§ 20-305.1. Automobile dealer warranty and recall obligations.

(a1) The retail rate customarily charged by the dealer for parts and labor may be established at the election of the dealer by the dealer submitting to the manufacturer or distributor 100 sequential nonwarranty customer-paid service repair orders which contain warranty-like parts, or 60 consecutive days of nonwarranty customer-paid service repair orders which contain warranty-like parts, whichever is less, covering repairs made no more than 180 days before the submission and declaring the average percentage markup. The average of the parts markup rate and the average labor rate shall both be presumed to be reasonable, accurate, however, a manufacturer or distributor may, not later than 30 days after submission, rebut that presumption by reasonably substantiating that the rate is unfair and unreasonable in light of the retail rates charged for parts and labor by all other franchised motor vehicle dealers located in the dealer's relevant market area offering the same line-make vehicles. In the event there are no other franchised dealers offering the same line-make of vehicle in the dealer's relevant market area, the manufacturer or distributor may compare the dealer's retail rate for parts and labor with the retail rates charged for parts and labor by other same segment franchised dealers who are selling competing line makes of vehicles within the dealer's relevant market area. In the event there is also no other same segment franchised dealer who is selling a competing line make of vehicle within the dealer's relevant market area, the manufacturer or distributor may then compare the dealer's retail rate for parts and labor with the retail rates charged for parts and labor by other same line make dealers or same segment franchised dealers who are selling competing line makes of vehicles that are located within the relevant market area of the franchised dealer who is located in closest proximity, measured by straight line distance, to the dealer, provided they are not all owned, operated, or controlled by the subject dealer. For the purposes of this section, the term "relevant market area" shall have the same meaning as set forth in G.S. 20-286(13b). Requested is either (i) not supported by the submission and by declaring the accurate rate based upon the submission repair orders or (ii) fraudulent. The retail rate and the average labor rate shall go into effect 30 days following the manufacturer's approval, but in no event later than 60 days following the declaration, subject to audit-review of the accuracy of the submitted repair orders by the manufacturer or distributor and a rebuttal of the declared rate as described above. If the declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the average percentage markup based on that rebuttal not later than 30 days after such audit, but in no event later than 60 days after submission. If the dealer does not agree with the proposed average percentage markup, the dealer may file a protest with the Commissioner not later than 30 days after receipt of that proposal by the manufacturer or distributor. If the
manufacturer or distributor believes the dealer's submission is fraudulent, the manufacturer or
distributor may file a protest with the Commissioner not later than 30 days following the dealer's
rejection of the rebuttal rate. If such a protest is filed, the Commissioner shall inform the
manufacturer or distributor parties that a timely protest has been filed and that a hearing will be
held on such protest. In any hearing held pursuant to this subsection, the manufacturer or
distributor shall have the burden of proving by a preponderance of the evidence that the rate
declared by the dealer was unreasonable either (i) inaccurate as described in this subsection and
that the proposed adjustment of the average percentage markup is reasonable pursuant to the
provisions of this subsection, correct or (ii) that the rate claimed is fraudulent. If the dealer
prevails at a protest hearing, the dealer's proposed rate, affirmed at the hearing, shall be effective
as of 60 days after the date of the dealer's initial submission of the customer-paid service orders
to the manufacturer or distributor. If the manufacturer or distributor prevails at a protest hearing,
the rate proposed by the manufacturer or distributor, that was affirmed at the hearing, shall be
effective beginning 30 days following issuance of the final order.

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

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

GRANDFATHER EXTENSION

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

"(30) To vary the price charged to any of its franchised new motor vehicle dealers
located in this State for new motor vehicles based on the dealer's purchase of
new facilities, supplies, tools, equipment, or other merchandise from the
manufacturer, the dealer's relocation, remodeling, repair, or renovation of
existing dealerships or construction of a new facility, the dealer's participation
in training programs sponsored, endorsed, or recommended by the
manufacturer, whether or not the dealer is dually with one or more other line
makes of new motor vehicles, or the dealer's sales penetration. Except as
provided in this subdivision, it shall be unlawful for any manufacturer, factory
branch, distributor, or distributor branch, or any field representative, officer,
agent, or any representative whatsoever of any of them to vary the price
charged to any of its franchised new motor vehicle dealers located in this State
for new motor vehicles based on the dealer's sales volume, the dealer's level
of sales or customer service satisfaction, the dealer's purchase of advertising
materials, signage, nondiagnostic computer hardware or software,
communications devices, or furnishings, or the dealer's participation in used
motor vehicle inspection or certification programs sponsored or endorsed by
the manufacturer."
The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration that has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

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

a. With respect to manufacturer to consumer rebates and incentives, the manufacturer's criteria for determining eligibility shall:
   1. Permit all of the manufacturer's franchised new motor vehicle dealers in this State to offer the rebate or incentive; and
   2. Be uniformly applied and administered to all eligible consumers.

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

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

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

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

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

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

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.