

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 438
Commerce Committee Substitute Adopted 6/2/11

Short Title: Clarify Motor Vehicle Licensing Law.

(Public)

Sponsors:

Referred to:

March 29, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY MOTOR VEHICLE DEALERS AND MANUFACTURERS
3 LICENSING LAW.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 20-288(a1) reads as rewritten:

6 "(a1) A used motor vehicle dealer may obtain a license by filing an application, as
7 prescribed in subsection (a) of this section, and providing the following:

8 (1) The required fee.

9 (2) Proof that the applicant, within the last 12 months, has completed a 12-hour
10 licensing course approved by the Division if the applicant is seeking an
11 initial license and a six-hour course approved by the Division if the applicant
12 is seeking a renewal license. The requirements of this subdivision do not
13 apply to a used motor vehicle dealer the primary business of which is the
14 sale of salvage vehicles on behalf of insurers or to a manufactured home
15 dealer licensed under G.S. 143-143.11 who complies with the continuing
16 education requirements of G.S. 143-143.11B. The requirement of this
17 subdivision does not apply to persons age 62 or older as of July 1, 2002, who
18 are seeking a renewal license. This subdivision also does not apply to an
19 applicant who holds a license as a new motor vehicle dealer as defined in
20 G.S. 20-286(13) ~~and operates from an established showroom one mile or~~
21 ~~less from the established showroom for which the applicant seeks a used~~
22 ~~motor vehicle dealer license. An applicant who also holds a license as a new~~
23 ~~motor vehicle dealer may designate a representative to complete the~~
24 ~~licensing course required by this subdivision.~~

25 (3) If the applicant is an individual, proof that the applicant is at least 18 years
26 of age and proof that all salespersons employed by the dealer are at least 18
27 years of age.

28 (4) The application for a dealer license plate."

29 **SECTION 2.** G.S. 20-288 is amended by adding a new subsection to read:

30 "(b1) The Division shall require in such license application and each application for
31 renewal of license a certification that the applicant is familiar with the North Carolina Motor
32 Vehicle Dealers and Manufacturers Licensing Law and with other North Carolina laws
33 governing the conduct and operation of the business for which the license or license renewal is
34 sought and that the applicant shall comply with the provisions of these laws, with the
35 provisions of Article 12 of Chapter 20 of the General Statues, and with other lawful regulations
36 of the Division."

37 **SECTION 3.** G.S. 20-301 is amended by adding a new subsection to read:



1 "(g) Notwithstanding any other statute, regulation, or rule or the existence of a pending
2 legal or administrative proceeding in any other forum any franchised new motor vehicle dealer
3 or any manufacturer, factory branch, distributor, or distributor branch may elect to file a
4 petition before the Commissioner for resolution of any dispute that may arise with respect to
5 any of the rights or obligations of the dealer or of the manufacturer, factory branch, distributor,
6 or distributor branch related to a franchise or franchise-related form agreement. The
7 Commissioner shall have the authority to apply principles of law, equity, and good faith in
8 determining such matters. The filing of a petition by a dealer or a manufacturer, factory branch,
9 distributor, or distributor branch pursuant to this section shall not preclude the party filing the
10 petition from pursuing any other form of recourse it may have, either before the Commissioner
11 or in another form, including any damages and injunctive relief. The Commissioner shall have
12 the authority to receive and evaluate the facts in the matter of controversy and render a decision
13 by entering an order which shall thereafter become binding and enforceable with respect to the
14 parties, subject to the right of review of the decision in a court of competent jurisdiction
15 pursuant to Chapter 150B of the General Statutes."

16 **SECTION 4.** G.S. 20-301.1(a) reads as rewritten:

17 "(a) Notwithstanding the terms of any contract, franchise, novation, or agreement, it
18 shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to
19 charge or assess one of its franchised motor vehicle dealers located in this State, or to charge or
20 debit the account of the franchised motor vehicle dealer for merchandise, tools, or equipment,
21 or other charges or amounts which total more than five thousand dollars (\$5,000), other than
22 the published cost of new motor vehicles, and merchandise, tools, or equipment specifically
23 ordered by the franchised motor vehicle dealer, unless the franchised motor vehicle dealer
24 receives a detailed itemized description of the nature and amount of each charge in writing at
25 least 10 days prior to the date the charge or account debit is to become effective or due. For
26 purposes of this subsection, ~~the~~ prior written notice ~~is required for~~ pursuant to this subsection
27 includes, but is not limited to, all charges or debits to a dealer's account for ~~the following~~
28 ~~charges or debits:~~ advertising or advertising materials; advertising or showroom displays;
29 customer informational materials; computer or communications hardware or software; special
30 tools; equipment; dealership operation guides; Internet programs; and any additional charges or
31 surcharges made or proposed for merchandise, tools, or equipment previously charged to the
32 dealer. ~~dealer;~~ and any other charges or amounts which total more than five thousand dollars
33 (\$5,000). If the franchised new motor vehicle dealer disputes all or any portion of an actual or
34 proposed charge or debit to the dealer's account, the dealer may proceed as provided in
35 G.S. 20-301(b) and G.S. 20-308.1. Upon the filing of a petition pursuant to G.S. 20-301(b) or a
36 civil action pursuant to G.S. 20-308.1, the affected manufacturer, factory branch, distributor, or
37 distributor branch shall not require payment from the dealer, or debit or charge the dealer's
38 account, unless and until a final judgment supporting the payment or charge has been rendered
39 by the Commissioner or court."

40 **SECTION 5.** G.S. 20-305(4) reads as rewritten:

41 "(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse
42 to approve the sale or transfer of the ownership of a dealership by the sale of
43 the business, stock transfer, or otherwise, or the transfer, sale or assignment
44 of a dealer franchise, or a change in the executive management or principal
45 operator of the dealership, change in use of an existing facility to provide for
46 the sales or service of one or more additional line-makes of new motor
47 vehicles, or relocation of the dealership to another site within the dealership's
48 relevant market area, if the Commissioner has determined, if requested in
49 writing by the dealer within 30 days after receipt of an objection to the
50 proposed transfer, sale, assignment, relocation, or change, and after a
51 hearing on the matter, that the failure to permit or honor the transfer, sale,

1 assignment, relocation, or change is unreasonable under the circumstances.
2 No franchise may be transferred, sold, assigned, relocated, or the executive
3 management or principal operators changed, or the use of an existing facility
4 changed, unless the franchisor has been given at least 30 days' prior written
5 notice as to the proposed transferee's name and address, financial ability, and
6 qualifications of the proposed transferee, a copy of the purchase agreement
7 between the dealership and the proposed transferee, the identity and
8 qualifications of the persons proposed to be involved in executive
9 management or as principal operators, and the location and site plans of any
10 proposed relocation or change in use of a dealership facility. The franchisor
11 shall send the dealership and the proposed transferee notice of objection, by
12 registered or certified mail, return receipt requested, to the proposed transfer,
13 sale, assignment, relocation, or change within 30 days after receipt of notice
14 from the dealer, as provided in this section. The notice of objection shall
15 state in detail all factual and legal bases for the objection on the part of the
16 franchisor to the proposed transfer, sale, assignment, relocation, or change
17 that is specifically referenced in this subdivision. An objection to a proposed
18 transfer, sale, assignment, relocation, or change in the executive
19 management or principal operator of the ~~dealership~~ dealership or change in
20 the use of the facility may only be premised upon the factual and legal bases
21 specifically referenced in this ~~subdivision~~ subdivision or G.S. 20-305(11), as
22 it relates to change in the use of a facility. A manufacturer's notice of
23 objection which is based upon factual or legal issues that are not specifically
24 referenced in this subdivision or G.S. 20-305(11) with respect to a change in
25 the use of an existing facility as being issues upon which the Commissioner
26 shall base his determination shall not be effective to preserve the franchisor's
27 right to object to the proposed transfer sale, assignment, relocation, or
28 change, provided the dealership or proposed transferee has submitted written
29 notice, as required above, as to the proposed transferee's name and address,
30 financial ability, and qualifications of the proposed transferee, a copy of the
31 purchase agreement between the dealership and the proposed transferee, the
32 identity and qualifications of the persons proposed to be involved in the
33 executive management or as principal operators, and the location and site
34 plans of any proposed ~~relocation~~ relocation or change in the use of an
35 existing facility. Failure by the franchisor to send notice of objection within
36 30 days shall constitute waiver by the franchisor of any right to object to the
37 proposed transfer, sale, assignment, relocation, or change. If the franchisor
38 requires additional information to complete its review, the franchisor shall
39 notify the dealership within 15 days after receipt of the proposed transferee's
40 name and address, financial ability, and qualifications, a copy of the
41 purchase agreement between the dealership and the proposed transferee, the
42 identity and qualifications of the persons proposed to be involved in
43 executive management or as principal operators, and the location and site
44 plans of any proposed relocation or change in use of the dealership facility.
45 If the franchisor fails to request additional information from the dealer or
46 proposed transferee within 15 days of receipt of this initial information, the
47 30-day time period within which the franchisor may provide notice of
48 objection shall be deemed to run from the initial receipt date. Otherwise, the
49 30-day time period within which the franchisor may provide notice of
50 objection shall run from the date the franchisor has received the
51 supplemental information requested from the dealer or proposed transferee;

1 provided, however, that failure by the franchisor to send notice of objection
2 within 60 days of the franchisor's receipt of the initial information from the
3 dealer shall constitute waiver by the franchisor of any right to object to the
4 proposed transfer, sale, assignment, relocation, or change. With respect to a
5 proposed transfer of ownership, sale, or assignment, the sole issue for
6 determination by the Commissioner and the sole issue upon which the
7 Commissioner shall hear or consider evidence is whether, by reason of lack
8 of good moral character, lack of general business experience, or lack of
9 financial ability, the proposed transferee is unfit to own the dealership. For
10 purposes of this subdivision, the refusal by the manufacturer to accept a
11 proposed transferee who is of good moral character and who otherwise
12 meets the written, reasonable, and uniformly applied business experience
13 and financial requirements, if any, required by the manufacturer of owners
14 of its franchised automobile dealerships is presumed to demonstrate the
15 manufacturer's failure to prove that the proposed transferee is unfit to own
16 the dealership. With respect to a proposed change in the executive
17 management or principal operator of the dealership, the sole issue for
18 determination by the Commissioner and the sole issue on which the
19 Commissioner shall hear or consider evidence shall be whether, by reason of
20 lack of training, lack of prior experience, poor past performance, or poor
21 character, the proposed candidate for a position within the executive
22 management or as principal operator of the dealership is unfit for the
23 position. For purposes of this subdivision, the refusal by the manufacturer to
24 accept a proposed candidate for executive management or as principal
25 operator who is of good moral character and who otherwise meets the
26 written, reasonable, and uniformly applied standards or qualifications, if any,
27 of the manufacturer relating to the business experience and prior
28 performance of executive management required by the manufacturers of its
29 dealers is presumed to demonstrate the manufacturer's failure to prove the
30 proposed candidate for executive management or as principal operator is
31 unfit to serve the capacity. With respect to a proposed change in use of a
32 dealership facility to provide for the sales or service of one or more
33 additional line-makes of new motor vehicles, the sole issue for determination
34 by the Commissioner is whether the new motor vehicle dealer has a
35 reasonable line of credit for each make or line of motor vehicle and remains
36 in compliance with any reasonable capital standards and facilities
37 requirements of the manufacturer or distributor. The reasonable facilities
38 requirements of the manufacturer or distributor shall not include any
39 requirement that a new motor vehicle dealer establish or maintain exclusive
40 facilities, personnel, or display space. With respect to a proposed relocation
41 or other proposed change, the issue for determination by the Commissioner
42 is whether the proposed relocation or other change is unreasonable under the
43 circumstances. For purposes of this subdivision, the refusal by the
44 manufacturer to agree to a proposed relocation which meets the written,
45 reasonable, and uniformly applied standards or criteria, if any, of the
46 manufacturer relating to dealer relocations is presumed to demonstrate that
47 the manufacturer's failure to prove the proposed relocation is unreasonable
48 under the circumstances. The manufacturer shall have the burden of proof
49 before the Commissioner under this subdivision. It is unlawful for a
50 manufacturer to, in any way, condition its approval of a proposed transfer,
51 sale, assignment, change in the dealer's executive management, principal

1 operator, or appointment of a designated successor, on the existing or
2 proposed dealer's willingness to construct a new facility, renovate the
3 existing facility, acquire or refrain from acquiring one or more line-makes of
4 vehicles, separate or divest one or more line-makes of vehicle, or establish or
5 maintain exclusive facilities, personnel, or display space. It is unlawful for a
6 manufacturer to, in any way, condition its approval of a proposed relocation
7 on the existing or proposed dealer's willingness to acquire or refrain from
8 acquiring one or more line-makes of vehicles, separate or divest one or more
9 line-makes of vehicle, or establish or maintain exclusive facilities, personnel,
10 or display space. The opinion or determination of a franchisor that the
11 continued existence of one of its franchised dealers situated in this State is
12 not viable, or that the dealer holds or fails to hold licensing rights for the sale
13 of other line-makes of vehicles in a manner consistent with the franchisor's
14 existing or future distribution or marketing plans, shall not constitute a
15 lawful basis for the franchisor to fail or refuse to approve a dealer's proposed
16 change in use of a dealership facility or relocation: provided, however, that
17 nothing contained in this subdivision shall be deemed to prevent or prohibit
18 a franchisor from failing to approve a dealer's proposed relocation on
19 grounds that the specific site or facility proposed by the dealer is otherwise
20 unreasonable under the circumstances. Approval of a relocation pursuant to
21 this subdivision shall not in itself constitute the franchisor's representation or
22 assurance of the dealer's viability at that location."

23 **SECTION 6.** G.S. 20-305(6)d.3. reads as rewritten:

24 "3. In addition to the other payments set forth in this section, if a
25 termination, cancellation, or nonrenewal is premised upon
26 any of the occurrences set forth in G.S. 20-305(6)c.1.IV., then
27 the manufacturer or distributor shall be liable to the dealer for
28 an amount at least equivalent to the fair market value of the
29 franchise on (i) the date the franchisor announces the action
30 which results in termination, cancellation, or nonrenewal; or
31 (ii) the date the action which results in termination,
32 cancellation, or nonrenewal first became general knowledge;
33 or (iii) the day ~~12 months~~ 18 months prior to the date on
34 which the notice of termination, cancellation, or nonrenewal
35 is issued, whichever amount is higher. Payment is due not
36 later than 90 days after the manufacturer or distributor has
37 received notice in writing from, or on behalf of, the new
38 motor vehicle dealer specifying the elements of compensation
39 requested by the dealer. If the termination, cancellation, or
40 nonrenewal is due to a manufacturer's change in distributors,
41 the manufacturer may avoid paying fair market value to the
42 dealer if the new distributor or the manufacturer offers the
43 dealer a franchise agreement with terms acceptable to the
44 dealer."

45 **SECTION 7.** G.S. 20-305(14) reads as rewritten:

46 "(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or
47 accessories in reasonable quantities relative to the new motor vehicle dealer's
48 facilities and sales potential in the new motor vehicle dealer's market area as
49 determined in accordance with reasonably applied economic principles, or
50 within a reasonable time, after receipt of an order from a dealer having a
51 franchise for the retail sale of any new motor vehicle sold or distributed by

1 the manufacturer or distributor, any new vehicle, parts or accessories to new
2 vehicles as are covered by such franchise, and such vehicles, parts or
3 accessories as are publicly advertised as being available or actually being
4 delivered. The delivery to another dealer of a motor vehicle of the same
5 model and similarly equipped as the vehicle ordered by a motor vehicle
6 dealer who has not received delivery thereof, but who has placed his written
7 order for the vehicle prior to the order of the dealer receiving the vehicle,
8 shall be evidence of a delayed delivery of, or refusal to deliver, a new motor
9 vehicle to a motor vehicle dealer within a reasonable time, without cause.
10 ~~Except~~ Additionally, except as may be required by any consent decree of the
11 Commissioner or other order of the Commissioner or court of competent
12 jurisdiction, ~~each any sales objectives which a manufacturer, factory branch,~~
13 ~~distributor, or distributor branch shall establishes for any of its franchised~~
14 ~~dealers in this State must be reasonable, and every manufacturer, factory~~
15 ~~branch, distributor, or distributor branch must allocate its products within~~
16 ~~this State in a manner that provides each of its franchised dealers in this~~
17 ~~State an adequate supply of vehicles by series, product line, and model to~~
18 ~~achieve the manufacturer's minimum sales requirements, planning volume,~~
19 ~~or sales objectives and that is fair and equitable to all of its franchised~~
20 ~~dealers in this State. Additionally, each manufacturer shall make available to~~
21 ~~each of its franchised dealers in this State a minimum of one of each vehicle~~
22 ~~series, model, or product line that the manufacturer advertises nationally as~~
23 ~~being available for purchase. A manufacturer shall not unfairly discriminate~~
24 ~~among its franchised dealers in this allocation process.~~ that does all of the
25 following:

- 26 a. Provides each of its franchised dealers in this State an adequate
27 supply of vehicles by series, product line, and model in a fair,
28 reasonable, and equitable manner based on each dealer's historical
29 selling pattern and reasonable sales standards as compared to other
30 same line-make dealers in the State.
- 31 b. Allocates an adequate supply of vehicles to each dealer by series,
32 product line, and model for the dealer to achieve the performance
33 standards established by the manufacturer and distributor.
- 34 c. Is fair and equitable to all of its franchised dealers in this State.
- 35 d. Makes available to each of its franchised dealers in this State a
36 minimum of one of each vehicle series, model, or product line that
37 the manufacturer makes available to any dealer in this State and
38 advertises in the State as being available for purchase.
- 39 e. Does not unfairly discriminate among its franchised dealers in its
40 allocation process.

41 This subsection is not violated, however, if such failure is caused solely by
42 acts or causes beyond the control of the manufacturer, distributor, factory
43 branch, or factory representative the occurrence of temporary international,
44 national, or regional product shortages resulting from natural disasters,
45 unavailability of parts, labor strikes, product recalls, and other factors and
46 events beyond the control of the manufacturer that temporarily reduce a
47 manufacturer's product supply. The willful or malicious maintenance,
48 creation, or alteration of a vehicle allocation process or formula by a
49 manufacturer, factory branch, distributor, or distributor branch that is in any
50 part designed or intended to force or coerce a dealer in this State to close or
51 sell the dealer's franchise, cause the dealer financial distress, or to relocate,

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

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

4 "(39) Notwithstanding the terms, provisions, or conditions of any agreement,
5 franchise, novation, waiver, or other written instrument, to require, coerce,
6 or attempt to coerce any of its franchised motor vehicle dealers in this State
7 to ~~purchase or lease~~ purchase, lease, erect, or relocate one or more signs
8 displaying the name of the manufacturer or franchised motor vehicle dealer
9 upon unreasonable or onerous terms or conditions or if installation of the
10 additional signage would violate local signage or zoning laws to which the
11 franchised motor vehicle dealer is subject. Any term, provision, or condition
12 of any agreement, franchise, waiver, novation, or any other written
13 instrument which is in violation of this subdivision shall be deemed null and
14 void and without force and effect."

15 **SECTION 9.** G.S. 20-305 is amended by adding two new subdivisions to read:

16 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel**
17 **franchise; preventing transfer of ownership; granting additional franchises;**
18 **terminating franchises without good cause; preventing family succession.**

19 It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch,
20 or any field representative, officer, agent, or any representative whatsoever of any of them:

21 ...

22 (43) To require, coerce, or attempt to coerce any new motor vehicle dealer in this
23 State to change location of the dealership, or to make any substantial
24 alterations to the dealership premises or facilities, if the dealer has changed
25 the location of the dealership or made substantial alterations to the
26 dealership premises or facilities within the preceding seven years at a cost of
27 more than five hundred thousand dollars (\$500,000) and the change in
28 location or alteration was made at the written request of the manufacturer,
29 factory branch, distributor, or distributor branch. This subdivision shall not
30 apply to improvements required by the manufacturer which are solely
31 necessary to conform to applicable laws and regulations for safety or health
32 reasons or to accommodate the reasonable and necessary sales and service
33 requirements based on the technology of a motor vehicle offered for sale by
34 the dealer.

35 (44) Notwithstanding the terms, provisions, or conditions of any agreement,
36 franchise, novation, waiver, or other written instrument, to require, coerce,
37 or attempt to coerce any of its franchised motor vehicle dealers in this State
38 to change the principal operator, general manager, or any other manager or
39 supervisor employed by the dealer. Any term, provision, or condition of any
40 agreement, franchise, waiver, novation, or any other written instrument that
41 is inconsistent with this subdivision shall be deemed null and void and
42 without force and effect."

43 **SECTION 10.** G.S. 20-305.1 reads as rewritten:

44 **"§ 20-305.1. Automobile dealer warranty obligations.**

45 (a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch,
46 shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's
47 obligations for preparation, delivery and warranty service on its products, the schedule of
48 compensation to be paid such dealers for parts, work, and service in connection with warranty
49 service, and the time allowances for the performance of such work and service. In no event
50 shall such schedule of compensation fail to include reasonable compensation for diagnostic
51 work and associated administrative requirements as well as repair service and labor. Time

1 allowances for the performance of warranty work and service shall be reasonable and adequate
2 for the work to be performed. The compensation which must be paid under this section must be
3 reasonable, provided, however, that under no circumstances may the reasonable compensation
4 under this section be in an amount less than the dealer's current retail labor rate and the amount
5 charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty
6 work of like kind, provided such amount is competitive with other franchised dealers within the
7 dealer's market.

8 (a1) The retail rate customarily charged by the dealer for parts and labor may be
9 established at the election of the dealer by the dealer submitting to the manufacturer or
10 distributor 100 sequential nonwarranty customer-paid service repair orders which contain
11 warranty-like parts, or 60 consecutive days of nonwarranty customer-paid service repair orders
12 which contain warranty-like parts, whichever is less, covering repairs made no more than 180
13 days before the submission and declaring the average percentage markup. The average of the
14 parts markup rate and the average labor rate shall both be presumed to be fair and reasonable,
15 however, a manufacturer or distributor may, not later than 30 days after submission, rebut that
16 presumption by reasonably substantiating that the rate is unfair and unreasonable in light of the
17 practices of all other franchised motor vehicle dealers in the dealer's market offering the same
18 line-make vehicles. In the event there are no other franchised dealers offering the same
19 line-make of vehicle in the dealer's market, the manufacturer or distributor may compare the
20 dealer's rate for parts and labor with the practices of other franchised dealers who are selling
21 competing line-makes of vehicles within the dealer's market. The retail rate and the average
22 labor rate shall go into effect 30 days following the manufacturer's approval, but in no event
23 later than 60 days following the declaration, subject to audit of the submitted repair orders by
24 the manufacturer or distributor and a rebuttal of the declared rate as described above. If the
25 declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the
26 average percentage markup based on that rebuttal not later than 30 days after such audit, but in
27 no event later than 60 days after submission. If the dealer does not agree with the proposed
28 average percentage markup, the dealer may file a protest with the Commissioner not later than
29 30 days after receipt of that proposal by the manufacturer or distributor. If such a protest is
30 filed, the Commissioner shall inform the manufacturer or distributor that a timely protest has
31 been filed and that a hearing will be held on such protest. In any hearing held pursuant to this
32 subsection, the manufacturer or distributor shall have the burden of proving by a preponderance
33 of the evidence that the rate declared by the dealer was unfair and unreasonable as described in
34 this subsection and that the proposed adjustment of the average percentage markup is fair and
35 reasonable pursuant to the provisions of this subsection.

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

- 38 (1) Repairs for manufacturer or distributor special events, specials, or
39 promotional discounts for retail customer repairs;
- 40 (2) Parts sold at wholesale or at reduced or specially negotiated rates for
41 insurance repairs;
- 42 (3) Engine assemblies and transmission assemblies;
- 43 (4) Routine maintenance not covered under warranty, such as fluids, filters, and
44 belts not provided in the course of repairs;
- 45 (5) Nuts, bolts, fasteners, and similar items that do not have an individual part
46 number;
- 47 (6) Tires; and
- 48 (7) Vehicle reconditioning.

49 (a3) If a manufacturer or distributor furnishes a part or component to a dealer, at no cost,
50 to use in performing repairs under a recall, campaign service action, or warranty repair, the
51 manufacturer or distributor shall compensate the dealer for the part or component in the same

1 manner as warranty parts compensation under this section by compensating the dealer the
2 average markup on the cost for the part or component as listed in the manufacturer's or
3 distributor's price schedule less the cost for the part or component.

4 (a4) A manufacturer or distributor may not require a dealer to establish the retail rate
5 customarily charged by the dealer for parts and labor by an unduly burdensome or
6 time-consuming method or by requiring information that is unduly burdensome or time
7 consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction
8 calculations.

9 ...
10 (h) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor
11 vehicle manufacturer, factory branch, distributor, or distributor branch to deny a franchised
12 new motor vehicle dealer the right to return any part or accessory that the dealer has not sold
13 after 15 months where the part or accessory was not obtained through a specific order initiated
14 by the franchised new motor vehicle dealer but instead was specified for, sold to, and shipped
15 to the dealer pursuant to an automated ordering system, provided that such part or accessory is
16 in the condition required for return to the manufacturer, factory branch, distributor, or
17 distributor branch and the dealer returns the part within 60 days of it becoming eligible under
18 this subsection. For purposes of this subsection, an "automated ordering system" shall be a
19 computerized system required by the manufacturer that automatically specifies parts and
20 accessories for sale and shipment to the dealer without specific order thereof initiated by the
21 dealer. The manufacturer, factory branch, distributor, or distributor branch shall not charge a
22 restocking or handling fee for any part or accessory being returned under this subsection."

23 **SECTION 11.** G.S. 20-305.7 reads as rewritten:

24 **"§ 20-305.7. Protecting dealership data and consent to access dealership information.**

25 (a) Except as expressly authorized in this section, no manufacturer, factory branch,
26 distributor, or distributor branch shall require a new motor vehicle dealer to provide its
27 customer lists, customer information, consumer contact information, transaction data, or service
28 files. Any requirement by a manufacturer, factory branch, distributor, or distributor branch that
29 a new motor vehicle dealer provide its customer lists, customer information, consumer contact
30 information, transaction data, or service files as a condition to the dealer's participation in any
31 incentive program or contest for a customer or dealer to receive any incentive payments
32 otherwise earned under an incentive program or contest, for the dealer to obtain consumer or
33 customer leads, or for the dealer to receive any other benefits, rights, merchandise, or services
34 for which the dealer would otherwise be entitled to obtain under the franchise or any other
35 contract or agreement, or which shall customarily be provided to dealers, shall be voidable at
36 the option of the dealer, unless all of the following conditions are satisfied: (i) the customer
37 information requested relates solely to the specific program requirements or goals associated
38 with such manufacturer's or distributor's own vehicle makes and does not require that the dealer
39 provide general customer information or other information related to the dealer; (ii) such
40 requirement is lawful and would also not require the dealer to allow any customer the right to
41 opt out under the federal Gramm-Leach-Bliley Act, 15 U.S.C., Subchapter I, § 1608, et seq.;
42 and (iii) the dealer is not required to allow the manufacturer or distributor or any third party to
43 have direct access to the dealer's computer system, but the dealer is instead permitted to provide
44 the same dealer, consumer, or customer data or information specified by the manufacturer or
45 distributor by timely obtaining and pushing or otherwise furnishing the required data in a
46 widely accepted file format such as comma delimited in accordance with subsection (h) of this
47 section. Nothing contained in this section shall limit the ability of the manufacturer, factory
48 branch, distributor, or distributor branch to require that the dealer provide, or use in accordance
49 with the law, such customer information related solely to such manufacturer's or distributor's
50 own vehicle makes to the extent necessary to do any of the following:

51 (1) Satisfy any safety or recall notice obligations.

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

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

17 No manufacturer, factory branch, distributor, or distributor branch shall access or obtain
18 dealer or customer data from or write dealer or customer data to a dealer management computer
19 system utilized by a motor vehicle dealer located in this State, or require or coerce a motor
20 vehicle dealer located in this State to utilize a particular dealer management computer system,
21 unless the dealer management computer system allows the dealer to reasonably maintain the
22 security, integrity, and confidentiality of the data maintained in the system. No manufacturer,
23 factory branch, distributor, distributor branch, dealer management computer system vendor, or
24 any third party acting on behalf of any manufacturer, factory branch, distributor, distributor
25 branch, or dealer management computer system vendor shall prohibit a dealer from providing a
26 means to regularly and continually monitor the specific data accessed from or written to the
27 dealer's computer system and from complying with applicable State and federal laws and any
28 rules or regulations promulgated thereunder. These provisions shall not be deemed to impose
29 an obligation on a manufacturer, factory branch, distributor, distributor branch, dealer
30 management computer system vendor, or any third party acting on behalf of any manufacturer,
31 factory branch, distributor, distributor branch, or dealer management computer system vendor
32 to provide such capability.

33 (b) No manufacturer, factory branch, distributor, distributor branch, dealer management
34 computer system vendor, or any third party acting on behalf of any manufacturer, factory
35 branch, distributor, distributor branch, or dealer management computer system vendor may
36 access or utilize customer or prospect information maintained in a dealer management
37 computer system utilized by a motor vehicle dealer located in this State for purposes of
38 soliciting any such customer or prospect on behalf of, or directing such customer or prospect to,
39 any other dealer. The limitations in this subsection do not apply to:

- 40 (1) A customer that requests a reference to another dealership;
- 41 (2) A customer that moves more than 60 miles away from the dealer whose data
42 was accessed;
- 43 (3) Customer or prospect information that was provided to the dealer by the
44 manufacturer, factory branch, distributor, or distributor branch; or
- 45 (4) Customer or prospect information obtained by the manufacturer, factory
46 branch, distributor, or distributor branch where the dealer agrees to allow the
47 manufacturer, factory branch, distributor, distributor branch, dealer
48 management computer system vendor, or any third party acting on behalf of
49 any manufacturer, factory branch, distributor, distributor branch, or dealer
50 management computer system vendor the right to access and utilize the
51 customer or prospect information maintained in the dealer's dealer

1 management computer system for purposes of soliciting any customer or
2 prospect of the dealer on behalf of, or directing such customer or prospect to,
3 any other dealer in a separate, stand-alone written instrument dedicated
4 solely to such authorization.

5 No manufacturer, factory branch, distributor, distributor branch, dealer management computer
6 system vendor, or any third party acting on behalf of any manufacturer, factory branch,
7 distributor, distributor branch, or dealer management computer system vendor, may provide
8 access to customer or dealership information maintained in a dealer management computer
9 system utilized by a motor vehicle dealer located in this State, without first obtaining the
10 dealer's prior express written consent, revocable by the dealer upon five business days written
11 notice, to provide such access. Prior to obtaining said consent and prior to entering into an
12 initial contract or renewal of a contract with a dealer located in this State, the manufacturer,
13 factory branch, distributor, distributor branch, dealer management computer system vendor, or
14 any third party acting on behalf of, or through any manufacturer, factory branch, distributor,
15 distributor branch, or dealer management computer system vendor shall provide to the dealer a
16 written list of all specific third parties to whom any ~~North Carolina dealer management~~
17 ~~computer system~~ data obtained from the dealer has actually been provided within the 12-month
18 period ending November 1 of the prior year. The list shall further describe the scope and
19 specific fields of the data provided. In addition to the initial list, a dealer management computer
20 system vendor or any third party acting on behalf of, or through a dealer management computer
21 system vendor shall provide to the dealer an annual list of third parties to whom said data is
22 actually being provided on November 1 of each year and to whom said data has actually been
23 provided in the preceding 12 months and describe the scope and specific fields of the data
24 provided. Such list shall be provided to the dealer by January 1 of each year. Any dealer
25 management computer system vendor's contract that directly relates to the transfer or accessing
26 of dealer or dealer customer information must conspicuously state, "NOTICE TO DEALER:
27 THIS AGREEMENT RELATES TO THE TRANSFER AND ACCESSING OF
28 CONFIDENTIAL INFORMATION AND CONSUMER RELATED DATA". Such consent
29 does not change any such person's obligations to comply with the terms of this section and any
30 additional State or federal laws (and any rules or regulations promulgated thereunder)
31 applicable to them with respect to such access. In addition, no dealer management computer
32 system vendor may refuse to provide a dealer management computer system to a motor vehicle
33 dealer located in this State if the dealer refuses to provide any consent under this ~~subsection,~~
34 ~~except to the extent that consent is deemed by the parties to be reasonably necessary in order~~
35 ~~for the vendor to provide the system to the dealer.~~subsection.

36 ...

37 (f) The following definitions apply to this section:

- 38 (1) "Dealer management computer system" – A computer hardware and
39 software ~~system having dealer business process management modules that~~
40 ~~provide real-time system that is owned or leased by the dealer, including a~~
41 dealer's use of Web applications, software, or hardware, whether located at
42 the dealership or provided at a remote location and that provides access to
43 customer records and transactions by a motor vehicle dealer located in this
44 State and that ~~allow~~allows such motor vehicle dealer timely information in
45 order to sell vehicles, parts or services through such motor vehicle
46 dealership.
- 47 (2) "Dealer management computer system vendor" – A seller or reseller of
48 dealer management computer systems (but only to the extent that such
49 person is engaged in such activities).
- 50 (3) "Security breach" – An incident of unauthorized access to and acquisition of
51 records or data containing dealership or dealership customer information

1 where unauthorized use of the dealership or dealership customer information
2 has occurred or is reasonably likely to occur or that creates a material risk of
3 harm to a dealership or a dealership's customer. Any incident of
4 unauthorized access to and acquisition of records or data containing
5 dealership or dealership customer ~~information~~ information, or any incident of
6 disclosure of dealership customer information to one or more third parties
7 which shall not have been specifically authorized by the dealer or customer,
8 shall constitute a security breach.

9 ...

10 (h) Notwithstanding any of the terms or provisions contained in this section or in any
11 consent, authorization, release, novation, franchise, or other contract or agreement, whenever
12 any manufacturer, factory branch, distributor, distributor branch, dealer management computer
13 system vendor, or any third party acting on behalf of or through any manufacturer, factory
14 branch, distributor, distributor branch, or dealer management computer system vendor requires
15 that a new motor vehicle dealer provide any dealer, consumer, or customer data or information
16 through direct access to a dealer's computer system, the dealer is not required to provide, and
17 may not be required to consent to provide in any written agreement, such direct access to its
18 computer system. The dealer may instead provide the same dealer, consumer, or customer data
19 or information specified by the requesting party by timely obtaining and pushing or otherwise
20 furnishing the requested data to the requesting party in a widely accepted file format such as
21 comma delimited; provided that, when a dealer would otherwise be required to provide direct
22 access to its computer system under the terms of a consent, authorization, release, novation,
23 franchise, or other contract or agreement, a dealer that elects to provide data or information
24 through other means may be charged a reasonable initial set-up fee and a reasonable processing
25 fee based on the actual incremental costs incurred by the party requesting the data for
26 establishing and implementing the process for the dealer. Any term or provision contained in
27 any consent, authorization, release, novation, franchise, or other contract or agreement which is
28 inconsistent with any term or provision contained in this subsection shall be voidable at the
29 option of the dealer.

30 (i) Notwithstanding the terms or conditions of any consent, authorization, release,
31 novation, franchise, or other contract or agreement, every manufacturer, factory branch,
32 distributor, distributor branch, dealer management computer system vendor, or any third party
33 acting on behalf of or through any manufacturer, factory branch, distributor, distributor branch,
34 or dealer management computer system vendor, having electronic access to consumer or
35 customer data or other information in a computer system utilized by a new motor vehicle
36 dealer, or who has otherwise been provided consumer or customer data or information by the
37 dealer, shall fully indemnify and hold harmless any dealer from whom it has acquired such
38 consumer or customer data or other information from all damages, costs, and expenses incurred
39 by such dealer, including, but not limited to, judgments, settlements, fines, penalties, litigation
40 costs, defense costs, court costs, and attorneys' fees arising out of complaints, claims, civil or
41 administrative actions, and, to the fullest extent allowable under the law, governmental
42 investigations and prosecutions to the extent caused by the access, storage, maintenance, use,
43 sharing, disclosure, or retention of such dealer's consumer or customer data or other
44 information by the manufacturer, factory branch, distributor, distributor branch, dealer
45 management computer system vendor, or third party acting on behalf of or through such
46 manufacturer, factory branch, distributor, distributor branch, or dealer management computer
47 system vendor."

48 **SECTION 12.** The terms and provisions of this act shall be applicable to all current
49 and future franchises and other agreements in existence between any new motor vehicle dealer
50 located in this State and a manufacturer or distributor as of the effective date of this act.

1 **SECTION 13.** If any provision of this act or its application is held invalid, the
2 invalidity does not affect other provisions or applications of this act that can be given effect
3 without the invalid provisions or application, and to this end the provisions of this act are
4 severable.

5 **SECTION 14.** Section 6 of this act becomes effective January 1, 2014. The
6 remainder of the act is effective when it becomes law.