

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

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**SENATE BILL 673
Commerce Committee Substitute Adopted 4/23/15**

Short Title: Clarify Motor Vehicle Dealer Laws.

(Public)

Sponsors:

Referred to:

March 30, 2015

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

The General Assembly of North Carolina enacts:

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

"(10) Motor vehicle. – Any motor propelled vehicle, trailer or semitrailer, required to be registered under the laws of this State.

a. "New motor vehicle" means a motor vehicle that has never been the subject of a completed, successful, or conditional sale that was subsequently approved other than between new motor vehicle dealers, or between manufacturer and dealer of the same franchise.

b. "Used motor vehicle" means a motor vehicle other than a motor vehicle described in paragraph (10) a above sub-subdivision a. of this subdivision.

SECTION 2. G.S. 20-305(7)d. reads as rewritten:

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



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

20 **SECTION 3.** G.S. 20-305(46) reads as rewritten:

21 "(46) To require, coerce, or attempt to coerce a dealer located in this State to
22 purchase goods or services of any nature from a vendor selected, identified,
23 or designated by a manufacturer, distributor, affiliate, or captive finance
24 source when the dealer may obtain goods or services of substantially similar
25 quality and design from a vendor selected by the dealer, provided the dealer
26 obtains prior approval from the manufacturer, distributor, affiliate, or captive
27 finance source, for the use of the dealer's selected vendor. Such approval by
28 the manufacturer, distributor, affiliate, or captive finance source may not be
29 unreasonably withheld. For purposes of this subdivision, the term "goods"
30 does not include moveable displays, brochures, and promotional materials
31 containing material subject to the intellectual property rights of a
32 manufacturer or distributor, or special tools as reasonably required by the
33 manufacturer, or parts to be used in repairs under warranty obligations of a
34 manufacturer or distributor. For any tool designated as special or essential,
35 the manufacturer, distributor, or affiliate may recover from the dealer only
36 the actual cost of such tool. In the event the special or essential tool is sold to
37 the dealer through the manufacturer, distributor, or affiliate, and was
38 manufactured or assembled by that manufacturer, distributor, or affiliate,
39 actual cost shall be defined as the cost the manufacturer, distributor, or
40 affiliate paid for the materials together with the cost of labor used in
41 manufacturing or assembling the special or essential tool. In the event the
42 special or essential tool is sold to the dealer through the manufacturer,
43 distributor, or affiliate, but was manufactured or assembled by an entity
44 other than that manufacturer, distributor, or affiliate, actual cost shall be
45 defined as the cost the manufacturer, distributor, or affiliate actually paid for
46 the special or essential tool. In the event the special or essential tool is sold
47 to the dealer by a third party designated, endorsed, or recommended by the
48 manufacturer, distributor, or affiliate, and the price at which the special or
49 essential tool is being offered to the dealer exceeds the cost of the same or
50 similar tool available for purchase by the dealer through another source that
51 will perform substantially all of the functions required by the dealer, the

1 manufacturer, distributor, or affiliate may not prohibit the dealer from
2 purchasing the special or essential tool from the other source. If the
3 manufacturer, distributor, affiliate, or captive finance source claims that a
4 vendor chosen by the dealer cannot supply goods and services of
5 substantially similar quality and design, the dealer may file a protest with the
6 Commissioner. When a protest is filed, the Commissioner shall promptly
7 inform the manufacturer, distributor, affiliate, or captive finance source that
8 a protest has been filed. The Commissioner shall conduct a hearing on the
9 merits of the protest within 90 days following the filing of a response to the
10 protest. The manufacturer, distributor, affiliate, or captive finance source
11 shall bear the burden of proving that the goods or services chosen by the
12 dealer are not of substantially similar quality and design to those required by
13 the manufacturer, distributor, affiliate, or captive finance source."

14 **SECTION 4.** G.S. 20-305.1(a) reads as rewritten:

15 "(a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch,
16 shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's
17 obligations for preparation, delivery and warranty service on its products, the schedule of
18 compensation to be paid such dealers for parts, work, and service in connection with warranty
19 service, and the time allowances for the performance of such work and service. In no event
20 shall such schedule of compensation fail to include reasonable compensation for diagnostic
21 work and associated administrative requirements as well as repair service and labor. Time
22 allowances for the performance of warranty work and service shall be reasonable and adequate
23 for the work to be performed. The compensation which must be paid under this section must be
24 reasonable, provided, however, that under no circumstances may the reasonable compensation
25 under this section be in an amount less than the dealer's current retail labor rate and the amount
26 charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty
27 work of like kind, provided such amount is competitive with the retail rates charged for parts
28 and labor by other franchised dealers within the dealer's market. For the purposes of this
29 section, the term "warranty service" includes (i) work to maintain or repair a motor vehicle
30 under a warranty or maintenance plan, extended warranty, certified pre-owned warranty, or a
31 service contract issued, supplied, recommended, or endorsed by a manufacturer, factory branch,
32 distributor, or distributor branch and (ii) delivery or preparation procedures and repairs to a
33 motor vehicle as a result of a recall, campaign service, authorized goodwill, directive, or
34 bulletin of a manufacturer, factory branch, distributor, or distributor branch."

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

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.
- 43 (4) Routine ~~maintenance not covered under warranty, such as~~ maintenance,
44 including fluids, filters, alignments, flushes, oil changes, brakes, and belts
45 not provided in the course of repairs.
- 46 (5) Nuts, bolts, fasteners, and similar items that do not have an individual part
47 number.
- 48 (6) ~~Tires.~~ Tires and vehicle alignments.
- 49 (7) Vehicle reconditioning.
- 50 (8) Batteries and light bulbs."

51 **SECTION 6.** G.S. 20-305.1(a3) reads as rewritten:

1 "(a3) If a manufacturer or distributor furnishes a part or component to a dealer, at no cost,
2 to use in performing repairs under a recall, campaign service action, or warranty repair, the
3 manufacturer or distributor shall compensate the dealer for the part or component in the same
4 manner as warranty parts compensation under this section by compensating the dealer the
5 average markup on the cost for the part or component as listed in the manufacturer's or
6 distributor's price schedule less the cost for the part or component. If a manufacturer or
7 distributor requires a dealer to retain, store, or to otherwise not dispose of any part or
8 component removed or replaced by a dealer in the performance of repairs under a recall,
9 campaign service action, or warranty repair, the manufacturer or distributor shall provide
10 reasonable compensation to the dealer for the storage costs of the removed or replaced part or
11 component from the date of the repair up to and including the earlier of the date the
12 manufacturer or distributor permits the dealer to dispose of the part or component or the date
13 the dealer returns the part or component to the manufacturer or distributor at the request of the
14 manufacturer or distributor. For purposes of this subsection, reasonable compensation for
15 storage and handling costs shall be determined by the dealer in accordance with generally
16 accepted accounting principles and shall include (i) the costs for the use of the dealer's facilities
17 for storage and handling of any part or component calculated on a fair market value per square
18 foot basis; (ii) any additional direct and indirect costs incurred by the dealer for storage of the
19 part or component, including the costs of any additional storage facilities incurred by the dealer
20 for storage of the part or component; and (iii) direct and indirect transportation costs related to
21 shipping parts or components to the dealer's storage facilities."

22 **SECTION 7.** If any provision of this act or its application is held invalid, the
23 invalidity does not affect other provisions or applications of this act that can be given effect
24 without the invalid provisions or application, and to this end the provisions of this act are
25 severable.

26 **SECTION 8.** This act is effective when it becomes law and applies to all current
27 and future franchises and other agreements in existence between any new motor vehicle dealer
28 located in this State and a manufacturer or distributor as of the effective date of this act.