

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

HOUSE BILL 619
RATIFIED BILL

AN ACT TO CLARIFY MOTOR VEHICLE DEALERS AND MANUFACTURERS
LICENSING LAWS.

The General Assembly of North Carolina enacts:

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

"(50) To require, coerce, or attempt to coerce any new motor vehicle dealer located in this State to change location of its dealership, or to make any substantial alterations to its dealership premises or facilities, if the dealer (i) has changed the location of its dealership or made substantial alterations to its dealership premises or facilities within the preceding 10 years at a cost of more than two hundred fifty thousand dollars (\$250,000), indexed to the Consumer Price Index, over this 10-year period, and (ii) the change in location or alteration was made toward compliance with a facility initiative or facility program that was sponsored or supported by the manufacturer, factory branch, distributor, or distributor branch, with the approval of the manufacturer, factory branch, distributor, or distributor branch. For any dealer that did not change the location of its dealership or make substantial alterations to its dealership premises or facilities within the preceding 10 years at a cost of more than two hundred fifty thousand dollars (\$250,000), indexed to the Consumer Price Index, the dealer's obligation to change location of its dealership, or to make any substantial alteration to its dealership premises or facilities, at the request of a manufacturer, factory branch, distributor, or distributor branch, or to satisfy a requirement or condition of an incentive program sponsored by a manufacturer, factory branch, distributor, or distributor branch, shall be governed by the applicable provisions of subdivisions (4), (11), (12), (25), (30), (32), and (42) of this section. This section shall not apply to any facility or premises improvement or alteration that is voluntarily agreed to by the new motor vehicle dealer and for which the dealer receives facilities-related compensation from the manufacturer or distributor for the facility improvement or alteration equivalent to at least a majority of the cost incurred by the dealer for the facility improvement or alteration."

SECTION 2. G.S. 20-305.1 reads as rewritten:

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

(a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch, shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's obligations for preparation, ~~delivery and warranty~~ delivery, warranty, and recall service on its ~~products~~ products. The disclosure required under this subsection shall include the schedule of compensation to be paid ~~such~~ the dealers for parts, work, and service in connection with ~~warranty~~ preparation, delivery, warranty, and recall service, and the time allowances for the performance of ~~such~~ the work and service. In no event shall ~~such~~ the schedule of compensation fail to include reasonable compensation for diagnostic work and associated administrative



requirements as well as repair service and labor. Time allowances for the performance of ~~warranty preparation, delivery, warranty, and recall~~ work and service shall be reasonable and adequate for the work to be performed. The compensation ~~which must be paid~~ under this section ~~must~~ shall be reasonable, provided, however, that under no circumstances ~~may~~ shall the reasonable compensation under this section for warranty and recall service be in an amount less than the dealer's current retail labor rate and the amount charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty work of like kind, provided ~~such~~ the amount is competitive with the retail rates charged for parts and labor by other franchised dealers of the same line-make located within the dealer's market. If there is no other same line-make dealer located in the dealer's market or if all other same line-make dealers in the dealer's market are owned or operated by the same entities or individuals as the dealership being compared, the retail rates charged for parts and labor by other franchised dealers located in the dealer's market that sell competing line-make motor vehicles as the dealer may be considered when determining whether the dealer's rates are competitive.

...

(a3) If a manufacturer or distributor furnishes a part or component to a dealer, at reduced or no cost, to use in performing repairs under a recall, campaign service action, or warranty repair, the manufacturer or distributor shall compensate the dealer for the part or component in the same manner as warranty parts compensation under this section by compensating the dealer on the basis of the dealer's average markup on the cost for the part or component as listed in the manufacturer's or distributor's price schedule less the cost for the part or component.

...

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

of incentive compensation program. Provided, however, these limitations shall not be effective in the case of fraudulent claims.

(b1) All claims made by motor vehicle dealers pursuant to this section for compensation for delivery, preparation, ~~warranty-warranty~~, and recall ~~work-work~~, including compensation for a qualifying used motor vehicle in accordance with subsection (i) of this section, labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after receipt of claim from the dealer. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. Any claim not specifically disapproved in writing within 30 days after receipt shall be considered approved and payment is due immediately. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the claim either in accordance with the manufacturer's reasonable written procedures or by other reasonable means. A manufacturer or distributor shall not deny a claim or reduce the amount to be reimbursed to the dealer as long as the dealer has provided reasonably sufficient documentation that the dealer:

- (1) Made a good faith attempt to perform the work in compliance with the written policies and procedures of the manufacturer; and
- (2) Actually performed the work.

Notwithstanding the foregoing, a manufacturer shall not fail to fully compensate a dealer for warranty or recall work or make any chargeback to the dealer's account based on the dealer's failure to comply with the manufacturer's claim documentation procedure or procedures unless both of the following requirements have been met:

- (1) The dealer has, within the previous 12 months, failed to comply with the same specific claim documentation procedure or procedures; and
- (2) The manufacturer has, within the previous 12 months, provided a written warning to the dealer by certified United States mail, return receipt requested, identifying the specific claim documentation procedure or procedures violated by the dealer.

Nothing contained in this subdivision shall be deemed to prevent or prohibit a manufacturer from adopting or implementing a policy or procedure which provides or allows for the self-audit of dealers, provided, however, that if any such self-audit procedure contains provisions relating to claim documentation, such claim documentation policies or procedures shall be subject to the prohibitions and requirements contained in this subdivision. Notices sent by a manufacturer under a bona fide self-audit procedure shall be deemed sufficient notice to meet the requirements of this subsection provided that the dealer is given reasonable opportunity through self-audit to identify and correct any out-of-line procedures for a period of at least 60 days before the manufacturer conducts its own audit of the dealer warranty operations and procedures. A manufacturer may further not charge a dealer back subsequent to the payment of the claim unless a representative of the manufacturer has met in person at the dealership, or by telephone, with an officer or employee of the dealer designated by the dealer and explained in detail the basis for each of the proposed charge-backs and thereafter given the dealer's representative a reasonable opportunity at the meeting, or during the telephone call, to explain the dealer's position relating to each of the proposed charge-backs. In the event the dealer was selected for audit or review on the basis that some or all of the dealer's claims were viewed as excessive in comparison to average, mean, or aggregate data accumulated by the manufacturer, or in relation to claims submitted by a group of other franchisees of the manufacturer, the manufacturer shall, at or prior to the meeting or telephone call with the dealer's representative, provide the dealer with a written statement containing the basis or methodology upon which the dealer was selected for audit or review.

...

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

...

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

(i) Compensation for Used Motor Vehicle Recall. – Notwithstanding the terms of any franchise or other agreement other than an agreement permitted by this subsection (i) of this section, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to compensate a franchised motor vehicle dealer for any qualifying used motor vehicle in the inventory of a dealer authorized to sell new motor vehicles of the same line-make or by a dealer authorized to perform recall repairs on vehicles of the same line-make in the manner specified in this subsection. The manufacturer, factory branch, distributor, or distributor branch shall compensate the dealer for any qualifying used motor vehicle in the inventory of the dealer at the prorated rate of at least one and one-half percent (1.5%) per month of the average trade-in value of the qualifying used motor vehicle beginning on the date the vehicle becomes a qualifying used motor vehicle and ending on and including the date the vehicle ceases to be a qualifying used motor vehicle pursuant to subsection (j) of this section. Any claim by a dealer for compensation owed under this subsection may be submitted by the dealer on a monthly basis, and the manufacturer, factory branch, distributor, or distributor branch shall approve or disapprove the claim within 30 days of receipt of the claim and shall process and pay the claim within 60 days after the approval of the claim. Every manufacturer, manufacturer branch, distributor, and distributor branch licensed by the Commissioner under this Article shall establish a simple, convenient, and efficient process for its franchised dealers to submit claims for compensation under this subsection on a monthly basis. Such process shall provide for a manner and method for a dealer to demonstrate the inventory status of a qualifying used motor vehicle, provided the manner and method is reasonable and does not require information that is unduly burdensome. Nothing in this subsection shall prohibit a manufacturer, factory branch,

distributor, or distributor branch from compensating a dealer for a qualifying used motor vehicle under a national recall compensation program instead of the basis established in this section, provided that the compensation paid to dealers under the program is equal to or exceeds the level of compensation required by this subsection on a monthly basis and the compensation payments are made within the time periods required by this section. Nothing in this subsection shall prohibit a dealer and a manufacturer, factory branch, distributor, or distributor branch from voluntarily entering an agreement the sole subject matter of which is compensation for a dealer for a used motor vehicle subject to a recall and which provides a compensation amount or other related terms that differ from the compensation amount and other requirements specified in subsection (j) of this section provided that the dealer's ability to participate in or qualify for any incentive program offered or sponsored by the manufacturer or distributor or to otherwise receive any discounts, credits, rebates, or incentives of any kind is not conditioned upon the dealer's willingness to enter such an agreement. Nothing in this subsection shall require a manufacturer, factory branch, distributor, or distributor branch to provide total compensation in excess of the total average trade-in value of the qualifying used motor vehicle.

(j) Definitions – The following definitions apply in this section:

- (1) "Average trade-in value" means the value of a used motor vehicle as determined by reference to a generally accepted, nationally published, third-party used vehicle valuation guide book.
- (2) "Qualifying used motor vehicle" means a motor vehicle that meets all of the following: (i) a used motor vehicle of a line-make for which the dealer holds an active franchise with the manufacturer to sell and service new motor vehicles; (ii) a used motor vehicle of a model subject to a recall notice and subject to or covered under a stop-sale or do-not-drive order issued by the manufacturer of the motor vehicle or issued by the National Highway Traffic Safety Administration; (iii) parts or other remedy sufficient to fully repair the underlying defect that resulted in the recall of the motor vehicle to the extent that the motor vehicle is no longer subject to or covered by a stop-sale or do-not-drive order issued by the manufacturer of the motor vehicle were not made available to the dealer within 30 days of the date of the notice of recall by the manufacturer; (iv) a motor vehicle in the dealer's inventory or otherwise owned by the dealer at the time a stop-sale or do-not-drive order is issued or taken into the used motor vehicle inventory of the dealer as a consumer trade-in incident to the purchase of a motor vehicle from the dealer after the stop-sale or do-not-drive order is issued. A motor vehicle meeting the definition of a "qualifying used motor vehicle" pursuant to this subdivision shall cease to be a "qualifying used motor vehicle" on the earlier of the following: (i) the date the remedy or parts to fully repair the underlying defect that resulted in the recall of the motor vehicle to an extent that the motor vehicle is no longer subject to or covered by a stop-sale or do-not-drive order issued by the manufacturer of the motor vehicle are made available to the dealer; (ii) the date the dealer sells, trades, or otherwise disposes of the qualifying used motor vehicle; or (iii) the date the manufacturer provides notice to the dealer that the stop-sale or do-not-drive order is no longer in effect.
- (3) "Stop-sale or do-not-drive order" means a notification, directive, or order issued by a manufacturer, factory branch, distributor, or distributor branch to its franchised dealers or issued by the National Highway Traffic Safety Administration stating that motor vehicle models of certain used vehicles in inventory shall not be sold or leased, at either retail or wholesale, due to a

federal safety recall for a defect or a noncompliance recall, or a federal emissions recall.

Nothing in this subsection shall be construed as excluding from the definition of a qualifying used motor vehicle a motor vehicle on which a previously issued notice of recall or a stop-sale or do-not-drive order remains in effect as of the effective date of this subsection, or a motor vehicle that becomes subject to a notice of recall or a stop-sale or do-not drive order on or after the effective date of this subsection, provided that the motor vehicle otherwise meets the criteria for a qualifying used motor vehicle. Subsections (i) and (j) of this section shall not be applicable to any manufacturer, factory branch, distributor, or distributor branch that manufactures or distributes recreational vehicles.

(k) Any compensation provided to the dealer that meets the minimum requirements of subsection (i) of this section is exclusive and may not be combined with any other state or federal recall compensation civil remedy for used motor vehicles subject to recall."

SECTION 3. G.S. 20-305.7(b) reads as rewritten:

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

- (1) A customer that requests a reference to another dealership;
- (2) A customer that moves more than 60 miles away from the dealer whose data was accessed;
- (3) Customer or prospect information that was provided to the dealer by the manufacturer, factory branch, distributor, or distributor branch; or
- (4) Customer or prospect information obtained by the manufacturer, factory branch, distributor, or distributor branch where the dealer agrees to allow the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor the right to access and utilize the customer or prospect information maintained in the dealer's dealer management computer system for purposes of soliciting any customer or prospect of the dealer on behalf of, or directing such customer or prospect to, any other dealer in a separate, stand-alone written instrument dedicated solely to such authorization.

No manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor, may provide access to customer or dealership information maintained in a dealer management computer system utilized by a motor vehicle dealer located in this State, without first obtaining the dealer's prior express written consent, revocable by the dealer upon five business days written notice, to provide such access. Prior to obtaining said consent and prior to entering into an initial contract or renewal of a contract with a dealer located in this State, the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of, or through any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor shall provide to the dealer a written list of all specific third parties to whom any data obtained from the dealer has actually been provided within the 12-month period ending November 1 of the prior year. The list shall further describe the scope and specific fields of the data provided. In addition to the initial list, a dealer

management computer system vendor or any third party acting on behalf of, or through a dealer management computer system vendor shall provide to the dealer an annual list of each and every third party to whom said data is actually being provided on November 1 of each year and each and every third party to whom said data ~~has~~was actually ~~been~~ provided in the preceding 12 months and ~~describe~~ for each and every third party identified, the scope and specific fields of the data provided to such third party during such 12-month period. Such list shall be provided to the dealer by January 1 of each year. The lists required in this paragraph of the third parties to whom any data obtained from the dealer has actually been provided shall be specific to each affected dealer and it shall be insufficient and unlawful for the provider of this information to furnish any dealer a list of third parties who could or may have received any of the affected dealer's data, as the information required to be provided in this paragraph requires the provider of this information to state the identity and other specified information of each and every third party to whom such data was actually provided during the relevant period of time. Any dealer management computer system vendor's contract that directly relates to the transfer or accessing of dealer or dealer customer information must conspicuously state, "NOTICE TO DEALER: THIS AGREEMENT RELATES TO THE TRANSFER AND ACCESSING OF CONFIDENTIAL INFORMATION AND CONSUMER RELATED DATA". Such consent does not change any such person's obligations to comply with the terms of this section and any additional State or federal laws (and any rules or regulations promulgated thereunder) applicable to them with respect to such access. In addition, no dealer management computer system vendor may refuse to provide a dealer management computer system to a motor vehicle dealer located in this State if the dealer refuses to provide any consent under this subsection."

SECTION 4. G.S. 20-305 is amended by adding a new subdivision to read:

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

SECTION 4.5.(a) G.S. 20-79.02(g) reads as rewritten:

"(g) Applicability. – Prior to January 1, ~~2019,2021~~, a new motor vehicle dealer may, but is not required to, display an LD license plate on a service loaner vehicle. Beginning on or after January 1, ~~2019,2021~~, a new motor vehicle dealer shall display an LD license plate on any new motor vehicle placed into service as a loaner vehicle if either of the following circumstances exists:

- (1) The new motor vehicle dealer is receiving incentive or warranty compensation from a manufacturer, factory branch, distributor, or distributor branch for the use of the vehicle as a service loaner.
- (2) The new motor vehicle dealer is receiving a fee or other compensation from the dealer's customers for the use of the vehicle as a service loaner."

SECTION 4.5.(b) Section 1.1(b) of S.L. 2015-232 reads as rewritten:

"**SECTION 1.1.(b)** This section is effective when this act becomes law and expires December 31, ~~2018,2020~~."

SECTION 4.5.(c) Section 1.4(b) of S.L. 2015-232 reads as rewritten:

"**SECTION 1.4.(b)** This section is effective when this act becomes law and expires December 31, ~~2018,2020~~."

SECTION 5. 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.

SECTION 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of June, 2018.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

Roy Cooper
Governor

Approved _____ .m. this _____ day of _____, 2018