FILED SENATE
Mar 24, 2021
S.B. 342
PRINCIPAL CLERK

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

S **D**

SENATE BILL DRS35142-MW-68

Short Title:	Clarify Motor Vehicle Franchise Laws.	(Public)
Sponsors:	Senators B. Jackson, Perry, and Sawyer (Primary Sponsors).	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CLARIFY THE LAWS GOVERNING NEW MOTOR VEHICLE DEALER FRANCHISES.

The General Assembly of North Carolina enacts:

DEALERSHIP TRANSFERS/RIGHT OF FIRST REFUSAL CLARIFICATION

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

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

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

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

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

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

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

d. With respect to a proposed transfer of ownership, sale, or assignment, the sole issue for determination by the Commissioner and the sole issue upon which the Commissioner shall hear or consider evidence is

whether, by reason of lack of good moral character, lack of general business experience, or lack of financial ability, the proposed transferee is unfit to own the dealership. For purposes of this subdivision, the refusal by the manufacturer to accept a proposed transferee who is of good moral character and who otherwise meets the written, reasonable, and uniformly applied business experience and financial requirements, if any, required by the manufacturer of owners of its franchised automobile dealerships is presumed to demonstrate the manufacturer's failure to prove that the proposed transferee is unfit to own the dealership.

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

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

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

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

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

1. Condition its approval of a proposed transfer, sale, assignment, change in the dealer's executive management, principal operator, or appointment of a designated successor, on the existing or proposed dealer's willingness to construct a new facility, renovate the existing facility, acquire or refrain from acquiring one or more line-makes of vehicles, separate or divest one or more line-makes of vehicle, or establish or maintain exclusive facilities, personnel, or display space.

2. ~~It is unlawful for a manufacturer to, in any way, condition~~ Condition its approval of a proposed relocation on the existing or proposed dealer's willingness to acquire or refrain from acquiring one or more line-makes of vehicles, separate or divest one or more line-makes of vehicle, or establish or maintain exclusive facilities, personnel, or display space. The opinion or determination of a franchisor that the continued existence of one of its franchised dealers situated in this State is not viable, or that the dealer holds or fails to hold licensing rights for the sale of other line-makes of vehicles in a manner consistent with the franchisor's existing or future distribution or marketing plans, shall not constitute a lawful basis for the franchisor to fail or refuse to approve a dealer's proposed change in use of a dealership facility or relocation: provided, however, that nothing contained in this subdivision shall be deemed to prevent or prohibit a franchisor from failing to approve a dealer's proposed relocation on grounds that the specific site or facility proposed by the dealer is otherwise unreasonable under the circumstances. Approval of a relocation pursuant to this subdivision shall not in itself constitute the franchisor's representation or assurance of the dealer's viability at that location.

3. Condition, directly or indirectly, the approval of the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale, succession, or assignment of a dealer's franchise, or a change in the executive management or principal operator of the dealership upon the existing or proposed dealer's willingness to renovate, construct, or relocate the dealership facility, or to enroll in a facility program.

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

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

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

…

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

1. Within 30 days after receiving written notice of the identity of the owner's designated successor and general information as to the financial ability and general business qualifications of the designated successor, the franchisor shall send the owner and designated successor notice of objection, by registered or certified mail, return receipt requested, to the appointment of the designated successor. The notice of objection shall state in detail all facts which constitute the basis for the contention on the part of the manufacturer or distributor that good cause, as defined in this sub-subdivision below, exists for rejection of the designated successor. Failure by the franchisor to send notice of objection within 30 days and otherwise as provided in this sub-subdivision shall constitute waiver by the franchisor of any right to object to the appointment of the designated successor.

…

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

…

5. Nothing in this sub-subdivision shall preclude a manufacturer or distributor from, upon its receipt of written notice from an owner of the identity of the owner's designated successor, requiring that the designated successor promptly provide personal and financial data that is reasonably necessary to determine the financial ability and general business qualifications of the designated successor; provided, however, that such a request for additional information shall not delay any of the time periods or constraints contained herein.

…

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

e. The designated successor shall agree to be bound by all terms and conditions of the franchise in effect between the manufacturer or distributor and the owner at the time of the owner's or principal operator's death or incapacity, if so requested in writing by the manufacturer or distributor subsequent to the owner's or principal operator's death or incapacity.

f. This section does not preclude an owner of a new motor vehicle dealership from designating any person as his or her successor by written instrument filed with the manufacturer or distributor, and, in the event there is an inconsistency between the successor named in such written instrument and the designated successor otherwise appointed by the owner consistent with the provisions of this section, and that written instrument has not been revoked by the owner of the new motor vehicle dealership in writing to the manufacturer or distributor, then the written instrument filed with the manufacturer or

distributor shall govern as to the appointment of the successor. The failure or refusal of the designated successor to agree to any terms or provisions that are in addition to or that vary from any of the terms or provisions contained in the existing franchise between the parties shall not constitute good cause for the manufacturer or distributor to object to the designated successor.

…."

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

"(18) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business transferred in accordance with G.S. 20-305(4) above, or to prevent or attempt to prevent, through the exercise of any contractual right of first refusal or otherwise, a dealer located in this State from either (i) transferring the franchised business to such persons or other entities as the dealer shall designate in accordance with ~~G.S. 20-305(4).~~ G.S. 20-305(4) or (ii) purchasing, entering into an option to purchase, or complying with any subjective standards or asserting any legal or equitable rights relating to the franchise. The opinion or determination of a manufacturer that the existence or location of one of its franchised dealers situated in this State is not viable or is not consistent with the manufacturer's distribution or marketing forecast or plans shall not constitute a lawful basis for the manufacturer to fail or refuse to approve a dealer's proposed transfer of ownership submitted in accordance with G.S. 20-305(4), or "good cause" for the termination, cancellation, or nonrenewal of the franchise under G.S. 20-305(6) or grounds for the objection to an owner's designated successor appointed pursuant to G.S. 20-305(7)."

ELECTRIC VEHICLES/FACILITATE SALES OF ELECTRIC VEHICLES

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

"g. A franchise shall continue in full force and operation notwithstanding a change, in whole or in part, of an established plan or system of distribution of the motor vehicles offered for sale under the franchise. The appointment of a new manufacturer, factory branch, distributor, or distributor branch for motor vehicles offered for sale under the franchise agreement or the establishment of a separate franchise that sells or distributes exclusively or primarily electric vehicles shall be deemed to be a change of an established plan or system of distribution.

Upon the occurrence of the change, the Division shall deny an application of a manufacturer, factory branch, distributor, or distributor branch for a license or license renewal unless the applicant for a license as a manufacturer, factory branch, distributor, or distributor branch offers to each motor vehicle dealer who is a party to a franchise for that ~~line-make~~ line-make, without any separate or additional fee or charge, a new franchise agreement containing substantially the same provisions which were contained in the previous franchise agreement or files an affidavit with the Division acknowledging its undertaking to assume and ~~fulfill~~ fulfill, without any separate or additional fee or charge to its dealers, the rights, duties, and obligations of its predecessor under the previous franchise agreement. Should the Division fail to deny an application following the change, as required by this subsection, the Division shall then deny any subsequent renewal of such license until such time as the

manufacturer, factory branch, distributor, or distributor branch offers to each motor vehicle dealer who is a party to a franchise for that line-make a new franchise agreement on substantially the same provisions which were contained in the previous franchise agreement."

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

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

Notwithstanding the terms or conditions of any franchise or other agreement, policy, or incentive program, it is unlawful for any manufacturer or distributor to require, coerce, or attempt to coerce any of its franchised dealers in this State to either (i) purchase or lease any electric vehicle charging stations at the dealer's expense unless the dealer is actually offering for sale to the public or providing warranty service on electric vehicles manufactured or distributed by that manufacturer or distributor or (ii) purchase or lease, at the dealer's expense, more than one electric vehicle charging station per dealership location owned by the dealer.

Notwithstanding the terms or conditions of any franchise or other agreement, policy, or incentive program, it is unlawful for any manufacturer or distributor to require that any of its franchised dealers in this State purchase or lease any diagnostic equipment or tool for the maintenance, servicing, or repair of electric vehicles if the dealer has other diagnostic equipment or tools available that can perform the work to the standards required by the applicable manufacturer or distributor. To the extent practicable, manufacturers and distributors having franchised dealers in this State that sell or service multiple brands of electric vehicles manufactured or distributed by the same manufacturer or distributor are required to design, manufacture, and distribute diagnostic equipment, tools, and parts that can be used interchangeably with all brands of electric vehicles sold or distributed to their dealers in this State.

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

…."

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

"(10) Motor vehicle. – Any motor propelled vehicle, regardless of the size and type of motor, source of power, or mode of operation, trailer or semitrailer,

required to be registered under the laws of this State. This term does not include mopeds, as that term is defined in G.S. 20-4.01.
…."

REQUIREMENT TO PURCHASE PRE-OWNED VEHICLES

SECTION 3.(a) G.S. 20-305(9), as rewritten by subsection (b) of Section 2 of this act, reads as rewritten:

"(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to purchase or lease a specific dealer management computer system for communication with the manufacturer, factory branch, distributor, or distributor branch or any computer hardware or software used for any purpose other than the maintenance or repair of motor vehicles, to participate monetarily in an advertising campaign or contest, to purchase off-lease or other pre-owned vehicles either as a part of the franchise agreement or as a part of an incentive program, or to purchase unnecessary or unreasonable quantities of any promotional materials, training materials, training programs, showroom or other display decorations, materials, computer equipment or programs, or special tools at the expense of the new motor vehicle dealer, provided that nothing in this subsection shall preclude a manufacturer or distributor from including an unitemized uniform charge in the base price of the new motor vehicle charged to the dealer where such charge is attributable to advertising costs incurred or to be incurred by the manufacturer or distributor in the ordinary courses of its business.

Notwithstanding the terms or conditions of any franchise or other agreement, policy, or incentive program, it is unlawful for any manufacturer or distributor to require, coerce, or attempt to coerce any of its franchised dealers in this State to either (i) purchase or lease any electric vehicle charging stations at the dealer's expense unless the dealer is actually offering for sale to the public or providing warranty service on electric vehicles manufactured or distributed by that manufacturer or distributor or (ii) purchase or lease, at the dealer's expense, more than one electric vehicle charging station per dealership location owned by the dealer.

Notwithstanding the terms or conditions of any franchise or other agreement, policy, or incentive program, it is unlawful for any manufacturer or distributor to require that any of its franchised dealers in this State purchase or lease any diagnostic equipment or tool for the maintenance, servicing or repair of electric vehicles if the dealer has other diagnostic equipment or tools available that can perform the work to the standards required by the applicable manufacturer or distributor. To the extent practicable, manufacturers and distributors having franchised dealers in this State that sell or service multiple brands of electric vehicles manufactured or distributed by the same manufacturer or distributor are required to design, manufacture and distribute diagnostic equipment, tools and parts that can be used interchangeably with all brands of electric vehicles sold or distributed to their dealers in this State.

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

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

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

CLARIFICATION OF DEALER'S RIGHT TO CONTROL LOCATION

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

"(12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change location of the ~~dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles so as to justify such an expansion, in light of the current market and economic conditions.~~dealership."

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

"(12a) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles so as to justify such an expansion, in light of the current market and economic conditions."

RELEASES/WAIVERS

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

"(13a) To enter into any release or waiver of rights created under this Article with one of its franchised dealers in this State unless the release or waiver of rights complies with all of the following:

a. The dealer's release or waiver of rights would not release or waive any rights relating to any provision contained in this Article which specifically provides that the dealer's rights are nonreleasable or nonwaivable;

b. The dealer's release or waiver of rights relates to an actual, active, and current claim or dispute between a manufacturer and a dealer and is in no part prospective;

c. The specific wording of the dealer's release or waiver of rights does not cause the dealer to release or waive any rights the dealer may have under this Article that are not directly related to resolution of an actual, active, and current claim or dispute between the dealer and manufacturer;

d. The dealer's release or waiver of rights is contained in a standalone document that is executed by an authorized owner or officer of the dealer and contains or references no other matters or issues other than facts and terms of settlement directly related to the resolution of the specific issues that comprise an actual, active, and current claim or dispute between the manufacturer and a dealer;

e. The dealer's release or waiver of rights would not require any dispute between the manufacturer and dealer related to its interpretation or either of the parties' performance or breach to be referred to any person

other than the duly constituted courts of the State or the United States of America, or to the Commissioner, if such referral would be binding upon the dealer; and

f. The dealer's release or waiver of rights is supported by adequate and reasonable consideration from the manufacturer that is fully disclosed in the release or waiver of rights itself and is negotiated and agreed to by both the dealer and manufacturer without any threats, coercion, or undue influence.

This subdivision shall be strictly construed, and a dealer's release or waiver of rights that fails to comply with any of the requirements or other provisions contained in sub-subdivisions a. through f. of this subdivision shall be null and void."

MINIMUM VEHICLE ALLOCATION

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

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

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

…

f. If, during the immediately preceding 12 calendar months, a new motor vehicle dealer located in this State sold a total of 250 or fewer new motor vehicles manufactured or distributed by a particular manufacturer or distributor, that manufacturer or distributor shall be required to allocate to the dealer and deliver in a timely manner, monthly and on a model by model or series basis, no fewer than the number of new motor vehicles of each such model or series that dealer sold at retail during the immediately previous calendar month; provided, however, that nothing contained in this subdivision or in any

franchise shall prevent or prohibit any dealer from refusing to accept all or any portion of any allocation of vehicles made available to the dealer by the manufacturer or distributor pursuant to this subdivision.

g. Provides in writing to each of its franchised dealers in this State the manufacturer's formula used for allocating motor vehicles as well as a monthly summary of the number of motor vehicles allocated to each of its franchised dealers in this State by series, product line, and model.

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

LOANER/RENTAL CAR REIMBURSEMENT

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

"(33) To fail to reimburse a dealer located in this State in full for the actual ~~cost~~ cost, including applicable taxes and third-party fees, of providing a loaner or rental vehicle to any customer who is having a vehicle serviced at the dealership if the provision of such a loaner or rental vehicle ~~is required by the manufacturer.~~is either required by the manufacturer, or if the manufacturer has represented or otherwise indicated to the customer that a loaner or rental vehicle will be provided or that the customer is entitled to a loaner or rental vehicle. It is unlawful for a manufacturer to fail to reimburse the dealer in full as provided above (i) whether or not the dealer provides the customer with a model vehicle similar to the vehicle the customer brought in for service, in the event the dealer does not have a similar model loaner or rental vehicle available, or (ii) in the event that all or any portion of the time the dealer has provided the customer with a loaner or rental is due to the unavailability of one or more parts."

FACILITY EXPENDITURES

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

"(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. If a manufacturer, factory branch, distributor, or distributor branch offers incentives, or other payments under a program that are in any part conditioned on a dealer's construction of a new

facility, facility improvements, or installation of signs or other image elements, a dealer that constructed a new facility, made facility improvements, or installed signs or other image elements required by or approved by the manufacturer that were completed at a cost of more than two hundred fifty thousand dollars ($250,000), indexed to the Consumer Price Index, within the preceding 10 years shall be deemed to be in compliance with the manufacturer's new or successor program requirements, and the dealer shall be entitled to receive all such incentives or other payments awardable under the new or successor program. 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."

WARRANTY REQUIREMENTS

SECTION 9. 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, warranty, manufacturer-sponsored maintenance programs, manufacturer extended warranty, goodwill repairs, parts exchange programs, and recall service on its products. The disclosure required under this subsection shall include the schedule of compensation to be paid the dealers for parts, work, and service in connection with preparation, delivery, warranty, and recall service, and the time allowances for the performance of the work and service. In no event shall the schedule of compensation fail to include reasonable compensation for diagnostic ~~work~~ work, battery disposal or other disposal charges and shipping and all other associated fees, and associated administrative requirements as well as repair service and labor. Time allowances for the performance of preparation, delivery, warranty, and recall work and service shall be reasonable and adequate for the work to be performed. The compensation paid under this section shall be reasonable, provided, however, that under no circumstances 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 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.

(a1) The retail rate customarily charged by the dealer for parts and labor may be established at the election of the dealer by the dealer submitting to the manufacturer or distributor 100 sequential nonwarranty customer-paid service repair orders which contain warranty-like parts, or 60 consecutive days of nonwarranty customer-paid service repair orders which contain warranty-like parts, whichever is less, covering repairs made no more than 180 days before the submission and declaring the average percentage markup. The average of the parts markup rate and the average labor rate shall both be presumed to be reasonable, however, a manufacturer or distributor may, not later than 30 days after submission, rebut that presumption by reasonably substantiating that the rate is unfair and unreasonable in light of the retail rates charged for parts and labor by all other franchised motor vehicle dealers located in the dealer's ~~market~~ city or town offering the same line-make vehicles. In the event there are no other franchised dealers offering the same line-make of vehicle in the dealer's ~~market,~~ city or town, the manufacturer or distributor may compare the dealer's retail rate for parts and labor with the retail rates charged for parts and labor by other same segment franchised dealers who are selling competing line-makes of vehicles within the dealer's ~~market.~~ city or town. The retail rate and the average labor rate shall go into effect 30 days following the manufacturer's approval, but in no event later than 60 days following the declaration, subject to audit of the submitted repair orders by the manufacturer or distributor and a rebuttal of the declared rate as described above. If the declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the average percentage markup based on that rebuttal not later than 30 days after such audit, but in no event later than 60 days after submission. If the dealer does not agree with the proposed average percentage markup, the dealer may file a protest with the Commissioner not later than 30 days after receipt of that proposal by the manufacturer or distributor. If such a protest is filed, the Commissioner shall inform the manufacturer or distributor that a timely protest has been filed and that a hearing will be held on such protest. In any hearing held pursuant to this subsection, the manufacturer or distributor shall have the burden of proving by a preponderance of the evidence that the rate declared by the dealer was unreasonable as described in this subsection and that the proposed adjustment of the average percentage markup is reasonable pursuant to the provisions of this subsection. If the dealer prevails at a protest hearing, the dealer's proposed rate, affirmed at the hearing, shall be effective as of 60 days after the date of the dealer's initial submission of the customer-paid service orders to the manufacturer or distributor. If the manufacturer or distributor prevails at a protest hearing, the rate proposed by the manufacturer or distributor, that was affirmed at the hearing, shall be effective beginning 30 days following issuance of the final order.

…

(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 G.S. 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) 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 recision 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 or 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, other than an audit conducted for cause, for warranty or recall parts or service compensation, or compensation for a qualifying used motor vehicle in accordance with subsections (i) and (j) of this section may only be conducted one time within any ~~12-month period~~ 24-month period and 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, other than an audit conducted for cause, for sales incentives, service incentives, rebates, or other forms of incentive compensation may only be conducted one time within any ~~12-month period~~ 24-month period and 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. For purposes of this subsection, the term "audit conducted for cause" is defined as an audit based on any of the following: (i) statistical evidence that the dealer's claims are unreasonably high in comparison to other dealers similarly situated or the dealer's claim history, (ii) that the ~~dealer's claims submissions violate reasonable claims documentation or other requirements of the applicable manufacturer, factory branch, distributor, or distributor branch,~~ dealer cannot reasonably substantiate the claim either in accordance with the manufacturer's reasonable written procedures or by other reasonable means, (iii) a follow up to an earlier audit in which the dealer was notified of a claim documentation procedure violation that occurred within the prior 12-month period, provided the audit and any chargeback are in compliance with subdivision (b1) or (b2) of this section and are limited in scope to just the specific violation determined previously, or (iv) reasonable evidence of malfeasance or fraud. In the event a manufacturer, factory branch, distributor, or distributor branch elects to perform an audit conducted for cause, the manufacturer, factory branch, distributor, or distributor branch, simultaneously with providing the affected dealer with written notice of the audit, shall further be required to explain in detail in the notice the data or other foundation upon which the cause is based.

(b1) All claims made by motor vehicle dealers pursuant to this section for compensation for delivery, preparation, warranty, and recall 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:~~if the dealer has documented by other reasonable means.

~~(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), (b4), (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, shall be stayed during the pendency of the determination by the Commissioner.

…."

CLARIFY DEFINITION OF MOTOR VEHICLE DEALER

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

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

1. For commission, money, or other thing of value, buys, sells, leases, offers for subscription, or exchanges, whether outright

or on conditional sale, bailment lease, chattel mortgage, or otherwise, five or more motor vehicles within any 12 consecutive months, regardless of who owns the motor vehicles.

2. On behalf of another and for commission, money, or other thing of value, arranges, offers, attempts to solicit, or attempts to negotiate the sale, purchase, or exchange of an interest in five or more motor vehicles within any 12 consecutive months, regardless of who owns the motor vehicles.
3. Engages, wholly or in part, in the business of ~~selling~~ selling, leasing, or offering for subscription new motor vehicles or new or used motor vehicles, or used motor vehicles only, whether or not the motor vehicles are owned by that person, and sells five or more motor vehicles within any 12 consecutive months.
4. Offers to sell, displays, or permits the display for sale for any form of compensation five or more motor vehicles within any 12 consecutive months.
5. Primarily engages in the leasing or renting of motor vehicles to others and sells or offers to sell those vehicles at retail."

DEALERSHIP FINANCIAL STATEMENTS REQUIRED NO MORE THAN ONCE PER QUARTER

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

"(20) To release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or new motor vehicle dealer, any confidential business, financial, or personal information which may be from time to time provided by the new motor vehicle dealer to the manufacturer, without the express written consent of the new motor vehicle dealer. A manufacturer shall not require, or include in any incentive program, a requirement that any of its motor vehicle dealers in this State provide (i) a financial statement more than once per calendar quarter or (ii) an exclusive financial statement for a franchise when the dealer company operates more than one franchise."

SEVERABILITY CLAUSE

SECTION 12. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

EFFECTIVE DATE

SECTION 13. This act is effective when it becomes law and applies to all current and future franchises and other agreements in existence between any new motor vehicle dealer located in this State and a manufacturer or distributor as of the effective date of this act.