

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 455
Committee Substitute Favorable 4/30/19

Short Title: Clarify Motor Vehicle Dealer Laws.

(Public)

Sponsors:

Referred to:

March 27, 2019

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

4
5 **UPDATE DEFINITIONS**

6 **SECTION 1.** G.S. 20-286 is amended by adding a new subdivision to read:

7 "(15a) Special tool or essential tool. – A tool designed and required by the
8 manufacturer or distributor and not readily available from another source that
9 is utilized for the purpose of performing service repairs on a motor vehicle
10 sold by a manufacturer or distributor to its franchised new motor vehicle
11 dealers in this State."

12
13 **CLARIFY DIAGNOSTIC EQUIPMENT EXCEPTION AND ADDRESS SPECIAL**
14 **TOOLS FOR SMALLER DEALERS**

15 **SECTION 2.(a)** G.S. 20-305(9) reads as rewritten:

16 "(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this
17 State to purchase ~~non~~diagnostic ~~or lease a specific dealer management~~
18 computer system for communication with the manufacturer, factory branch,
19 distributor, or distributor branch or any computer equipment or programs
20 hardware or software used for any purpose other than the maintenance or
21 repair of motor vehicles, to participate monetarily in an advertising campaign
22 or contest, or to purchase unnecessary or unreasonable quantities of any
23 promotional materials, training materials, training programs, showroom or
24 other display decorations, materials, computer equipment or programs, or
25 special tools at the expense of the new motor vehicle dealer, provided that
26 nothing in this subsection shall preclude a manufacturer or distributor from
27 including an unitemized uniform charge in the base price of the new motor
28 vehicle charged to the dealer where such charge is attributable to advertising
29 costs incurred or to be incurred by the manufacturer or distributor in the
30 ordinary courses of its business. Notwithstanding the terms or conditions of
31 any franchise or other agreement, a franchised dealer that sells fewer than 350
32 new motor vehicles per year may request approval from the manufacturer to
33 enter into a tool loaner agreement with another dealer, in lieu of purchasing or
34 leasing any special tools required by any manufacturer, factory branch,
35 distributor, or distributor branch, provided, however, that all of the following
36 conditions are satisfied:



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- 1 a. The manufacturer does not offer its dealers a special tool
2 loaner/sharing program in which the dealer would be eligible to
3 participate.
- 4 b. Eligible special tools exceed a cost of one thousand five hundred
5 dollars (\$1,500) per special tool, are easily and readily transportable,
6 and would be utilized for service on less than 10 vehicles per month at
7 the requesting dealer's dealership.
- 8 c. The dealers participating in a special tools loaner agreement do so
9 pursuant to a written agreement, including designation of the dealer
10 responsible for purchasing the specified tools.
- 11 d. All participating dealers are of the same line-make franchise with the
12 manufacturer.
- 13 e. All participating dealers are located within a 40-mile radius of the
14 dealer responsible for purchasing the specified special tools.
- 15 f. No more than five dealers participate in a special tool loaner
16 agreement.
- 17 g. The manufacturer has approved the special tool loaner agreement,
18 including the list of participating dealers and the list of eligible special
19 tools to be included, which approval shall not be unreasonably
20 withheld, conditioned, or delayed.
- 21 h. The manufacturer, factory branch, distributor, or distributor branch
22 shall have the right to disapprove or terminate, upon 30 days written
23 notice to all of the affected dealers, any special tool loaner agreement,
24 if it determines that the agreement has resulted or is likely to result in
25 a warranty repair delay of more than 48 hours, excessive warranty
26 expense, or significant customer dissatisfaction."

27 **SECTION 2.(b)** G.S. 20-305(46) reads as rewritten:

28 "(46) To require, coerce, or attempt to coerce a dealer located in this State to
29 purchase goods or services of any nature from a vendor selected, identified,
30 or designated by a manufacturer, distributor, affiliate, or captive finance
31 source when the dealer may obtain goods or services of substantially similar
32 quality and design from a vendor selected by the dealer, provided the dealer
33 obtains prior approval from the manufacturer, distributor, affiliate, or captive
34 finance source, for the use of the dealer's selected vendor. Such approval by
35 the manufacturer, distributor, affiliate, or captive finance source may not be
36 unreasonably withheld. For purposes of this subdivision, the term "goods"
37 does not include moveable displays, brochures, and promotional materials
38 containing material subject to the intellectual property rights of a
39 manufacturer or distributor, or special tools or parts as reasonably required by
40 the ~~manufacturer, or parts~~ manufacturer to be used in repairs under warranty
41 obligations of a manufacturer or distributor. If the manufacturer, distributor,
42 affiliate, or captive finance source claims that a vendor chosen by the dealer
43 cannot supply goods and services of substantially similar quality and design,
44 the dealer may file a protest with the Commissioner. When a protest is filed,
45 the Commissioner shall promptly inform the manufacturer, distributor,
46 affiliate, or captive finance source that a protest has been filed. The
47 Commissioner shall conduct a hearing on the merits of the protest within 90
48 days following the filing of a response to the protest. The manufacturer,
49 distributor, affiliate, or captive finance source shall bear the burden of proving
50 that the goods or services chosen by the dealer are not of substantially similar

1 quality and design to those required by the manufacturer, distributor, affiliate,
2 or captive finance source."
3

4 AREA OF RESPONSIBILITY PROTEST RIGHTS

5 SECTION 3. G.S. 20-305(38) reads as rewritten:

6 "(38) Notwithstanding the terms, provisions, or conditions of any agreement,
7 franchise, novation, waiver, or other written instrument, to assign or change a
8 franchised new motor vehicle dealer's area of responsibility under the
9 franchise arbitrarily or without due regard to the present or projected future
10 pattern of motor vehicle sales and registrations within the dealer's market and
11 without having provided the affected dealer with written notice of the change
12 in the dealer's area of responsibility and a detailed description of the change
13 in writing by registered or certified mail, return receipt requested. A
14 franchised new motor vehicle dealer who believes that a manufacturer, factory
15 branch, distributor, or distributor branch with whom the dealer has entered
16 into a franchise has assigned or changed the dealer's area of responsibility, is
17 proposing to assign or change the dealer's area of responsibility arbitrarily or
18 without due regard to the present or projected future pattern of motor vehicle
19 sales and registrations within the dealer's market, or failed to provide the
20 dealer with the notice required under this subdivision may file a petition
21 within 60 days of receiving notice of a manufacturer, factory branch,
22 distributor, or distributor branch's proposed assignment or change to the
23 dealer's area of responsibility and have an evidentiary hearing before the
24 Commissioner as provided in G.S. 20-301(b) contesting the franchised new
25 motor vehicle dealer's assigned area of responsibility. Provided that the dealer
26 has not previously filed a petition pursuant to this subdivision within the
27 preceding 48 months regarding the dealer's currently assigned area of
28 responsibility, a franchised new motor vehicle dealer who at any point in time
29 believes that it is unreasonable for a manufacturer, factory branch, distributor,
30 or distributor branch with whom that dealer has entered into a franchise to
31 include one or more portions of the dealer's existing area of responsibility
32 previously assigned to that dealer by the manufacturer, factory branch,
33 distributor, or distributor branch may request the elimination of the contested
34 territory from the dealer's area of responsibility by submitting the request in
35 writing to the manufacturer, factory branch, distributor, or distributor branch.
36 The dealer's request shall be deemed accepted by the manufacturer, factory
37 branch, distributor, or distributor branch if the manufacturer, factory branch,
38 distributor, or distributor branch has not sent the dealer notice of objection to
39 the dealer's request via U.S. registered or certified mail, return receipt
40 requested, within 60 days after receipt of the dealer's request. A dealer may
41 file a petition within 60 days of receiving notice from the manufacturer,
42 factory branch, distributor, or distributor branch of the manufacturer's
43 rejection, in whole or in part, of the dealer's request for the elimination of the
44 contested territory from the dealer's area of responsibility and have an
45 evidentiary hearing before the Commissioner as provided in G.S. 20-301(b)
46 contesting the manufacturer's rejection, in whole or in part, of the dealer's
47 request for the elimination of the contested territory from the franchised new
48 motor vehicle dealer's assigned area of responsibility. In determining at ~~the an~~
49 evidentiary hearing requested under this subdivision whether a ~~manufacturer,~~
50 factory branch, distributor, or distributor branch has assigned or changed the
51 dealer's area of responsibility or is proposing to assign or change the dealer's

1 ~~area of responsibility~~ all or any portion of the existing or proposed area of
2 responsibility assigned to the dealer is unreasonable or has been assigned
3 arbitrarily or without due regard to the present or projected future pattern of
4 motor vehicle sales and registrations within the dealer's market, the
5 Commissioner may take into consideration the relevant circumstances,
6 including, but not limited to:

- 7 a. The investment of time, money, or other resources made for the
8 purpose of developing the market for the vehicles of the same
9 line-make in the existing or proposed area of responsibility by the
10 petitioning dealer, other same line-make dealers who would be
11 affected by the change in the area of responsibility, or by the
12 manufacturer, factory branch, distributor, distributor branch, or any
13 dealer or regional advertising association.
- 14 b. The present and future projected traffic patterns and drive times
15 between consumers and the same line-make franchised dealers of the
16 affected manufacturer, factory branch, distributor, or distributor
17 branch who are located within the market.
- 18 c. The historical and projected future pattern of new vehicle sales and
19 registrations of the affected manufacturer, factory branch, distributor,
20 or distributor branch within various portions of the area of
21 responsibility and within the market as a whole.
- 22 d. The growth or decline in population, density of population, and new
23 car registrations in the market.
- 24 e. If the affected manufacturer, factory branch, distributor, or distributor
25 branch has removed territory from a dealer's area of responsibility or
26 is proposing to remove territory from a dealer's area of responsibility,
27 the projected economic effects, if any, that these changes in the dealer's
28 area of responsibility will have on the petitioning dealer, other same
29 line-make dealers, the public, and the manufacturer, factory branch,
30 distributor, or distributor branch.
- 31 f. The projected effects that the changes in the petitioning dealer's area
32 of responsibility that have been made or proposed by the affected
33 manufacturer, manufacturer branch, distributor, or distributor branch
34 will have on the consuming public within the market.
- 35 g. The presence or absence of natural geographical obstacles or
36 boundaries, such as mountains and rivers.
- 37 h. The proximity of census tracts or other geographic units used by the
38 affected manufacturer, factory branch, distributor, or distributor
39 branch in determining same line-make dealers' respective areas of
40 responsibility.
- 41 i. The public interest, consumer welfare, and customer convenience.
- 42 j. The reasonableness of the change or proposed change to the dealer's
43 area of responsibility considering the benefits and harm to the
44 petitioning dealer, other same line-make dealers, and the
45 manufacturer, factory branch, distributor, or distributor branch.

46 At the evidentiary hearing before the Commissioner, following the filing of a
47 petition by a dealer contesting the proposed assignment or change of the
48 dealer's area of responsibility by a manufacturer, factory branch, distributor,
49 or distributor branch, the affected manufacturer, factory branch, distributor,
50 or distributor branch shall have the burden of proving that all portions of its
51 current or proposed area of responsibility for the petitioning franchised new

1 motor vehicle dealer are reasonable in light of the present or projected future
2 pattern of motor vehicle sales and registrations within the franchised new
3 motor vehicle dealer's market. At an evidentiary hearing before the
4 Commissioner held pursuant to a franchised new motor vehicle dealer's
5 petition to eliminate contested territory from the dealer's existing area of
6 responsibility previously assigned to the dealer by the manufacturer, factory
7 branch, distributor, or distributor branch, the franchised new motor vehicle
8 dealer shall have the burden of proving that the continued inclusion of the
9 contested territory in the dealer's area of responsibility is unreasonable under
10 the circumstances or has been assigned arbitrarily in light of the present or
11 projected future pattern of motor vehicle sales and registrations within the
12 franchised dealer's new motor vehicle dealer's market. A policy or protocol of
13 a manufacturer, factory branch, distributor, or distributor branch that
14 determines a dealer's area of responsibility based solely on the proximity of
15 census tracts or other geographic units to its franchised dealers and the
16 existence of natural boundaries fails to satisfy the burden of proof on the
17 affected manufacturer, factory branch, distributor, or distributor branch under
18 this subdivision. Upon the filing of a petition before the Commissioner under
19 this subdivision, any changes in the petitioning franchised new motor vehicle
20 dealer's area of responsibility that have been proposed by the affected
21 manufacturer, factory branch, distributor, or distributor branch shall be stayed
22 during the pendency of the determination by the Commissioner. If a protest is
23 or has been filed under G.S. 20-305(5) and the franchised new motor vehicle
24 dealer's area of responsibility is included in the relevant market area under the
25 protest, any protest filed under this subdivision shall be consolidated with that
26 protest for hearing and joint disposition of all of the protests. Nothing in this
27 subdivision shall apply to the determination of whether good cause exists for
28 the establishment by a manufacturer, factory branch, distributor, or distributor
29 branch of an additional new motor vehicle dealer or relocation of an existing
30 new motor vehicle dealer, which shall be governed in accordance with the
31 requirements and criteria contained in G.S. 20-305(5) and not this
32 subdivision."
33

34 **DEALER'S RIGHT TO SELL PARTS AND ACCESSORIES OVER THE INTERNET**

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

36 "(52) To prohibit or to in any way unreasonably limit or restrict a dealer from
37 offering for sale over the Internet, including online e-commerce marketplaces,
38 parts and accessories obtained by the dealer from the manufacturer, factory
39 branch, distributor, or distributor branch, or from any source recommended or
40 approved by the manufacturer, factory branch, distributor, or distributor
41 branch. Nothing in this subdivision shall eliminate or impair the intellectual
42 property rights of a manufacturer, factory branch, distributor, or distributor
43 branch."
44

45 **AUDITS LIMITED TO ONE PER 12-MONTH PERIOD/PROHIBITION ON** 46 **CONTINGENCY AUDITS**

47 **SECTION 5.** G.S. 20-305.1 reads as rewritten:

48 **"§ 20-305.1. Automobile dealer warranty and recall obligations.**

49 ...

50 (b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor
51 vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of

1 its warranty or recall obligations with respect to a motor vehicle, to fail to fully compensate its
2 motor vehicle dealers licensed in this State for a qualifying used motor vehicle pursuant to
3 subsections (i) and (j) of this section or warranty and recall parts other than parts used to repair
4 the living facilities of recreational vehicles, including motor homes, travel trailers, fifth-wheel
5 trailers, camping trailers, and truck campers as defined in G.S. 20-4.01(32b), at the prevailing
6 retail rate according to the factors in subsection (a) of this section, or, in service in accordance
7 with the schedule of compensation provided the dealer pursuant to subsection (a) of this section,
8 or to otherwise recover all or any portion of its costs for compensating its motor vehicle dealers
9 licensed in this State for warranty or recall parts and service or for payments for a qualifying
10 used motor vehicle pursuant to subsections (i) and (j) of this section either by reduction in the
11 amount due to the dealer, or by separate charge, surcharge, or other imposition, and to fail to
12 indemnify and hold harmless its franchised dealers licensed in this State against any judgment
13 for damages or settlements agreed to by the manufacturer, including, but not limited to, court
14 costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims
15 or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or
16 implied warranty, or rescission or revocation of acceptance of the sale of a motor vehicle as defined
17 in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective
18 negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other
19 functions by the manufacturer, factory branch, distributor or distributor branch, beyond the
20 control of the dealer. Any ~~audit~~-audit, other than an audit conducted for cause, for warranty or
21 recall parts or service compensation, or compensation for a qualifying used motor vehicle in
22 accordance with subsections (i) and (j) of this section may only be conducted one time within
23 any 12-month period and shall only be for the 12-month period immediately following the date
24 of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch.
25 Any ~~audit~~-audit, other than an audit conducted for cause, for sales incentives, service incentives,
26 rebates, or other forms of incentive compensation may only be conducted one time within any
27 12-month period and shall only be for the 12-month period immediately following the date of the
28 payment of the claim by the manufacturer, factory branch, distributor, or distributor branch
29 pursuant to a sales incentives program, service incentives program, rebate program, or other form
30 of incentive compensation program. Provided, however, these limitations shall not be effective
31 in the case of fraudulent claims. For purposes of this subsection, the term "audit conducted for
32 cause" is defined as an audit based on either (i) statistical evidence that the dealer's claims are
33 unreasonably high in comparison to other dealers similarly situated or (ii) that the dealer's claims
34 submissions violate reasonable claims documentation or other requirements of the applicable
35 manufacturer, manufacturer branch, distributor, or distributor branch. In the event a
36 manufacturer, factory branch, distributor, or distributor branch elects to perform an audit
37 conducted for cause, the manufacturer, factory branch, distributor, or distributor branch,
38 simultaneously with providing the affected dealer with written notice of the audit, shall further
39 be required to explain in detail in the notice the data or other foundation upon which the cause is
40 based.

41 ...

- 42 (5) Any audit of a dealer by a manufacturer for sales or leases made to known
43 exporters or brokers may only be conducted one time within any 12-month
44 period and shall only be for the 12-month period immediately preceding the
45 ~~audit~~-audit, provided, however, that nothing in this subsection shall prohibit
46 or limit the ability of a manufacturer, factory branch, distributor, or distributor
47 branch to conduct any audit of sales or leases made by one of its franchised
48 dealers to known exporters or brokers for cause at any time during the
49 permitted time period. For purposes of this subdivision, the term "for cause"
50 means the dealer's sale or lease of motor vehicles to individuals identified on
51 a list of known motor vehicle exporters or brokers previously provided by or

1 posted on a Web site made accessible to the dealer by the manufacturer,
2 factory branch, distributor, or distributor branch.

3 (b4) Any person or other entity employed or contracted by a manufacturer, factory branch,
4 distributor, or distributor branch to conduct an audit of a motor vehicle dealer regulated by this
5 section shall comply with all the requirements of this section. It shall be unlawful for any
6 manufacturer, factory branch, distributor, or distributor branch to contract with or employ any
7 person or other entity to conduct an audit of any motor vehicle dealer located in this State
8 regulated under this section for which the person or other entity conducting the audit of the dealer
9 would be in any part compensated on the basis of the dollar amount, volume, or number of
10 chargebacks that would result to the dealer from the audit.

11 ..."

12

13 **MOTOR VEHICLE SUBSCRIPTIONS**

14 **SECTION 6.** G.S. 20-305.2(a) reads as rewritten:

15 "(a) It is unlawful for any motor vehicle manufacturer, factory branch, distributor,
16 distributor branch, or subsidiary thereof, to directly or indirectly through any subsidiary or
17 affiliated entity, own any ownership interest in, operate, or control any motor vehicle dealership
18 in this State, ~~State that offers motor vehicles for sale, lease, or subscription~~ provided that this
19 section shall not be construed to prohibit:

20 ..."

21

22 **DEALERSHIP DATA**

23 **SECTION 7.** G.S. 20-305.7 reads as rewritten:

24 "(a) Notwithstanding the terms of any contract or agreement, the dealer's data contained
25 in or on a dealer management computer system owned or leased by a dealer located in this State
26 is the sole and exclusive property of the dealer. For purposes of this section, the terms "dealer
27 data" and "dealer's data" are defined as any information or other data that has been entered or
28 stored on the dealer's dealer management computer system by an officer, employee, or contractee
29 of the dealer, whether stored or hosted on-site at a dealer location or on the cloud, or at any other
30 remote location, that relates to any of the following: (i) the dealer's sales, service, or parts
31 customers, (ii) customer leads generated by or provided to the dealer, (iii) the tracking, history,
32 or performance of the dealer's internal processing of customer orders and work, (iv) customer
33 deal files, (v) customer recommendations or complaints communicated by any means to the
34 dealer, (vi) the tracking of dealer or customer incentive payments sought or received from any
35 manufacturer or distributor, (vii) business plans, goals, objectives, or strategies created by any
36 officer, employee, or contractee of the dealer, (viii) the dealer's internal bank, financial, or
37 business records, (ix) e-mail, voice, and other communications between or among the dealer's
38 officers or employees, (x) e-mail, voice, and other communications between the dealer's officers
39 or employees and third parties, (xi) contracts and agreements with third parties and all records
40 related to the performance of such contracts and agreements, (xii) employee performance, and
41 (xiii) dealer personnel records. The terms "dealer data" and "dealer's data" specifically exclude
42 the proprietary software of the dealer management computer system provider. Except as
43 expressly authorized in this section, no manufacturer, factory branch, distributor, or distributor
44 branch shall require a new motor vehicle dealer to provide its customer lists, customer
45 information, consumer contact information, transaction data, or service files. Any requirement
46 by a manufacturer, factory branch, distributor, or distributor branch that a new motor vehicle
47 dealer provide its customer lists, customer information, consumer contact information,
48 transaction data, or service files to the manufacturer, factory branch, distributor, or distributor
49 branch, or to any third party as a condition to the dealer's participation in any incentive program
50 or contest that is either required or voluntary on the part of the dealer, for a customer or dealer to
51 receive any incentive payments otherwise earned under an incentive program or contest, for the

1 dealer to obtain consumer or customer leads, or for the dealer to receive any other benefits, rights,
2 merchandise, or services for which the dealer would otherwise be entitled to obtain under the
3 franchise or any other contract or agreement, or which shall customarily be provided to dealers,
4 shall be ~~voidable at the option of the dealer, void and the dealer shall automatically be entitled to~~
5 the benefits offered under the applicable incentive program or contest or any other contract or
6 agreement, unless all of the following conditions are satisfied: (i) the customer information
7 requested relates solely to the specific program requirements or goals associated with such
8 manufacturer's or distributor's own vehicle makes and does not require that the dealer provide
9 general customer information or other information related to the dealer; (ii) such requirement is
10 lawful and would also not require the dealer to allow any customer the right to opt out under the
11 federal Gramm-Leach-Bliley Act, 15 U.S.C., Subchapter I, § 1608, et seq.; and (iii) the dealer is
12 ~~not required to allow the manufacturer or distributor or any third party to have direct access to~~
13 either permitted to restrict the data fields that may be accessed in the dealer's dealer management
14 computer system, but or the dealer is instead permitted to provide the same dealer, consumer, or
15 customer data or information specified by the manufacturer or distributor by timely obtaining
16 and pushing or otherwise furnishing the required data in a widely accepted file format such as
17 comma delimited in accordance with subsection (g1) of this section. Nothing contained in this
18 section shall limit the ability of the manufacturer, factory branch, distributor, or distributor branch
19 to require that the dealer provide, or use in accordance with the law, such customer information
20 related solely to such manufacturer's or distributor's own vehicle makes to the extent necessary
21 to do any of the following:

- 22 (1) Satisfy any safety or recall notice obligations.
- 23 (2) Complete the sale and delivery of a new motor vehicle to a customer.
- 24 (3) Validate and pay customer or dealer incentives.
- 25 (4) Submit to the manufacturer, factory branch, distributor, or distributor branch
26 claims for any services supplied by the dealer for any claim for warranty parts
27 or repairs.

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

39 No manufacturer, factory branch, distributor, or distributor branch shall access or obtain
40 dealer or customer data from or write dealer or customer data to a dealer management computer
41 system utilized by a motor vehicle dealer located in this State, or require or coerce a motor vehicle
42 dealer located in this State to utilize a particular dealer management computer system, unless the
43 dealer management computer system allows the dealer to reasonably maintain the security,
44 integrity, and confidentiality of the data maintained in the system. No manufacturer, factory
45 branch, distributor, distributor branch, dealer management computer system vendor, or any third
46 party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or
47 dealer management computer system vendor shall prohibit a dealer from providing a means to
48 regularly and continually monitor the specific dealer data accessed from or written to the dealer's
49 computer system and from complying with applicable State and federal laws and any rules or
50 regulations promulgated thereunder. These provisions shall not be deemed to impose an
51 obligation on a manufacturer, factory branch, distributor, distributor branch, dealer management

1 computer system vendor, or any third party acting on behalf of any manufacturer, factory branch,
2 distributor, distributor branch, or dealer management computer system vendor to provide such
3 capability. Notwithstanding the terms or conditions of any incentive program or contest that is
4 either required or voluntary on the part of the dealer, or the terms or conditions of any other
5 contract or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or
6 distributor branch to fail or refuse to provide dealer notice, in a standalone written document, at
7 least 45 days prior to making any changes in any of the dealer or customer data the dealer is
8 requested or required to share with a manufacturer, factory branch, distributor, or distributor
9 branch, or any third party. The changes in any of the dealer or customer data the dealer is required
10 or requested to provide shall be void unless the applicable manufacturer, factory branch,
11 distributor, or distributor branch complies with the notice requirements contained in this
12 paragraph.

13 ...

14 (b1) Notwithstanding the terms of any contract or agreement, it shall be unlawful for any
15 dealer management computer system vendor, or any third party having access to any dealer
16 management computer system, to:

17 (1) Take any action, by contract, by technical means, or otherwise, that would
18 prohibit or limit a dealer's ability to protect, store, copy, share, or use any
19 dealer data maintained in a dealer management computer system utilized by a
20 new motor vehicle dealer located in this State. Unlawful conduct prohibited
21 by this section includes, but is not limited to:

22 a. Imposing any unreasonable fees or other restrictions of any kind on
23 the dealer or any third party for access to or sharing of customer or
24 dealer information, or for writing data to a dealer management
25 computer system. For purposes of this section, the term "unreasonable
26 fees" means charges for access to customer or dealer data beyond any
27 direct costs incurred by any dealer management computer system
28 vendor in providing access to the dealer's customer or dealer data to a
29 third party that the dealer has authorized to access its dealer
30 management computer system or allowing any third party that the
31 dealer has authorized to access its dealer management computer
32 system to write data to its dealer management computer system.
33 Nothing contained in this subdivision shall be deemed to prohibit the
34 charging of a fee, which includes the ability of the service provider to
35 recoup development costs incurred to provide the services involved
36 and to make a reasonable profit on the services provided. Any charges
37 must be (i) disclosed to the dealer and (ii) justified by documentary
38 evidence of the costs associated with access or it will be deemed a
39 prohibited unreasonable fee under this section.

40 b. Imposing unreasonable restrictions on secure integration by any
41 authorized third party that the dealer has selected to access its dealer
42 management computer system. Examples of unreasonable restrictions
43 include, but are not limited to, any of the following:

44 1. Unreasonable restrictions on the scope or nature of the dealer's
45 data shared with a third party authorized by the dealer to access
46 the dealer's dealer management computer system.

47 2. Unreasonable restrictions on the ability of a third party
48 authorized by the dealer to securely access the dealer's dealer
49 management computer system to write dealer data to a dealer
50 management computer system.

- 1 3. Unreasonable restrictions or conditions on a third party
2 authorized by the dealer to securely access the dealer's dealer
3 management computer system to share dealer data.
4 4. Requiring unreasonable access to sensitive, competitive, or
5 other confidential business information of a third party as a
6 condition for access to customer or dealer information or
7 sharing customer or dealer information with any third party
8 authorized by the dealer to access the dealer's dealer
9 management computer system.
10 c. Sharing dealer data with any third party not authorized in writing by
11 the dealer to access the dealer's dealer management computer system.
12 d. Prohibiting or unreasonably limiting a dealer's ability to store, copy,
13 securely share, or use dealer data outside the dealer's dealer
14 management computer system in any manner and for any reason.
15 e. Permitting access to or accessing dealer data without first obtaining
16 the dealer's express written consent in a standalone document.
17 f. Prohibiting or limiting a dealer's ability to block specific data fields
18 containing dealer data within the dealer's dealer management
19 computer system from being shared with one or more third parties.
20 (2) Access, use, store, or share any dealer data from a dealer management
21 computer system in any manner other than as expressly permitted in its written
22 agreement with the dealer.
23 (3) Fail to provide the dealer with the option and ability to securely obtain and
24 push specified dealer data within the dealer's dealer management computer
25 system to any third party in lieu of providing the third party direct access to
26 data within the dealer's dealer management computer system.
27 (4) Fail to promptly provide a dealer, upon the dealer's written request, a written
28 listing of all entities with whom it is currently sharing any data from the
29 dealer's dealer management computer system and with whom it has, within
30 the immediately three preceding years, shared any data from the dealer's
31 dealer management computer system and the specific data fields shared with
32 each entity identified.
33 (5) Fail to allow a dealer the ability to verify the data from the dealer's dealer
34 management computer system that is being provided to or shared with third
35 parties.
36 (6) Fail to allow and facilitate a dealer to audit the dealer management computer
37 system vendor's access and use of its dealer management computer system
38 and any specific data fields and data obtained or obtainable from its dealer
39 management computer system.
40 (7) Upon receipt of a dealer's written request to terminate any contract or
41 agreement for the provision of hardware or software related to the dealer's
42 dealer management computer system, to fail to promptly facilitate the transfer
43 of the dealer's customer, employee, and business data maintained on its dealer
44 management computer system to another dealer management computer
45 system vendor of the dealer's choosing in a secure, useable manner, or to hold
46 the dealer responsible for fees in excess of reasonable charges actually
47 incurred by the computer management computer system vendor that are
48 associated with the dealer's transfer of the dealer's data to the dealer's
49 designated dealer computer management system vendor. Nothing in this
50 subdivision shall be deemed to prohibit the charging of a fee, which includes
51 the ability of the service provider to recoup development costs incurred to

1 provide the services involved and to make a reasonable profit on the services
2 provided.
3 (b2) The rights conferred on dealers in this section are not waivable and may not be
4 reduced or otherwise modified by any contract or agreement.
5 "

7 **STANDING TO INITIATE AN ACTION**

8 **SECTION 8.** G.S. 20-308.1(d) reads as rewritten:

9 "(d) Any association that is comprised of a minimum of 400 new motor vehicle dealers,
10 or a minimum of 10 motorcycle dealers, substantially all of whom are new motor vehicle dealers
11 located within North Carolina, and which represents the collective interests of its members, shall
12 have standing to initiate an action or participate as a party to any civil or administrative
13 proceeding in any of the courts or administrative agencies of this State, including the right to file
14 a petition before the Commissioner or a cause of action in any court of competent jurisdiction for
15 itself, or on behalf of any or all of its members, seeking declaratory and injunctive relief. ~~Prior~~
16 ~~to bringing an action, the association and manufacturer, factory branch, distributor, or distributor~~
17 ~~branch shall initiate mediation as set forth in G.S. 20-301.1(b).~~ An action brought pursuant to
18 this subsection may seek a determination whether one or more manufacturers, factory branches,
19 distributors, or distributor branches doing business in this State have violated any of the
20 provisions of this Article, or for the determination of any rights created or defined by this Article,
21 so long as the association alleges an injury to the collective interest of its members cognizable
22 under this section. A cognizable injury to the collective interest of the members of the association
23 shall be deemed to occur if a manufacturer, factory branch, distributor, or distributor branch
24 doing business in this State ~~has engaged in any conduct or taken any action which actually harms~~
25 ~~or affects all of the franchised new motor vehicle dealers holding franchises with that~~
26 ~~manufacturer, factory branch, distributor, or distributor branch in this State.~~ engages in any
27 conduct or takes any action which has harmed or would harm or which has affected or would
28 affect either (i) a majority of its franchised new motor vehicle dealers in this State or (ii) a
29 majority of all franchised new motor vehicle dealers in this State. With respect to any
30 administrative or civil action filed by an association pursuant to this subsection, the relief granted
31 shall be limited to declaratory and injunctive relief and in no event shall the Commissioner or
32 court enter an award of monetary damages. In the event that, in any civil action before a court of
33 this State in which an association has exercised standing in accordance with this subsection and
34 becomes a party to the action, the court enters a declaratory ruling as to the facial applicability
35 of any of the provisions contained in this Article, or interpreting the rights and obligations of one
36 or more manufacturers or the rights and obligations of one or more dealers, the court's
37 determination shall be collateral estoppel in any subsequent civil action or administrative
38 proceeding involving the same manufacturer or manufacturers or the same dealer or dealers on
39 all issues of fact and law decided in the original civil action in which the association was a party."

41 **SEVERABILITY CLAUSE**

42 **SECTION 9.** If any provision of this act or its application is held invalid, the
43 invalidity does not affect other provisions or applications of this act that can be given effect
44 without the invalid provisions or application, and to this end the provisions of this act are
45 severable.

47 **EFFECTIVE DATE**

48 **SECTION 10.** This act is effective when it becomes law and applies to all current
49 and future franchises and other agreements in existence between any new motor vehicle dealer
50 located in this State and a manufacturer or distributor as of the effective date of this act.