

Article 12.

Motor Vehicle Dealers and Manufacturers Licensing Law.

§ 20-285. Regulation of motor vehicle distribution in public interest.

The General Assembly finds and declares that the distribution of motor vehicles in the State of North Carolina vitally affects the general economy of the State and the public interest and public welfare, and in the exercise of its police power, it is necessary to regulate and license motor vehicle manufacturers, distributors, dealers, salesmen, and their representatives doing business in North Carolina, in order to prevent frauds, impositions and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this State. (1955, c. 1243, s. 1; 1983, c. 704, s. 1.)

§ 20-286. Definitions.

The following definitions apply in this Article:

- (1), (2) Repealed by Session Laws 1973, c. 1330, s. 39.
- (2a) Dealership facilities. – The real estate, buildings, fixtures and improvements devoted to the conduct of business under a franchise.
- (2b) Designated family member. – The spouse, child, grandchild, parent, brother, or sister of a dealer, who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will; or who has otherwise been designated in writing by a deceased dealer to succeed him in the motor vehicle dealership; or who under the laws of intestate succession of this State is entitled to inherit the interest; or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property. The term includes the appointed and qualified personal representative and testamentary trustee of a deceased dealer.
- (3) Distributor. – A person, resident or nonresident of this State, who sells or distributes new motor vehicles to new motor vehicle dealers in this State, maintains a distributor representative in this State, controls any person, resident or nonresident, who in whole or in part offers for sale, sells or distributes any new motor vehicle to any motor vehicle dealer in this State.
- (4) Distributor branch. – A branch office maintained by a distributor for the sale of new motor vehicles to new motor vehicle dealers, or for directing or supervising the distributor's representatives in this State.
- (5) Distributor representative. – A person employed by a distributor or a distributor branch for the purpose of selling or promoting the sale of new motor vehicles or otherwise conducting the business of the distributor or distributor branch.
- (5a) Established office. – An office that meets the following requirements:
 - a. Contains at least 96 square feet of floor space in a permanent enclosed building.
 - b. Is a place where the books, records, and files required by the Division under this Article are kept.
- (6) Established salesroom. – A salesroom that meets the following requirements:
 - a. Contains at least 96 square feet of floor space in a permanent enclosed building.

- b. Displays, or is located immediately adjacent to, a sign having block letters not less than three inches in height on contrasting background, clearly and distinctly designating the trade name of the business.
- c. Is a place at which a permanent business of bartering, trading, and selling motor vehicles will be carried on in good faith on an ongoing basis whereby the dealer can be contacted by the public at reasonable times.
- d. Is a place where the books, records, and files required by the Division under this Article are kept.

The term includes the area contiguous to or located within 500 feet of the premises on which the salesroom is located. The term does not include a tent, a temporary stand, or other temporary quarters. The minimum area requirement does not apply to any place of business lawfully in existence and duly licensed on or before January 1, 1978.

- (7) Factory branch. – A branch office, maintained for the sale of new motor vehicles to new motor vehicle dealers, or for directing or supervising the factory branch's representatives in this State.
- (8) Factory representative. – A person employed by a manufacturer or a factory branch for the purpose of selling or promoting the sale of the manufacturer's motor vehicles or otherwise conducting the business of the manufacturer or factory branch.
- (8a) Franchise. – A written agreement or contract between any new motor vehicle manufacturer, and any new motor vehicle dealer which purports to fix the legal rights and liabilities of the parties to such agreement or contract, and pursuant to which the dealer purchases and resells the franchised product or leases or rents the dealership premises.
- (8b) Franchised motor vehicle dealer. – A dealer who holds a currently valid franchise as defined in G.S. 20-286(8a) with a manufacturer or distributor of new motor vehicles, trailers, or semitrailers.
- (8c) Good faith. – Honesty in fact and the observation of reasonable commercial standards of fair dealing as defined and interpreted in G.S. 25-1-201(b)(20).
- (8d) Independent motor vehicle dealer. – A dealer in used motor vehicles.
- (8e) Manufacturer. – A person, resident or nonresident, who manufactures or assembles new motor vehicles, or who imports new motor vehicles for distribution through a distributor, including any person who acts for and is under the control of the manufacturer or assembler in connection with the distribution of the motor vehicles. Additionally, the term "manufacturer" shall include the terms "distributor" and "factory branch."
- (9) Repealed by Session Laws 1973, c. 1330, s. 39.
- (10) Motor vehicle. – Any motor propelled vehicle, 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.
 - a. "New motor vehicle" means a motor vehicle that has never been the subject of a completed, successful, or conditional sale that was subsequently approved other than between new motor vehicle dealers, or between a manufacturer and a new motor vehicle dealer of the same

franchise. For purposes of this subdivision, the use of a new motor vehicle by a new motor vehicle dealer for demonstration or service loaner purposes does not render the new motor vehicle a used motor vehicle, notwithstanding (i) the commencement of the manufacturer's original warranty as a result of the franchised dealer's use of the vehicle for demonstration or loaner purposes, or (ii) the dealer's receipt of incentive or warranty compensation or other reimbursement or consideration from a manufacturer, factory branch, distributor, distributor branch or from a third-party warranty, maintenance, or service contract company relating to the use of a vehicle as a demonstrator or service loaner.

- b. "Used motor vehicle" means a motor vehicle other than a motor vehicle described in sub-subdivision a. of this subdivision.
- c. The term "motor vehicle" does not include an electrically powered device that is equipped with automated driving technology that enables device operation with or without remote support and supervision of a human, and to which all of the following apply: (i) the device does not exceed a weight of 750 pounds, excluding cargo, (ii) the device does not exceed a length of 40 inches when not linked with other devices, and (iii) the device does not exceed a width of 36 inches. An electrically powered device that is equipped with automated driving technology that enables device operation with or without remote support and supervision of a human and that exceeds any of the dimensions set out in this sub-subdivision is included in the term "motor vehicle" under this Article, and the device is subject to the provisions of Article 18 of this Chapter if it falls within the definition of "fully autonomous vehicle" under G.S. 20-400(3).

(11) Motor vehicle dealer or dealer. –

- a. A person who does any of the following:
 - 1. For commission, money, or other thing of value, buys, sells, 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 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.
- b. The term "motor vehicle dealer" or "dealer" does not include any of the following:
1. Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court.
 2. Public officers while performing their official duties.
 3. Persons disposing of motor vehicles acquired for their own use or the use of a family member, and actually so used, when the vehicles have been acquired and used in good faith and not for the purpose of avoiding the provisions of this Article.
 4. Persons who sell motor vehicles as an incident to their principal business but who are not engaged primarily in the selling of motor vehicles. This category includes financial institutions who sell repossessed motor vehicles and insurance companies who sell motor vehicles to which they have taken title as an incident of payments made under policies of insurance, and auctioneers who sell motor vehicles for the owners or the heirs of the owners of those vehicles as part of an auction of other personal or real property or for the purpose of settling an estate or closing a business or who sell motor vehicles on behalf of a governmental entity, and who do not maintain a used car lot or building with one or more employed motor vehicle sales representatives.
 5. Persons manufacturing, distributing or selling trailers and semitrailers weighing not more than 2,500 pounds unloaded weight.
 6. A licensed real estate broker or salesman who sells a mobile home for the owner as an incident to the sale of land upon which the mobile home is located.
 7. An employee of an organization arranging for the purchase or lease by the organization of vehicles for use in the organization's business.
 8. Any publication, broadcast, or other communications media when engaged in the business of advertising, but not otherwise arranging for the sale of motor vehicles owned by others.
 9. Any person dealing solely in the sale or lease of vehicles designed exclusively for off-road use.
 10. Any real property owner who leases any interest in property for use by a dealer.
 11. Any person acquiring any interest in a motor vehicle for a family member.

12. Any auctioneer licensed pursuant to Chapter 85B of the General Statutes employed to be an auctioneer of motor vehicles for a licensed motor vehicle dealer, while conducting an auction for that dealer.
 13. Any charitable organization operating under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)) where the vehicle was donated to the charitable organization solely for purposes of resale by the charitable organization.
- (12) Motor vehicle sales representative or salesman. – A person who is employed as a sales representative by, or has an agreement with, a motor vehicle dealer or a wholesaler to sell or exchange motor vehicles.
 - (13) New motor vehicle dealer. – A motor vehicle dealer who buys, sells or exchanges, or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged, wholly or in part, in the business of selling, new or new and used motor vehicles.
 - (13a) Person. – Defined in G.S. 20-4.01.
 - (13b) Relevant market area or trade area. – The area within a radius of 20 miles around an existing dealer or the area of responsibility defined in the franchise, whichever is greater; except that, where a manufacturer is seeking to establish an additional new motor vehicle dealer the relevant market area shall be as follows:
 - a. If the population in an area within a radius of 10 miles around the proposed site is 250,000 or more, the relevant market area shall be that area within the 10 mile radius; or
 - b. If the population in an area within a radius of 10 miles around the proposed site is less than 250,000, but the population in an area within a radius of 15 miles around the proposed site is 150,000 or more, the relevant market area shall be that area within the 15 mile radius; or
 - c. Except as defined in subparts a. and b., the relevant market area shall be the area within a radius of 20 miles around an existing dealer.

In determining population for this definition the most recent census by the U.S. Bureau of the Census or the most recent population update either from Claritas Inc. or other similar recognized source shall be accumulated for all census tracts either wholly or partially within the relevant market area. In accumulating population for this definition, block group and block level data shall be used to apportion the population of census tracts which are only partially within the relevant market area so that population outside of the applicable radius is not included in the count.
 - (14) Repealed by Session Laws 1973, c. 1330, s. 39.
 - (15) Retail installment sale. – A sale of one or more motor vehicles to a buyer for the buyer's use and not for resale, in which the price thereof is payable in one or more installments over a period of time and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under a form of contract designated as a conditional sale, bailment lease, chattel mortgage or otherwise.

- (15a) Special tool or essential tool. – A tool designed and required by the manufacturer or distributor and not readily available from another source that is utilized for the purpose of performing service repairs on a motor vehicle sold by a manufacturer or distributor to its franchised new motor vehicle dealers in this State.
- (16) Used motor vehicle dealer. – A motor vehicle dealer who buys, sells or exchanges, or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged, wholly or in part, in the business of selling, used motor vehicles only.
- (17) Wholesaler. – A person who sells or distributes used motor vehicles to motor vehicle dealers in this State, has a sales representative in this State, or controls any person who in whole or in part offers for sale, sells, or distributes any used motor vehicle to a motor vehicle dealer in this State. The provisions of G.S. 20-302, 20-305.1, and 20-305.2 that apply to distributors also apply to wholesalers. (1955, c. 1243, s. 2; 1967, c. 1126, s. 1; c. 1173; 1973, c. 1330, s. 39; 1977, c. 560, s. 1; 1983, c. 312; c. 704, ss. 2, 3, 21; 1987, c. 381; 1991, c. 527, s. 1; c. 662, s. 1; 1991 (Reg. Sess., 1992), c. 819, s. 23; 1993, c. 331, s. 1; 1995, c. 234, s. 1; 1997-456, s. 27; 2003-254, s. 1; 2003-265, s. 1; 2005-409, s. 7; 2007-484, s. 6; 2015-125, s. 8; 2015-209, s. 1; 2015-232, s. 1.2; 2015-264, s. 42(a); 2018-43, s. 3; 2019-125, s. 1; 2020-73, s. 6.)

§ 20-287. Licenses required; penalties.

(a) License Required. – It shall be unlawful for any new motor vehicle dealer, used motor vehicle dealer, motor vehicle sales representative, manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative, or wholesaler to engage in business in this State without first obtaining a license as provided in this Article. If any motor vehicle dealer acts as a motor vehicle sales representative, the dealer shall obtain a motor vehicle sales representative's license in addition to a motor vehicle dealer's license. A sales representative may have only one license. The license shall show the name of the dealer or wholesaler employing the sales representative. An individual who has submitted an application to the Division for a sales representative license pursuant to G.S. 20-288(a) shall be permitted to engage in activities as a sales representative while the application is pending provided that the sales representative applicant is actively and directly supervised by a licensed motor vehicle dealer or a licensed sales representative designated by the dealer, provided further that the applicant certifies in the application that the applicant has not been previously denied a sales representative license for any dealer by the Division and that the applicant has not been previously convicted of a felony. Any license issued by the Division to a motor vehicle dealer, manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative, or wholesaler under this Article may not be assigned, sold, or otherwise transferred to any other person or entity.

(b) Civil Penalty for Violations by Licensee. – In addition to any other punishment or remedy under the law for any violation of this section, the Division may levy and collect

a civil penalty, in an amount not to exceed one thousand dollars (\$1,000) for each violation, against any person who has obtained a license pursuant to this section, if it finds that the licensee has violated any of the provisions of G.S. 20-285 through G.S. 20-303, Article 15 of this Chapter, or any statute or rule adopted by the Division relating to the sale of vehicles, vehicle titling, or vehicle registration.

(c) **Civil Penalty for Violations by Person Without a License.** – In addition to any other punishment or remedy under the law for any violation of this section, the Division may levy and collect a civil penalty, in an amount not to exceed five thousand dollars (\$5,000) for each violation, against any person who is required to obtain a license under this section and has not obtained the license, if it finds that the person has violated any of the provisions of G.S. 20-285 through G.S. 20-303, Article 15 of this Chapter, or any statute or rule adopted by the Division relating to the sale of vehicles, vehicle titling, or vehicle registration. (1955, c. 1243, s. 3; 1991, c. 662, s. 2; 2001-345, s. 1; 2005-99, s. 1; 2019-181, s. 1.)

§ 20-288. Application for license; license requirements; expiration of license; bond.

(a) A new motor vehicle dealer, motor vehicle sales representative, manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative, or wholesaler may obtain a license by filing an application with the Division. An application must be on a form provided by the Division and contain the information required by the Division. An application for a license must be accompanied by the required fee. The following requirements also apply to applicants under this section:

- (1) An application for a new motor vehicle dealer license must be accompanied by an application for a dealer license plate. In addition, the Division shall require each applicant for a new motor vehicle dealer license to certify on the application whether the applicant or any parent, subsidiary, affiliate, or any other entity related to the applicant is a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative. In the event the applicant indicates on the application that the applicant or any parent, subsidiary, affiliate, or any other entity related to the applicant is a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, the Division shall not issue a motor vehicle dealer license to the applicant until both of the following conditions are satisfied:
 - a. The applicant states on the application the specific exception or exceptions to the prohibition on the issuance of a motor vehicle dealer license to any manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative for which the applicant contends it qualifies under G.S. 20-305.2(a).
 - b. If the applicant does not currently hold a motor vehicle dealer license issued by the Division, the Commissioner determines, after an evidentiary hearing, that the applicant qualifies under one or more of the exceptions to the prohibition against the issuance of a motor vehicle dealer license to any manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor

representative provided in G.S. 20-305.2(a). The applicant shall bear the burden of proving the applicant's qualification for the exception or exceptions claimed.

- (2) Upon submission of a license application by a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative that has not previously been issued a license by the Division, the Division shall promptly publish notice of the license application in the North Carolina Register. The notice shall include the applicant's name, address, application date, and the names and titles of any individual listed on the application as an owner, partner, member, or officer of the applicant. The Division shall not approve or issue any license for a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative earlier than 15 days from the date the notice of the license or license renewal application was published in the North Carolina Register.

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

- (1) The required fee.
- (2) Proof that the applicant, within the last 12 months, has completed a 12-hour licensing course approved by the Division if the applicant is seeking an initial license and a six-hour course approved by the Division if the applicant is seeking a renewal license. The requirements of this subdivision do not apply to a used motor vehicle dealer the primary business of which is the sale of salvage vehicles on behalf of insurers or to a manufactured home dealer licensed under G.S. 143-143.11 who complies with the continuing education requirements of G.S. 143-143.11B. The requirement of this subdivision does not apply to persons age 62 or older as of July 1, 2002, who are seeking a renewal license. This subdivision also does not apply to an applicant who holds a license as a new motor vehicle dealer as defined in G.S. 20-286(13) and operates from an established showroom located in an area within a radius of 30 miles around the location of the established showroom for which the applicant seeks a used motor vehicle dealer license. An applicant who also holds a license as a new motor vehicle dealer may designate a representative to complete the licensing course required by this subdivision.
- (3) If the applicant is an individual, proof that the applicant is at least 18 years of age and proof that all salespersons employed by the dealer are at least 18 years of age.
- (4) The application for a dealer license plate.
- (5) A certification as to whether the applicant or any entity having any common ownership or affiliation with the applicant is a motor vehicle manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative. In the event the applicant indicates on the application that the applicant or any parent, subsidiary, affiliate, or any other entity related to the applicant is a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, the applicant shall be required to state whether the applicant contends it qualifies for a motor vehicle dealer's license in accordance with any of the exceptions to the

prohibition on the issuance of a motor vehicle dealer's license to any manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, as provided in G.S. 20-305.2(a).

(b) The Division shall require in such application, or otherwise, information relating to matters set forth in G.S. 20-294 as grounds for the refusing of licenses, and to other pertinent matters commensurate with the safeguarding of the public interest, all of which shall be considered by the Division in determining the fitness of the applicant to engage in the business for which he seeks a license. The Division shall not require submission of an applicant's fingerprints to be used in performing a criminal history record check of an applicant for a license or license renewal.

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

(c) All licenses that are granted shall be for a period of one year unless sooner revoked or suspended. The Division shall vary the expiration dates of all licenses that are granted so that an equal number of licenses expire at the end of each month, quarter, or other period consisting of one or more months to coincide with G.S. 20-79(c).

(d) To obtain a license as a wholesaler, an applicant who intends to sell or distribute self-propelled vehicles must have an established office in this State, and an applicant who intends to sell or distribute only trailers or semitrailers of more than 2,500 pounds unloaded weight must have a place of business in this State where the records required under this Article are kept.

To obtain a license as a motor vehicle dealer, an applicant who intends to deal in self-propelled vehicles must have an established salesroom in this State, and an applicant who intends to deal in only trailers or semitrailers of more than 2,500 pounds unloaded weight must have a place of business in this State where the records required under this Article are kept.

An applicant for a license as a manufacturer, a factory branch, a distributor, a distributor branch, a wholesaler, or a motor vehicle dealer must have a separate license for each established office, established salesroom, or other place of business in this State. An application for any of these licenses shall include a list of the applicant's places of business in this State.

(e) Each applicant approved by the Division for license as a motor vehicle dealer, manufacturer, factory branch, distributor, distributor branch, or wholesaler shall furnish a corporate surety bond or cash bond or fixed value equivalent of the bond. The amount of the bond for an applicant for a motor vehicle dealer's license is fifty thousand dollars (\$50,000) for one established salesroom of the applicant and twenty-five thousand dollars (\$25,000) for each of the applicant's additional established salesrooms. The amount of the bond for other applicants required to furnish a bond is fifty thousand dollars (\$50,000) for

one place of business of the applicant and twenty-five thousand dollars (\$25,000) for each of the applicant's additional places of business.

A corporate surety bond shall be approved by the Commissioner as to form and shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this Article and Article 15. A cash bond or fixed value equivalent thereof shall be approved by the Commissioner as to form and terms of deposits as will secure the ultimate beneficiaries of the bond; and such bond shall not be available for delivery to any person contrary to the rules of the Commissioner. Any purchaser of a motor vehicle, including a motor vehicle dealer, who shall have suffered any loss or damage by the failure of any license holder subject to this subsection to deliver free and clear title to any vehicle purchased from a license holder or any other act of a license holder subject to this subsection that constitutes a violation of this Article or Article 15 of this Chapter shall have the right to institute an action to recover against the license holder and the surety. Every license holder against whom an action is instituted shall notify the Commissioner of the action within 10 days after served with process. Except as provided by G.S. 20-288(f) and (g), a corporate surety bond shall remain in force and effect and may not be canceled by the surety unless the bonded person stops engaging in business or the person's license is denied, suspended, or revoked under G.S. 20-294. That cancellation may be had only upon 30 days' written notice to the Commissioner and shall not affect any liability incurred or accrued prior to the termination of such 30-day period. This subsection does not apply to a license holder who deals only in trailers having an empty weight of 4,000 pounds or less. This subsection does not apply to manufacturers of, or dealers in, mobile or manufactured homes who furnish a corporate surety bond, cash bond, or fixed value equivalent thereof, pursuant to G.S. 143-143.12.

(f) A corporate surety bond furnished pursuant to this section or renewal thereof may also be canceled by the surety prior to the next premium anniversary date without the prior written consent of the license holder for the following reasons:

- (1) Nonpayment of premium in accordance with the terms for issuance of the surety bond; or
- (2) An act or omission by the license holder or his representative that constitutes substantial and material misrepresentation or nondisclosure of a material fact in obtaining the surety bond or renewing the bond.

Any cancellation permitted by this subsection is not effective unless written notice of cancellation has been delivered or mailed to the license holder and to the Commissioner not less than 30 days before the proposed effective date of cancellation. The notice must be given or mailed by certified mail to the license holder at its last known address. The notice must state the reason for cancellation. Cancellation for nonpayment of premium is not effective if the amount due is paid before the effective date set forth in the notice of cancellation. Cancellation of the surety shall not affect any liability incurred or accrued prior to the termination of the 30-day notice period.

(g) A corporate surety may refuse to renew a surety bond furnished pursuant to this section by giving or mailing written notice of nonrenewal to the license holder and to the Commissioner not less than 30 days prior to the premium anniversary date of the surety bond. The notice must be given or mailed by certified mail to the license holder at its last known address. Nonrenewal of the surety bond shall not affect any liability incurred or

accrued prior to the premium anniversary date of the surety bond. (1955, c. 1243, s. 4; 1975, c. 716, s. 5; 1977, c. 560, s. 2; 1979, c. 254; 1981, c. 952, s. 3; 1985, c. 262; 1991, c. 495, s. 1; c. 662, s. 3; 1993, c. 440, s. 3; 1997-429, s. 1; 2001-345, s. 2; 2001-492, s. 4; 2003-254, s. 2; 2004-167, s. 9; 2004-199, s. 59; 2005-99, s. 2; 2006-105, s. 2.3; 2006-191, s. 1; 2006-259, s. 12; 2011-290, ss. 1, 2; 2017-148, s. 1; 2019-125, s. 11; 2020-77, s. 5(a).)

§ 20-289. License fees.

- (a) The license fee for each fiscal year, or part thereof, shall be as follows:
- (1) For motor vehicle dealers, distributors, distributor branches, and wholesalers, ninety dollars (\$90.00) for each place of business.
 - (2) For manufacturers, one hundred ninety-five dollars (\$195.00) and for each factory branch in this State, one hundred thirty dollars (\$130.00).
 - (3) For motor vehicle sales representatives, twenty dollars (\$20.00).
 - (4) For factory representatives, or distributor representatives, twenty dollars (\$20.00).
 - (5) Repealed by Session Laws 1991, c. 662, s. 4.

(b) The fees collected under this section shall be credited to the Highway Fund. These fees are in addition to all other taxes and fees. (1955, c. 1243, s. 5; 1969, c. 593; 1977, c. 802, s. 8; 1981, c. 690, s. 16; 1991, c. 662, s. 4; c. 689, s. 335; 2005-276, s. 44.1(o); 2015-241, s. 29.30(p).)

§ 20-290. Licenses to specify places of business; display of license and list of salesmen; advertising.

(a) The license of a motor vehicle dealer shall list each of the dealer's established salesrooms in this State. A license of a manufacturer, factory branch, distributor, distributor branch, or wholesaler shall list each of the license holder's places of business in this State. A license shall be conspicuously displayed at each place of business. In the event the location of a business changes, the Division shall endorse the change of location on the license, without charge.

(b) Each dealer shall keep a current list of his licensed salesmen, showing the name of each licensed salesman, posted in a conspicuous place in each place of business.

(c) Whenever any licensee places an advertisement in any newspaper or publication, the licensee's name shall appear in the advertisement. (1955, c. 1243, s. 6; 1975, c. 716, s. 5; 1991, c. 662, s. 5; 2005-99, s. 3.)

§ 20-291. Representatives to carry license and display it on request; license to name employer.

Every person to whom a sales representative, factory representative, or distributor representative license is issued shall carry the license when engaged in business, and shall display it upon request. The license shall state the name of the representative's employer. If the representative changes employers, the representative shall immediately apply to the Division for a license that states the name of the representative's new employer. The fee for issuing a license stating the name of a new employer is ten dollars (\$10.00). (1955, c. 1243, s. 7; 1975, c. 716, s. 5; 1991, c. 662, s. 6; c. 689, s. 336; 2005-99, s. 4; 2005-276, s. 44.1(r).)

§ 20-292. Dealers may display motor vehicles for sale at retail only at established salesrooms.

A new or used motor vehicle dealer may display a motor vehicle for sale at retail only at the dealer's established salesroom, unless the display is of a motor vehicle that meets any of the following descriptions:

- (1) Contains the dealer's name or other sales information and is used by the dealer as a "demonstrator" for transportation purposes.
- (2) Is displayed at a trade show or exhibit at which no selling activities relating to the vehicle take place.
- (3) Is displayed at the home or place of business of a customer at the request of the customer.

This section does not apply to recreational vehicles, house trailers, or boat, animal, camping, or other utility trailers. (1955, c. 1243, s. 8; 1991, c. 662, s. 7.)

§ 20-292.1. Supplemental temporary license for sale of antique and specialty vehicles.

Any dealer licensed as a motor vehicle dealer under this Article may apply to the Commissioner and receive, at no additional charge, a supplemental temporary license authorizing the off-premises sales of antique motor vehicles and specialty motor vehicles for a period not to exceed 10 consecutive calendar days. To obtain a temporary supplemental license for the off-premises sale of antique motor vehicles and specialty motor vehicles, the applicant shall:

- (1) Be licensed as a motor vehicle dealer under this Article.
- (2) Notify the applicable local office of the Division of the specific dates and location for which the license is requested.
- (3) Display a sign at the licensed location clearly identifying the dealer.
- (4) Keep and maintain the records required for the sale of motor vehicles under this Article.
- (5) Provide staff to work at the temporary location for the duration of the off-premises sale.
- (6) Meet any local government permitting requirements.
- (7) Have written permission from the property owner to sell at the location.

For purposes of this section, the term "antique motor vehicle" shall mean any motor vehicle for private use manufactured at least 25 years prior to the current model year, and the term "specialty motor vehicle" shall mean any model or series of motor vehicle for private use manufactured at least three years prior to the current model year of which no more than 5,000 vehicles were sold within the United States during the model year the vehicle was manufactured.

This section does not apply to a nonselling motor vehicle show or public display of new motor vehicles. (2003-113, s. 1.)

§ 20-293: Repealed by Session Laws 1993, c. 440, s. 10.

§ 20-294. Grounds for denying, suspending, placing on probation, or revoking licenses.

The Division may deny, suspend, place on probation, or revoke a license issued under this Article for any one or more of the following grounds:

- (1) Making a material misstatement in an application for a license.
- (2) Willfully and intentionally failing to comply with this Article, Article 15 of this Chapter, or G.S. 20-52.1, 20-75, 20-79.1, 20-79.2, 20-108, 20-109, 20-109.3, or a rule adopted by the Division under this Article.

- (3) Failing to have an established salesroom, if the license holder is a motor vehicle dealer, or failing to have an established office, if the license holder is a wholesaler.
- (4) Willfully defrauding any retail buyer, to the buyer's damage, or any other person in the conduct of the licensee's business.
- (5) Employing fraudulent devices, methods or practices in connection with compliance with the requirements under the laws of this State with respect to the retaking of motor vehicles under retail installment contracts and the redemption and resale of such motor vehicles.
- (6) Using unfair methods of competition or unfair deceptive acts or practices.
- (7) Knowingly advertising by any means, any assertion, representation or statement of fact which is untrue, misleading or deceptive in any particular relating to the conduct of the business licensed or for which a license is sought.
- (8) Knowingly advertising a used motor vehicle for sale as a new motor vehicle.
- (9) Being convicted of an offense set forth under G.S. 20-106, 20-106.1, 20-107, or 20-112 while holding such a license or within five years next preceding the date of filing the application; or being convicted of a felony involving moral turpitude under the laws of this State, another state, or the United States.
- (10) Submitting a bad check to the Division of Motor Vehicles in payment of highway use taxes collected by the licensee.
- (11) Knowingly giving an incorrect certificate of title, or failing to give a certificate of title to a purchaser, a lienholder, or the Division, as appropriate, after a vehicle is sold.
- (12) Making a material misstatement in an application for a dealer license plate.
- (13) Failure to pay a civil penalty imposed under G.S. 20-287. (1955, c. 1243, s. 10; 1963, c. 1102; 1967, c. 1126, s. 2; 1975, c. 716, s. 5; 1977, c. 560, s. 3; 1983, c. 704, s. 4; 1985, c. 687; ss. 1, 2; 1991, c. 193, s. 2; 1993, c. 440, s. 11; 2001-345, ss. 3, 4; 2010-132, s. 16; 2014-108, s. 5(a); 2018-43, s. 4.)

§ 20-295. Action on application; grace period while application for license renewal is pending.

(a) **Division Action.** – The Division shall either grant or deny an application for a license or license renewal within 30 days after receiving it. Any applicant denied a license shall, upon filing a written request within 30 days, be given a hearing at the time and place determined by the Commissioner or a person designated by the Commissioner. A hearing shall be public and shall be held with reasonable promptness.

(b) **Pending License Renewal Grace Period.** – When an application for license renewal has been timely submitted prior to expiration of the license, the license shall remain valid for up to 30 days after the expiration date until the Division grants or denies the application. The Division shall ensure that any database maintained by the Division that indicates the status of a license issued under this Article reflects that the license continues to be valid during this period. (1955, c. 1243, s. 11; 1975, c. 716, s. 5; 1993, c. 440, s. 1; 2020-77, s. 6(a).)

§ 20-296. Notice and hearing upon denial, suspension, revocation, placing on probation, or refusal to renew license.

No license shall be suspended, revoked, denied, placed on probation, or renewal thereof refused, until a written notice of the complaint made has been furnished to the licensee against whom the same is directed, and a hearing thereon has been had before the Commissioner, or a person designated by him. At least 10 days' written notice of the time and place of such hearing shall be given to the licensee by certified mail with return receipt requested to his last known address as shown on his license or other record of information in possession of the Division. At any such hearing, the licensee shall have the right to be heard personally or by counsel. After hearing, the Division shall have power to suspend, revoke, place on probation, or refuse to renew the license in question. Immediate notice of any such action shall be given to the licensee in accordance with G.S. 1A-1, Rule 4(j) of the Rules of Civil Procedure. (1955, c. 1243, s. 12; 1975, c. 716, s. 5; 1981, c. 108; 2014-108, s. 6(a).)

§ 20-297. Retention and inspection of certain records.

(a) Vehicles. – A dealer must keep a record of all vehicles received by the dealer and all vehicles sold by the dealer. The records must contain the information that the Division requires and be made available for inspection by the Division within a reasonable period of time after being requested by the Division. A dealer may satisfy the record-keeping requirements contained in this subsection either by (i) keeping and maintaining written or paper records at the dealership facility where the vehicles were sold or at another site within this State provided that the location and the name of a designated contact agent are provided to the Division or (ii) maintaining electronic copies of the records required by this subsection, provided that the Division shall have access to these electronic records from a location within this State. For purposes of this section, the location where dealership written or electronic records are kept and maintained may be owned and operated by a party other than the dealer.

(b) Inspection. – The Division may inspect the pertinent books, records, letters, and contracts of a licensee relating to any written complaint made to the Division against the licensee.

(c) Records Format. – Any record required to be kept and maintained under this section may be converted to electronic form and retained by a dealer in electronic form without retention of the original or any copies of the record in paper or other nonelectronic form. (1955, c. 1243, s. 13; 1975, c. 716, s. 5; 1995, c. 163, s. 5; 2007-481, s. 3; 2016-74, s. 1.)

§ 20-297.1. Franchise-related form agreements.

(a) All franchise-related form agreements, as defined in this subsection, offered to a motor vehicle dealer in this State shall provide that all terms and conditions in the agreement inconsistent with any of the laws or rules of this State are of no force and effect. For purposes of this section, the term "franchise-related form agreements" means one or more contracts between a franchised motor vehicle dealer and a manufacturer, factory branch, distributor, or distributor branch,

including a written communication from a manufacturer or distributor in which a duty is imposed on the franchised motor vehicle dealer under which:

- (1) The franchised motor vehicle dealer is granted the right to sell and service new motor vehicles manufactured or distributed by the manufacturer or distributor or only to service motor vehicles under the contract and a manufacturer's warranty;
- (2) The franchised motor vehicle dealer is a component of the manufacturer or distributor's distribution system as an independent business;
- (3) The franchised motor vehicle dealer is substantially associated with the manufacturer or distributor's trademark, trade name, and commercial symbol;
- (4) The franchised motor vehicle dealer's business substantially relies on the manufacturer or distributor for a continued supply of motor vehicles, parts, and accessories; or
- (5) Any right, duty, or obligation granted or imposed by this Chapter is affected.

(b) Notwithstanding the terms of any franchise or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to offer to a dealer, revise, modify, or replace a franchise-related form agreement, as defined above in this section, which agreement, modification, or replacement may adversely affect or alter the rights, obligations, or liability of a motor vehicle dealer or may adversely impair the sales, service obligations, investment, or profitability of any motor vehicle dealer located in this State, unless:

- (1) The manufacturer, factory branch, distributor, or distributor branch provides prior written notice by registered or certified mail to each affected dealer, the Commissioner, and the North Carolina Automobile Dealers Association, Inc., of the modification or replacement in the form and within the time frame set forth within this section and in subsection (c) of this section; and
- (2) If a protest is filed under this section, the Commissioner approves the modification or replacement.

(c) The notice required by subdivision (b)(1) of this section shall:

- (1) Be given not later than the 60th day before the effective date of the modification or replacement;
- (2) Contain on its first page a conspicuous statement that reads: "NOTICE TO DEALER: YOU MAY BE ENTITLED TO FILE A PROTEST WITH THE COMMISSIONER OF THE NORTH CAROLINA DIVISION OF MOTOR VEHICLES AND HAVE A HEARING IN WHICH YOU MAY PROTEST THE PROPOSED INITIAL OFFERING, MODIFICATION, OR REPLACEMENT OF CERTAIN FRANCHISE-RELATED FORM AGREEMENTS UNDER THE TERMS OF THE MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAW, IF YOU OPPOSE THIS ACTION"; and
- (3) Contain a separate letter or statement that identifies all substantive modifications or revisions and the principal reasons for each such modification or revision.

(d) A franchised dealer may file a protest with the Commissioner of the offering, modification, or replacement pursuant to this section not later than the latter of:

- (1) The 60th day after the date of the receipt of the notice; or
- (2) The time specified in the notice.

(e) After a protest is filed, the Commissioner shall determine whether the manufacturer, factory branch, distributor, or distributor branch has established by a preponderance of the evidence that there is good cause for the proposed offering, modification, or replacement. The prior franchise-related form agreement, if any, continues in effect until the Commissioner resolves the protest.

(f) The Commissioner is authorized and directed to investigate and prevent violations of this section, including inconsistencies of any franchise-related form agreement with the provisions of this Article.

(g) Nothing contained in this section shall in any way limit a dealer's rights under any other provision of this Article or other applicable law. (1997-319, s. 1; 2005-409, s. 1.)

§ 20-298. Insurance.

It shall be unlawful for any dealer or salesman or any employee of any dealer, to coerce or offer anything of value to any purchaser of a motor vehicle to provide any type of insurance coverage on said motor vehicle. No dealer, salesman or representative of either shall accept any policy as collateral on any vehicle sold by him to secure an interest in such vehicle in any company not qualified under the insurance laws of this State: Provided, nothing in this Article shall prevent a dealer or his representative from requiring adequate insurance coverage on a motor vehicle which is the subject of an installment sale. (1955, c. 1243, s. 14.)

§ 20-298.1. Provision of certain products and services to those covered under the Military Lending Act.

A motor vehicle dealer that does not market or extend to a covered borrower a loan or credit transaction covered by Section 987 of Title 10 of the United States Code, or any subsequent amendments thereto, and Part 232 (commencing with Section 232.1) of Subchapter M of Chapter I of Subtitle A of Title 32 of the Code of Federal Regulations, or any subsequent amendments thereto, shall not be in violation of G.S. 127B-11 or otherwise under the law with respect to all transactions entered into on or after October 3, 2016, regardless of whether the motor vehicle dealer markets or extends the loan or credit transaction to other persons who are not covered borrowers. For purposes of this section, "covered borrower" has the same meaning as provided in Part 232 (commencing with Section 232.1) of Subchapter M of Chapter I of Subtitle A of Title 32 of the Code of Federal Regulations and any subsequent amendments thereto. (2019-181, s. 4.)

§ 20-299. Acts of officers, directors, partners, salesmen and other representatives.

(a) If a licensee is a copartnership or a corporation, it shall be sufficient cause for the denial, suspension or revocation of a license that any officer, director or partner of the copartnership or corporation has committed any act or omitted any duty which would be cause for refusing, suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his salesmen while acting as his agent.

(b) Every licensee who is a manufacturer or a factory branch shall be responsible for the acts of any or all of its agents and representatives while acting in the conduct of said licensee's business whether or not such licensee approved, authorized, or had knowledge of such acts. (1955, c. 1243, s. 15; 1973, c. 559.)

§ 20-300. Appeals from actions of Commissioner.

Appeals from actions of the Commissioner shall be governed by the provisions of Chapter 150B of the General Statutes. (1955, c. 1243, s. 16; 1973, c. 1331, s. 3; 1987, c. 827, s. 1.)

§ 20-301. Powers of Commissioner.

(a) The Commissioner shall promote the interests of the retail buyer of motor vehicles.

(b) The Commissioner shall have power to prevent unfair methods of competition and unfair or deceptive acts or practices and other violations of this Article. Any franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer holds a currently valid franchise has violated or is currently violating any provision of this Article may file a petition before the Commissioner setting forth the factual and legal basis for such violations. The Commissioner shall promptly forward a copy of the petition to the named manufacturer, factory branch, distributor, or distributor branch requesting a reply to the petition within 30 days. Allowing for sufficient time for the parties to conduct discovery, the Commissioner or his designee shall then hold an evidentiary hearing and render findings of fact and conclusions of law based on the evidence presented. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

(c) The Commissioner shall have the power in hearings arising under this Article to enter scheduling orders and limit the time and scope of discovery; to determine the date, time, and place where hearings are to be held; to subpoena witnesses; to take depositions of witnesses; and to administer oaths.

(d) The Commissioner may, whenever he shall believe from evidence submitted to him that any person has been or is violating any provision of this Article, in addition to any other remedy, bring an action in the name of the State against that person and any other persons concerned or in any way participating in, or about to participate in practices or acts so in violation, to enjoin any persons from continuing the violations.

(e) The Commissioner may issue rules and regulations to implement the provisions of this section and to establish procedures related to administrative proceedings commenced under this section.

(f) In the event that a dealer, who is permitted or required to file a notice, protest, or petition before the Commissioner within a certain period of time in order to adjudicate, enforce, or protect rights afforded the dealer under this Article, voluntarily elects to appeal a policy, determination, or decision of the manufacturer through an appeals board or internal grievance procedure of the manufacturer, or to participate in or refer the matter to mediation, arbitration, or other alternative dispute resolution procedure or process established or endorsed by the manufacturer, the applicable period of time for the dealer to file the notice, protest, or petition before the Commissioner under this Article shall not commence until the manufacturer's appeal board or internal grievance procedure, mediation, arbitration, or appeals process of the manufacturer has been completed and the

dealer has received notice in writing of the final decision or result of the procedure or process. Nothing, however, contained in this subsection shall be deemed to require that any dealer exhaust any internal grievance or other alternative dispute process required or established by the manufacturer before seeking redress from the Commissioner as provided in this Article.

(g) Notwithstanding any other statute, regulation, or rule or the existence of a pending legal or administrative proceeding in any other forum any franchised new motor vehicle dealer or any manufacturer, factory branch, distributor, or distributor branch may elect to file a petition before the Commissioner for resolution of any dispute that may arise with respect to any of the rights or obligations of the dealer or of the manufacturer, factory branch, distributor, or distributor branch related to a franchise or franchise-related form agreement. The Commissioner shall have the authority to apply principles of law, equity, and good faith in determining such matters. The filing of a petition by a dealer or a manufacturer, factory branch, distributor, or distributor branch pursuant to this section shall not preclude the party filing the petition from pursuing any other form of recourse it may have, either before the Commissioner or in another form, including any damages and injunctive relief. The Commissioner shall have the authority to receive and evaluate the facts in the matter of controversy and render a decision by entering an order which shall thereafter become binding and enforceable with respect to the parties, subject to the right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes. (1955, c. 1243, s. 17; 1983, c. 704, s. 23; 1991, c. 510, s. 1; 1997-319, s. 2; 1999-335, s. 1; 2011-290, s. 3.)

§ 20-301.1. Notice of additional charges against dealer's account; informal appeals procedure.

(a) Notwithstanding the terms of any contract, franchise, novation, or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to charge or assess one of its franchised motor vehicle dealers located in this State, or to charge or debit the account of the franchised motor vehicle dealer for merchandise, tools, or equipment, or other charges or amounts which total more [than] five thousand dollars (\$5,000), other than the published cost of new motor vehicles, and merchandise, tools, or equipment specifically ordered by the franchised motor vehicle dealer, unless the franchised motor vehicle dealer receives a detailed itemized description of the nature and amount of each charge in writing at least 10 days prior to the date the charge or account debit is to become effective or due. For purposes of this subsection, the prior written notice required pursuant to this subsection includes, but is not limited to, all charges or debits to a dealer's account for advertising or advertising materials; advertising or showroom displays; customer informational materials; computer or communications hardware or software; special tools; equipment; dealership operation guides; Internet programs; and any additional charges or surcharges made or proposed for merchandise, tools, or equipment previously charged to the dealer; and any other charges or amounts which total more than five thousand dollars (\$5,000). If the franchised new motor vehicle dealer disputes all or any portion of an actual or proposed charge or debit to the dealer's account, the dealer may

proceed as provided in G.S. 20-301(b) and G.S. 20-308.1. Upon the filing of a petition pursuant to G.S. 20-301(b) or a civil action pursuant to G.S. 20-308.1, the affected manufacturer, factory branch, distributor, or distributor branch shall not require payment from the dealer, or debit or charge the dealer's account, unless and until a final judgment supporting the payment or charge has been rendered by the Commissioner or court.

(b) Any franchised new motor vehicle dealer who seeks to challenge an actual or proposed charge, debit, payment, reimbursement, or credit to the franchised new motor vehicle dealer or to the franchised new motor vehicle dealer's account in an amount less than or equal to ten thousand dollars (\$10,000) and that is in violation of this Article or contrary to the terms of the franchise may, prior to filing a formal petition before the Commissioner as provided in G.S. 20-301(b) or a civil action in any court of competent jurisdiction under G.S. 20-308.1, request and obtain a mediated settlement conference as provided in this subsection. Unless objection to the timeliness of the franchised new motor vehicle dealer's request for mediation under this subsection is waived in writing by the affected manufacturer, factory branch, distributor, or distributor branch, a franchised new motor vehicle dealer's request to mediate must be sent to the Commissioner within 75 days after the franchised new motor vehicle dealer's receipt of written notice from a manufacturer, factory branch, distributor, or distributor branch of the charges, debits, payments, reimbursements, or credits challenged by the franchised new motor vehicle dealer. If the franchised new motor vehicle dealer has requested in writing that the manufacturer, factory branch, distributor, or distributor branch review the questioned charges, debits, payments, reimbursements, or credits, a franchised new motor vehicle dealer's request to mediate must be sent to the Commissioner within 30 days after the franchised new motor vehicle dealer's receipt of the final written determination on the issue from the manufacturer, factory branch, distributor, or distributor branch.

- (1) It is the policy and purpose of this subsection to implement a system of settlement events that are designed to reduce the cost of litigation under this Article to the general public and the parties, to focus the parties' attention on settlement rather than on trial preparation, and to provide a structured opportunity for settlement negotiations to take place.
- (2) The franchised new motor vehicle dealer shall send a letter to the Commissioner by certified or registered mail, return receipt requested, identifying the actual or proposed charges the franchised new motor vehicle dealer seeks to challenge and the reason or basis for the challenge. The charges, debits, payments, reimbursements, or credits challenged by the franchised new motor vehicle dealer need not be related, and multiple issues may be resolved in a single proceeding. The franchised new motor vehicle dealer shall send a copy of the letter to the affected manufacturer, factory branch, distributor, or distributor branch, addressed to the current district, zone, or regional manager in charge of overseeing the dealer's operations, or the registered agent for acceptance of legal process in this State. Upon the mailing of a letter to the Commissioner and the manufacturer, factory branch, distributor, or distributor branch pursuant to this subsection, any chargeback to or any payment required of a franchised new motor vehicle dealer by a manufacturer, factory branch, distributor, or

distributor branch shall be stayed during the pendency of the mediation. Upon the mailing of a letter to the Commissioner and manufacturer, factory branch, distributor, or distributor branch pursuant to this subsection, any statute of limitation or other time limitation for filing a petition before the Commissioner or civil action shall be tolled during the pendency of the mediation.

- (3) Upon receipt of the written request of the franchised new motor vehicle dealer, the Commissioner shall appoint a mediator and send notice of that appointment to the parties. A person is qualified to serve as mediator as provided by this subdivision if the person is certified to serve as a mediator under Rule 8 of the North Carolina Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions and does not represent motor vehicle dealers or manufacturers, factory branches, distributors, or distributor branches. A mediator acting pursuant to this subdivision shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice.
- (4) The parties shall by written agreement select a venue and schedule for the mediated settlement conference conducted under this subsection. If the parties are unable to agree on a venue and schedule, the mediator shall select a venue and schedule. Except by written agreement of all parties, a mediation proceeding and mediated settlement conference under this subsection shall be held in North Carolina.
- (5) In this subsection, "mediation" means a nonbinding forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. A mediator may not impose his or her own judgment on the issues for that of the parties.
- (6) At least 10 days prior to the mediated settlement conference, the affected manufacturer, factory branch, distributor, or distributor branch shall, by certified or registered mail, return receipt requested, send the mediator and the franchised new motor vehicle dealer a detailed response to the allegations raised in the franchised new motor vehicle dealer's written request. The mediation may be conducted by officers or employees of the parties themselves without the appearance of legal counsel. However, at least 10 days prior to the mediated settlement conference, either party may give notice to the other and to the mediator of its intention to appear at the mediation with legal counsel, in which event either party may appear at the mediation with legal counsel.
- (7) A mediation proceeding conducted pursuant to this subsection shall be complete not later than the sixtieth day after the date of the Commissioner's notice of the appointment of the mediator; this deadline may be extended by written agreement of the parties. The parties shall be solely responsible for the compensation and expenses of the mediator on a 50/50 basis. The Commissioner is not liable for the compensation paid or to be paid a mediator employed pursuant to this subsection.
- (8) A party may attend a mediated settlement conference telephonically in lieu of personal appearance. If a party or other person required to attend a mediated settlement conference fails to attend without good cause, the Commissioner may impose upon the party or person any appropriate monetary sanction,

including the payment of fines, attorneys' fees, mediator fees, expenses, and loss of earnings incurred by persons attending the conference.

- (9) If the mediation fails to result in a resolution of the dispute, the franchised new motor vehicle dealer may proceed as provided in G.S. 20-301(b) and G.S. 20-308.1. Upon the filing of a petition pursuant to G.S. 20-301(b) or a civil action pursuant to G.S. 20-308.1, the affected manufacturer, factory branch, distributor, or distributor branch shall not require payment from the dealer, or debit or charge the dealer's account, unless and until a final judgment supporting the payment or charge has been rendered by the Commissioner or court. All communications made during a mediation proceeding, including, but not limited to, those communications made during a mediated settlement conference are presumed to be made in compromise negotiation and shall be governed by Rule 408 of the North Carolina Rules of Evidence. (2001-510, s. 1; 2011-290, s. 4.)

§ 20-302. Rules and regulations.

The Commissioner may make such rules and regulations, not inconsistent with the provisions of this Article, as he shall deem necessary or proper for the effective administration and enforcement of this Article, provided that the Commissioner shall make a copy of such rules and regulations available on a Web site maintained by the Division or the Department of Transportation 30 days prior to the effective date of such rules and regulations. (1955, c. 1243, s. 18; 2018-74, s. 8.)

§ 20-303. Installment sales to be evidenced by written instrument; statement to be delivered to buyer.

(a) Every retail installment sale shall be evidenced by one or more instruments in writing, which shall contain all the agreements of the parties and shall be signed by the buyer.

(b) For every retail installment sale, prior to or about the time of the delivery of the motor vehicle, the seller shall deliver to the buyer a written statement describing clearly the motor vehicle sold to the buyer, the cash sale price thereof, the cash paid down by the buyer, the amount credited the buyer for any trade-in and a description of the motor vehicle traded, the amount of the finance charge, the amount of any other charge specifying its purpose, the net balance due from the buyer, the terms of the payment of such net balance and a summary of any insurance protection to be effected. The written statement shall be signed by the buyer. (1955, c. 1243, s. 19; 2007-513, s. 1.)

§ 20-304. Coercion of retail dealer by manufacturer or distributor in connection with installment sales contract prohibited.

(a) It shall be unlawful for any manufacturer, wholesaler or distributor, or any officer, agent or representative of either, to coerce, or attempt to coerce, any retail motor vehicle dealer or prospective retail motor vehicle dealer in this State to sell, assign or transfer any retail installment sales contract, obtained by such dealer in connection with the sale by him in this State of motor vehicles manufactured or sold by such manufacturer, wholesaler, or distributor, to a specified finance company or class of such companies, or to any other specified persons, by any of the acts or means hereinafter set forth, namely:

- (1) By any statement, suggestion, promise or threat that such manufacturer, wholesaler, or distributor will in any manner benefit or injure such dealer,

whether such statement, suggestion, threat or promise is expressed or implied, or made directly or indirectly,

- (2) By any act that will benefit or injure such dealer,
- (3) By any contract, or any expressed or implied offer of contract, made directly or indirectly to such dealer, for handling motor vehicles, on the condition that such dealer sell, assign or transfer his retail installment sales contract thereon, in this State, to a specified finance company or class of such companies, or to any other specified person,
- (4) By any expressed or implied statement or representation, made directly or indirectly, that such dealer is under any obligation whatsoever to sell, assign or transfer any of his retail sales contracts, in this State, on motor vehicles manufactured or sold by such manufacturer, wholesaler, or distributor to such finance company, or class of companies, or other specified person, because of any relationship or affiliation between such manufacturer, wholesaler, or distributor and such finance company or companies or such other specified person or persons.

(b) Any such statements, threats, promises, acts, contracts, or offers of contracts, when the effect thereof may be to lessen or eliminate competition, or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition and against the public policy of this State, are unlawful and are hereby prohibited. (1955, c. 1243, s. 20.)

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

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

- (1) To require, coerce, or attempt to coerce any dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities, which shall not have been ordered by that dealer, or to accept delivery of any motor vehicle or vehicles which have been equipped in a manner other than as specified by the dealer.
- (2) To require, coerce, or attempt to coerce any dealer to enter into any agreement with such manufacturer, factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to such dealer, by threatening to cancel any franchise existing between such manufacturer, factory branch, distributor, distributor branch, or representative thereof, and such dealer;
- (3) (See Editor's note for applicability) Unfairly without due regard to the equities of the dealer, and without just provocation, to cancel the franchise of such dealer;
- (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. 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 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 executive management or as principal operators, and the location and site plans of any proposed relocation or change in use of a dealership facility. 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. 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. 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. 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. 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. 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. 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. The manufacturer shall have the burden of proof before the Commissioner under this subdivision. It is unlawful for a manufacturer to, in any way, 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. It is unlawful for a manufacturer to, in any way, 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.

- (5) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new motor vehicle dealer until the Commissioner has held a hearing and has determined that there is good cause for permitting the addition or relocation of such new motor vehicle dealer.

- a. This section does not apply:
 1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle. If this sub-subdivision is applicable, only dealers trading in the same line-make of vehicle that are located within the 10-mile radius shall be entitled to notice from the manufacturer and have the protest rights afforded under this section.
 2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years.
 3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership if the franchise has been operating on a regular basis from the existing site for a minimum of three years immediately preceding the relocation.
 4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market area.
 5. Repealed by Session Laws 2008-156, s. 3, effective August 3, 2008.
- b. In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:
 1. The permanency of the investment of both the existing and proposed additional new motor vehicle dealers;
 2. Growth or decline in population, density of population, and new car registrations in the relevant market area;
 3. Effect on the consuming public in the relevant market area;
 4. Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
 5. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the same line make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;
 6. Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer in the relevant market area would increase competition in a manner such as to be in the long-term public interest; and

7. The effect on the relocating dealer of a denial of its relocation into the relevant market area.
 - c. The Commissioner shall try to conduct the hearing and render his final determination if possible, within 180 days after a protest is filed.
 - d. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.
 - e. In a hearing involving a proposed additional dealership, the manufacturer or distributor has the burden of proof under this section. In a proceeding involving the relocation of an existing dealership, the dealer seeking to relocate has the burden of proof under this section.
 - f. If the Commissioner determines, following a hearing, that good cause exists for permitting the proposed additional or relocated motor vehicle dealership, the dealer seeking the proposed additional or relocated motor vehicle dealership must, within two years, obtain a license from the Commissioner for the sale of vehicles at the relevant site, and actually commence operations at the site selling new motor vehicles of all line makes, as permitted by the Commissioner. Failure to obtain a permit and commence sales within two years shall constitute waiver by the dealer of the dealer's right to the additional or relocated dealership, requiring renotification, a new hearing, and a new determination as provided in this section. If the Commissioner fails to determine that good cause exists for permitting the proposed additional or relocated motor vehicle dealership, the manufacturer seeking the proposed additional dealership or dealer seeking to relocate may not again provide notice of its intention or otherwise attempt to establish an additional dealership or relocate to any location within 10 miles of the site of the original proposed additional dealership or relocation site for a minimum of three years from the date of the Commissioner's determination.
 - g. (See Editor's note for applicability) For purposes of this subdivision, the addition, creation, or operation of a "satellite" or other facility, not physically part of or contiguous to an existing licensed new motor vehicle dealer, whether or not owned or operated by a person or other entity holding a franchise as defined by G.S. 20-286(8a), at which warranty service work authorized or reimbursed by a manufacturer is performed or at which new motor vehicles are offered for sale to the public, shall be considered an additional new motor vehicle dealer requiring a showing of good cause, prior notification to existing new motor vehicle dealers of the same line make of vehicle within the relevant market area by the manufacturer and the opportunity for a hearing before the Commissioner as provided in this subdivision.
- (6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements of sub-subdivision c. of this

subdivision and the Commissioner has determined, if requested in writing by the dealer within (i) the time period specified in G.S. 20-305(6)c.1.II., III., or IV., as applicable, or (ii) the effective date of the franchise termination specified or proposed by the manufacturer in the notice of termination, whichever period of time is longer, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed, and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner shall try to conduct the hearing and render a final determination within 180 days after a petition has been filed. If the termination, cancellation or nonrenewal is pursuant to G.S. 20-305(6)c.1.III. then the Commissioner shall give the proceeding priority consideration and shall try to render his final determination no later than 90 days after the petition has been filed. Any parties to a hearing by the Commissioner under this section shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes. Any determination of the Commissioner under this section finding that good cause exists for the nonrenewal, cancellation, or termination of any franchise shall automatically be stayed during any period that the affected dealer shall have the right to judicial review or appeal of the determination before the superior court or any other appellate court and during the pendency of any appeal; provided, however, that within 30 days of entry of the Commissioner's order, the affected dealer provide such security as the reviewing court, in its discretion, may deem appropriate for payment of such costs and damages as may be incurred or sustained by the manufacturer by reason of and during the pendency of the stay. Although the right of the affected dealer to such stay is automatic, the procedure for providing such security and for the award of damages, if any, to the manufacturer upon dissolution of the stay shall be in accordance with G.S. 1A-1, Rule 65(d) and (e). No such security provided by or on behalf of any affected dealer shall be forfeited or damages awarded against a dealer who obtains a stay under this subdivision in the event the ownership of the affected dealership is subsequently transferred, sold, or assigned to a third party in accordance with this subdivision or subdivision (4) of this section and the closing on such transfer, sale, or assignment occurs no later than 180 days after the date of entry of the Commissioner's order. Furthermore, unless and until the termination, cancellation, or nonrenewal of a dealer's franchise shall finally become effective, in light of any stay or any order of the Commissioner determining that good cause exists for the termination, cancellation, or nonrenewal of a dealer's franchise as provided in this subdivision, a dealer who receives a notice of termination, cancellation, or nonrenewal from a manufacturer as provided in this subdivision shall continue to have the same rights to assign, sell, or transfer the franchise to a third party

under the franchise and as permitted under G.S. 20-305(4) as if notice of the termination had not been given by the manufacturer. Any franchise under notice or threat of termination, cancellation, or nonrenewal by the manufacturer which is duly transferred in accordance with G.S. 20-305(4) shall not be subject to termination by reason of failure of performance or breaches of the franchise on the part of the transferor.

- a. Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:
 1. There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship provided that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of such failure;
 2. If the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; and
 - I. The notification stated that notice was provided of failure of performance pursuant to this section;
 - II. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with the criteria; and
 - III. The new motor vehicle dealer failed to demonstrate substantial progress towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.
- b. The manufacturer shall have the burden of proof under this section.
- c. Notification of Termination, Cancellation and Nonrenewal. –
 1. Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:
 - I. In the manner described in G.S. 20-305(6)c2 below; and
 - II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or
 - III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:

- A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;
 - B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;
 - C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;
 - D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.
- IV. Not less than 180 days prior to the effective date of such termination, cancellation, or nonrenewal which occurs as a result of any change in ownership, operation, or control of all or any part of the business of the manufacturer, factory branch, distributor, or distributor branch whether by sale or transfer of assets, corporate stock or other equity interest, assignment, merger, consolidation, combination, joint venture, redemption, operation of law or otherwise; or the termination, suspension, or cessation of a part or all of the business operations of the manufacturers, factory branch, distributor, or distributor branch; or discontinuance of the sale of the line-make or brand, or a change in distribution system by the manufacturer whether through a change in distributors or the manufacturer's decision to cease conducting business through a distributor altogether.
- V. Unless the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, not more than one year after the manufacturer first acquired knowledge of the basic facts comprising the failure.
2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:
- I. A statement of intention to terminate, cancel or not to renew the franchise;
 - II. A detailed statement of all of the material reasons for the termination, cancellation or nonrenewal; and
 - III. The date on which the termination, cancellation or nonrenewal takes effect.

3. Notification provided in G.S. 20-305(6)c1II of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the 180 days designated in G.S. 20-305(6)a2II provided the notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.
- d. Payments.
1. Notwithstanding the terms of any franchise, agreement, or waiver, upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, the cessation of business or the termination, nonrenewal, or cancellation of any franchise by any new motor vehicle dealer located in this State, or upon any of the occurrences set forth in G.S. 20-305(6)c.1.IV., the manufacturer or distributor shall purchase from and compensate the new motor vehicle dealer for all of the following:
 - I. Each new and unsold motor vehicle within the new motor vehicle dealer's inventory that has been acquired within 24 months of the effective date of the termination from the manufacturer or distributor or another same line-make dealer in the ordinary course of business, and which has not been substantially altered or damaged to the prejudice of the manufacturer or distributor while in the new motor vehicle dealer's possession, and which has been driven less than 1,000 miles or, for purposes of a recreational vehicle motor home as defined in G.S. 20-4.01(32b)c., less than 1,500 miles following the original date of delivery to the dealer, and for which no certificate of title has been issued. For purposes of this sub-subdivision, the term "ordinary course of business" shall include inventory transfers of all new, same line-make vehicles between affiliated dealerships, or otherwise between dealerships having common or interrelated ownership, provided that the transfer is not intended solely for the purpose of benefiting from the termination assistance described in this sub-subdivision.
 - II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer or distributor or sources approved by the manufacturer or distributor, at a price not to exceed the original manufacturer's price to the dealer, provided such supplies and parts are currently offered for sale by the manufacturer or distributor in its current parts catalogs and are in salable condition.
 - III. Equipment, signs, and furnishings that have not been substantially altered or damaged and that have been required by the manufacturer or distributor to be

purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources.

- IV. Special tools that have not been altered or damaged, normal wear and tear excepted, and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise. The amount of compensation which shall be paid to the new motor vehicle dealer by the manufacturer or distributor shall be the net acquisition price if the item was acquired in the 12 months preceding the date of receipt of the dealer's request for compensation; seventy-five percent (75%) of the net acquisition price if the item was acquired between 13 and 24 months preceding the dealer's request for compensation; fifty percent (50%) of the net acquisition price if the item was acquired between 25 and 36 months preceding the dealer's request for compensation; twenty-five percent (25%) of the net acquisition price if the item was acquired between 37 and 60 months preceding the dealer's request for compensation.
2. The compensation provided above shall be paid by the manufacturer or distributor not later than 90 days after the manufacturer or distributor has received notice in writing from or on behalf of the new motor vehicle dealer specifying the elements of compensation requested by the dealer; provided the new motor vehicle dealer has, or can obtain, clear title to the inventory and has conveyed, or can convey, title and possession of the same to the manufacturer or distributor. Within 15 days after receipt of the dealer's written request for compensation, the manufacturer or distributor shall send the dealer detailed written instructions and forms required by the manufacturer or distributor to effectuate the receipt of the compensation requested by the dealer. The manufacturer or distributor shall be obligated to pay or reimburse the dealer for any transportation charges associated with the repurchase obligations of the manufacturer or distributor under this sub-subdivision. The manufacturer or distributor shall also compensate the dealer for any handling, packing, or similar payments contemplated in the franchise. In no event may the manufacturer or distributor charge the dealer any handling, restocking, or other similar costs or fees associated with items repurchased by the manufacturer under this sub-subdivision.
3. In addition to the other payments set forth in this section, if a termination, cancellation, or nonrenewal is premised upon any

of the occurrences set forth in G.S. 20-305(6)c.1.IV., then the manufacturer or distributor shall be liable to the dealer for an amount at least equivalent to the fair market value of the franchise on (i) the date the franchisor announces the action which results in termination, cancellation, or nonrenewal; or (ii) the date the action which results in termination, cancellation, or nonrenewal first became general knowledge; or (iii) the day 18 months prior to the date on which the notice of termination, cancellation, or nonrenewal is issued, whichever amount is higher. Payment is due not later than 90 days after the manufacturer or distributor has received notice in writing from, or on behalf of, the new motor vehicle dealer specifying the elements of compensation requested by the dealer. Any contract, agreement, or release entered into between any manufacturer and any dealer in which the dealer waives the dealer's right to receive monetary compensation in any sum or amount not less than the fair market value of the franchise as provided in this subdivision, including any contract, agreement, or release in which the dealer would accept the right to continue to offer and be compensated for service, parts, or both service and parts provided by the dealer in lieu of receiving all or a portion of the fair market value of the franchise, shall be voidable at the election of the dealer within 90 days of the effective date of the agreement. If the termination, cancellation, or nonrenewal is due to a manufacturer's change in distributors, but the line-make or brand in this State would continue to be sold through the new distributor, the manufacturer may avoid paying fair market value to the dealer if the new distributor or the manufacturer offers the dealer a franchise agreement with terms acceptable to the dealer.

e. Dealership Facilities Assistance upon Termination, Cancellation or Nonrenewal.

In the event of the occurrence of any of the events specified in G.S. 20-305(6)d.1. above, except termination, cancellation or nonrenewal for license revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner:

1. Subject to sub-sub-subdivision 3. of this sub-subdivision, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer or distributor, the manufacturer or distributor shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or three year's rent, whichever is less, or such longer term as is provided in the franchise agreement between the dealer and manufacturer; except that, in the case of motorcycle dealerships, the manufacturer shall pay the new motor vehicle dealer the sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or such longer term as provided in

the franchise agreement between the dealer and manufacturer;
or

2. Subject to sub-sub-subdivision 3. of this sub-subdivision, if the new motor vehicle dealer owns the dealership facilities, the manufacturer or distributor shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for three years, or for one year in the case of motorcycle dealerships.
3. In order to be entitled to facilities assistance from the manufacturer or distributor, as provided in this sub-subdivision, the dealer, owner, or lessee, as the case may be, shall have the obligation to mitigate damages by listing the demised premises for lease or sublease with a licensed real estate agent within 30 days after the effective date of the termination of the franchise and thereafter by reasonably cooperating with said real estate agent in the performance of the agent's duties and responsibilities. In the event that the dealer, owner, or lessee is able to lease or sublease the demised premises, the dealer shall be obligated to pay the manufacturer the net revenue received from such mitigation up to the total amount of facilities assistance which the dealer has received from the manufacturer pursuant to sub-subdivisions 1. and 2. To the extent and for such uses and purposes as may be consistent with the terms of the lease, a manufacturer who pays facilities assistance to a dealer under this sub-subdivision shall be entitled to occupy and use the dealership facilities during the years for which the manufacturer shall have paid rent under sub-subdivisions 1. and 2.
4. In the event the termination relates to fewer than all of the franchises operated by the dealer at a single location, the amount of facilities assistance which the manufacturer or distributor is required to pay the dealer under this sub-subdivision shall be based on the proportion of gross revenue received from the sale and lease of new vehicles by the dealer and from the dealer's parts and service operations during the three years immediately preceding the effective date of the termination (or any shorter period that the dealer may have held these franchises) of the line-makes being terminated, in relation to the gross revenue received from the sale and lease of all line-makes of new vehicles by the dealer and from the total of the dealer's and parts and service operations from this location during the same three-year period.
5. The compensation required for facilities assistance under this sub-subdivision shall be paid by the manufacturer or distributor within 90 days after the manufacturer or distributor has received notice in writing from, or on behalf of, a new motor vehicle

dealer specifying the elements of compensation requested by the dealer.

- f. The provisions of sub-subdivision e. above shall not be applicable when the termination, nonrenewal, or cancellation of the franchise agreement by a new motor vehicle dealer is the result of the sale of assets or stock of the motor vehicle dealership. The provisions of sub-subdivisions d. and e. above shall not be applicable when the termination, nonrenewal, or cancellation of the franchise agreement is at the initiation of a new motor vehicle dealer of recreational vehicle motor homes, as defined in G.S. 20-4.01(32b)c., provided that at the time of the termination, nonrenewal, or cancellation, the recreational vehicle manufacturer or distributor has paid to the dealer all claims for warranty or recall work, including payments for labor, parts, and other expenses, which were submitted by the dealer 30 days or more prior to the date of termination, nonrenewal, or cancellation.
- 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 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 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 the rights, duties, and obligations of its predecessor under the previous franchise agreement.

- (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.
 - a. Any owner of a new motor vehicle dealership may appoint by will, or any other written instrument, a designated successor to succeed in the respective ownership interest or interest as principal operator of the owner in the new motor vehicle dealership, including the franchise, upon the death or incapacity of the owner or principal operator. In order for succession to the position of principal operator to occur by operation of law in accordance with sub-subdivision c. below, the owner's choice of a successor must be approved by the dealer, in accordance with the dealer's bylaws, if applicable, either prior or subsequent to the death or incapacity of the existing principal operator.

- 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 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.
 2. Any time within 30 days of receipt of the manufacturer's notice of objection the owner or the designated successor may file a request in writing with the Commissioner that the Commissioner hold an evidentiary hearing and determine whether good cause exists for rejection of the designated successor. When such a request is filed, the Commissioner shall promptly inform the affected manufacturer or distributor that a timely request has been filed.
 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.
 4. Any parties to a hearing by the Commissioner concerning whether good cause exists for the rejection of the dealer's designated successor shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.
 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 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.

6. In the event death or incapacity of the owner or principal operator occurs prior to the time a manufacturer or distributor receives notice of the owner's appointment of a designated successor or before the Commissioner has rendered a determination as provided above, the existing franchise shall remain in effect and the designated successor shall be deemed to have succeeded to all of the owner's or principal operator's rights and obligations in the dealership and under the franchise until a determination is made by the Commissioner or the rights of the parties have otherwise become fixed in accordance with this sub-subdivision.
- c. Except as otherwise provided in sub-subdivision d. of this subdivision, any designated successor of a deceased or incapacitated owner or principal operator of a new motor vehicle dealership appointed by such owner in substantial compliance with this section shall, by operation of law, succeed at the time of such death or incapacity to all of the rights and obligations of the owner or principal operator in the new motor vehicle dealership and under either the existing franchise or any other successor, renewal, or replacement franchise.
- d. Within 60 days after the death or incapacity of the owner or principal operator, a designated successor appointed in substantial compliance with this section shall give the affected manufacturer or distributor written notice of his or her succession to the position of owner or principal operator of the new motor vehicle dealership; provided, however, that the failure of the designated successor to give the manufacturer or distributor written notice as provided above within 60 days of the death or incapacity of the owner or principal operator shall not result in the waiver or termination of the designated successor's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated successor may give the notice required hereunder, provided the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity. Within 30 days of receipt of the notice by the manufacturer or distributor from the designated successor provided 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 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.
- (8) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of those motor vehicles as publicly advertised by the manufacturer or distributor.
 - (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, 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:

- a. The manufacturer does not offer its dealers a special tool loaner/sharing program in which the dealer would be eligible to participate.
 - b. Eligible special tools exceed a cost of two thousand dollars (\$2,000) per special tool, are easily and readily transportable, and would be utilized for service on less than 10 vehicles per month at the requesting dealer's dealership.
 - c. The dealers participating in a special tools loaner agreement do so pursuant to a written agreement, including designation of the dealer responsible for purchasing the specified tools.
 - d. All participating dealers are of the same line-make franchise with the manufacturer.
 - e. All participating dealers are located within a 40-mile radius of the dealer responsible for purchasing the specified special tools.
 - f. No more than five dealers participate in a special tool loaner agreement.
 - g. The manufacturer has approved the special tool loaner agreement, including the list of participating dealers and the list of eligible special tools to be included, which approval shall not be unreasonably withheld, conditioned, or delayed.
 - h. The manufacturer, factory branch, distributor, or distributor branch shall have the right to disapprove or terminate, upon 30 days written notice to all of the affected dealers, any special tool loaner agreement, if it determines that the agreement has resulted or is likely to result in a warranty repair delay of more than 48 hours, excessive warranty expense, or significant customer dissatisfaction.
- (10) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change the capital structure of the new motor vehicle dealer or the means by or through which the new motor vehicle dealer finances the operation of the dealership provided that the new motor vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria; and also provided that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor, provided that said consent shall not be unreasonably withheld.
- (11) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products; Provided,

however, that this subsection does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and the new motor vehicle dealer remains in compliance with any reasonable capital standards and facilities requirements of the manufacturer. The reasonable facilities requirements shall not include any requirement that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space.

- (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.
- (13) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this law or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or representative, 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 new motor vehicle dealer.
- (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.

- b. Allocates an adequate supply of vehicles to each of its dealers by series, product line, and model so as to allow the dealer to achieve any performance standards established by the manufacturer and distributor.
- c. Is fair and equitable to all of its franchised dealers in this State.
- d. Makes available to each of its franchised dealers in this State a minimum of one of each vehicle series, model, or product line that the manufacturer makes available to any dealer in this State and advertises in the State as being available for purchase.
- e. Does not unfairly discriminate among its franchised dealers in its allocation process.

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.

- (15) To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the State.
- (16) To award money, goods, services, or any other benefit to any new motor vehicle dealership employee, either directly or indirectly, unless such benefit is promptly accounted for, and transmitted to, or approved by, the new motor vehicle dealer.
- (17) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered and which the manufacturer or distributor has accepted for immediate delivery for private retail consumers prior to the new motor vehicle dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each such order provided that the vehicle is in fact delivered to that customer. Price differences applicable to new model or series shall not be considered a price increase or price decrease. Price changes caused by either: (i) the addition to a new motor vehicle of required or optional equipment; or (ii) revaluation of the United States dollar, in the case of foreign-make vehicles or components; or (iii) an increase in transportation charges due to increased rates imposed by carriers; or (iv) new tariffs or duties imposed by the United States of America or any other governmental authority, shall not be subject to the provisions of this subsection.
- (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 transferring the franchised business to such persons or other entities as the dealer shall designate in accordance with G.S. 20-305(4). 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).

- (19) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the State or any political subdivision thereof without making the same offer available upon request to all other new motor vehicle dealers in the same line make within the State.
- (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.
- (21) To deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose.
- (22) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursements or authority granted its new motor vehicle dealers to make warranty adjustments with retail customers.
- (23) To engage in any predatory practice against or unfairly compete with a new motor vehicle dealer located in this State.
- (24) To terminate any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise.
- (25) To require, coerce, or attempt to coerce a new motor vehicle dealer in this State to either establish or maintain exclusive facilities, personnel, or display space.
- (26) To resort to or to use any false or misleading advertisement in the conducting of its business as a manufacturer or distributor in this State.
- (27) To knowingly make, either directly or through any agent or employee, any material statement which is false or misleading or conceal any material facts which induce any new motor vehicle dealer to enter into any agreement or franchise or to take any action which is materially prejudicial to that new motor vehicle dealer or his business.
- (28) To require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any 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.

- (29) To require, coerce, or attempt to coerce any new motor vehicle dealer to sell, transfer, or otherwise issue stock or other ownership interest in the dealership corporation to a general manager or any other person involved in the management of the dealership other than the dealer principal or dealer operator named in the franchise, unless the dealer principal or dealer operator is an absentee owner who is not involved in the operation of the dealership on a regular basis.
- (30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility, the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer, whether or not the dealer is dualled with one or more other line makes of new motor vehicles, or the dealer's sales penetration. Except as provided in this subdivision, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them to vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's sales volume, the dealer's level of sales or customer service satisfaction, the dealer's purchase of advertising materials, signage, nondiagnostic computer hardware or software, communications devices, or furnishings, or the dealer's participation in used motor vehicle inspection or certification programs sponsored or endorsed by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration that has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions that provide or award dealers or consumers rebates or incentives; provided, however, that the manufacturer complies with all of the following conditions:

- a. With respect to manufacturer to consumer rebates and incentives, the manufacturer's criteria for determining eligibility shall:
 - 1. Permit all of the manufacturer's franchised new motor vehicle dealers in this State to offer the rebate or incentive; and
 - 2. Be uniformly applied and administered to all eligible consumers.
- b. With respect to manufacturer to dealer rebates and incentives, the rebate or incentive program shall:
 - 1. Be based solely on the dealer's actual or reasonably anticipated sales volume or on a uniform per vehicle sold or leased basis;

2. Be uniformly available, applied, and administered to all of the manufacturer's franchised new motor vehicle dealers in this State; and
3. Provide that any of the manufacturer's franchised new motor vehicle dealers in this State may, upon written request, obtain the method or formula used by the manufacturer in establishing the sales volumes for receiving the rebates or incentives and the specific calculations for determining the required sales volumes of the inquiring dealer and any of the manufacturer's other franchised new motor vehicle dealers located within 75 miles of the inquiring dealer.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

It is unlawful for any manufacturer to charge or include the cost of any program or policy prohibited under this subdivision in the price of new motor vehicles that the manufacturer sells to its franchised dealers or purchasers located in this State.

In the event that as of October 1, 1999, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, it shall be lawful for that program or policy, including amendments to that program or policy that are consistent with the purpose and provisions of the existing program or policy, or a program or policy similar thereto implemented after October 1, 1999, to continue in effect as to the manufacturer's franchised dealers located in this State until June 30, 2022.

In the event that as of June 30, 2001, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, and the program or policy was implemented in this State subsequent to October 1, 1999, and prior to June 30, 2001, and provided that the program or policy is in compliance with this subdivision as it existed as of June 30, 2001, it shall be lawful for that program or policy, including amendments to that program or policy that comply with this subdivision as it existed as of June 30, 2001, to continue in effect as to the manufacturer's franchised dealers located in this State until June 30, 2022.

Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy.

The provisions of this subdivision shall not be applicable to multiple or repeated sales of new motor vehicles made by a new motor vehicle dealer to a single purchaser under a bona fide fleet sales policy of a manufacturer, factory branch, distributor, or distributor branch.

- (31) Notwithstanding the terms of any contract, franchise, agreement, release, or waiver, to require that in any civil or administrative proceeding in which a new motor vehicle dealer asserts any claims, rights, or defenses arising under this Article or under the franchise, that the dealer or any nonprevailing party compensate the manufacturer or prevailing party for any court costs, attorneys' fees, or other expenses incurred in the litigation.
- (32) To require that any of its franchised new motor vehicle dealers located in this State pay any extra fee, purchase unreasonable or unnecessary quantities of advertising displays or other materials, or remodel, renovate, or recondition the dealers' existing facilities in order to receive any particular model or series of vehicles manufactured or distributed by the manufacturer for which the dealers have a valid franchise. Notwithstanding the foregoing, nothing contained in this subdivision shall be deemed to prohibit or prevent a manufacturer from requiring that its franchised dealers located in this State purchase special tools or equipment, stock reasonable quantities of certain parts, or participate in training programs which are reasonably necessary for those dealers to sell or service any model or series of vehicles.
- (33) To fail to reimburse a dealer located in this State in full for the actual cost of providing a loaner vehicle to any customer who is having a vehicle serviced at the dealership if the provision of such a loaner vehicle is required by the manufacturer.
- (34) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to participate monetarily in any training program whose subject matter is not expressly limited to specific information necessary to sell or service the models of vehicles the dealer is authorized to sell or service under the dealer's franchise with that manufacturer. Examples of training programs with respect to which a manufacturer is prohibited from requiring the dealer's monetary participation include, but are not limited to, those which purport to teach morale-boosting employee motivation, teamwork, or general principles of customer relations. A manufacturer is further prohibited from requiring the personal attendance of an owner or dealer principal of any dealership located in this State at any meeting or training program at which it is reasonably possible for another member of the dealer's management to attend and later relate the subject matter of the meeting or training program to the dealership's owners or principal operator.
- (35) Notwithstanding the terms of any franchise, agreement, waiver or novation, to limit the number of franchises of the same line make of vehicle that any franchised motor vehicle dealer, including its parent(s), subsidiaries, and affiliates, if any, may own or operate or attach any restrictions or conditions on the ownership or operation of multiple franchises of the same line make of motor vehicle without making the same limitations, conditions, and restrictions applicable to all of its other franchisees.

- (36) With regard to any manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof that owns and operates a new motor vehicle dealership, directly or indirectly through any subsidiary or affiliated entity as provided in G.S. 20-305.2, to unreasonably discriminate against any other new motor vehicle dealer in the same line make in any matter governed by the motor vehicle franchise, including the sale or allocation of vehicles or other manufacturer or distributor products, or the execution of dealer programs for benefits.
- (37) Subdivisions (11) and (25) of this section shall not apply to any manufacturer, manufacturer branch, distributor, distributor branch, or any affiliate or subsidiary thereof of new motor vehicles which manufactures or distributes exclusively new motor vehicles with a gross weight rating of 8,500 pounds or more, provided that the following conditions are met: (i) the manufacturer has, as of November 1, 1996, an agreement in effect with at least three of its franchised dealers within the State, and which agreement was, in fact, being enforced by the manufacturer, requiring the dealers to maintain separate and exclusive facilities for the vehicles it manufactures or distributes; and (ii) there existed at least seven dealerships (locations) of that manufacturer within the State as of January 1, 1999.
- (38) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver, or other written instrument, to assign or change a franchised new motor vehicle dealer's area of responsibility under the franchise arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registrations within the dealer's market and without having provided the affected dealer with written notice of the change in the dealer's area of responsibility and a detailed description of the change in writing by registered or certified mail, return receipt requested. A franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer has entered into a franchise has assigned or changed the dealer's area of responsibility, is proposing to assign or change the dealer's area of responsibility arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registrations within the dealer's market, or failed to provide the dealer with the notice required under this subdivision may file a petition within 60 days of receiving notice of a manufacturer, factory branch, distributor, or distributor branch's proposed assignment or change to the dealer's area of responsibility and have an evidentiary hearing before the Commissioner as provided in G.S. 20-301(b) contesting the franchised new motor vehicle dealer's assigned area of responsibility. Provided that the dealer has not previously filed a petition pursuant to this subdivision within the preceding 48 months regarding the dealer's currently assigned area of responsibility, a franchised new motor vehicle dealer who believes that it is unreasonable for a manufacturer, factory branch, distributor, or distributor branch with whom that dealer has entered into a franchise to include one or more portions of the dealer's existing area of responsibility previously assigned to that dealer by the manufacturer, factory branch, distributor, or distributor branch may request the elimination of the

contested territory from the dealer's area of responsibility by submitting the request in writing via U.S. registered or certified mail, return receipt requested, to the manufacturer, factory branch, distributor, or distributor branch. The dealer shall state in its request that the request is being made pursuant to this subdivision, describe the territory the dealer seeks to remove from its area of responsibility, and provide a general statement as to the factual basis for the dealer's contention of the changed factors warranting modification of the dealer's area of responsibility. The dealer's request shall be deemed accepted by the manufacturer, factory branch, distributor, or distributor branch if the manufacturer, factory branch, distributor, or distributor branch has not sent the dealer notice of objection to the dealer's request via U.S. registered or certified mail, return receipt requested, within 90 days after receipt of the dealer's request. Within 30 days of the dealer's receipt of notice from the manufacturer, factory branch, distributor, or distributor branch of the manufacturer's rejection, in whole or in part, of the dealer's request for the elimination of the contested territory from the dealer's area of responsibility, either party may request mediation under the manufacturer's internal mediation program, if any. Any such mediation shall commence within 60 days after the request for mediation is made and be concluded within 120 days after the date the manufacturer, factory branch, distributor, or distributor branch objected to the dealer's proposed change in its area of responsibility. Within 60 days of the conclusion of a requested mediation process, or, if a mediation process has not been timely requested under this subdivision, within 60 days of receiving notice from the manufacturer, factory branch, distributor, or distributor branch of the manufacturer's rejection, in whole or in part, of the dealer's request for the elimination of the contested territory from the dealer's area of responsibility, a dealer may file a petition and have an evidentiary hearing before the Commissioner as provided in G.S. 20-301(b) contesting the manufacturer's rejection, in whole or in part, of the dealer's request for the elimination of the contested territory from the franchised new motor vehicle dealer's assigned area of responsibility. In determining at an evidentiary hearing requested under this subdivision whether all or any portion of the existing or proposed area of responsibility assigned to the dealer is unreasonable or has been assigned arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registrations within the dealer's market, the Commissioner may take into consideration the relevant circumstances, including, but not limited to:

- a. The investment of time, money, or other resources made for the purpose of developing the market for the vehicles of the same line-make in the existing or proposed area of responsibility by the petitioning dealer, other same line-make dealers who would be affected by the change in the area of responsibility, or by the manufacturer, factory branch, distributor, distributor branch, or any dealer or regional advertising association.
- b. The present and future projected traffic patterns and drive times between consumers and the same line-make franchised dealers of the affected

- manufacturer, factory branch, distributor, or distributor branch who are located within the market.
- c. The historical and projected future pattern of new vehicle sales and registrations of the affected manufacturer, factory branch, distributor, or distributor branch within various portions of the area of responsibility and within the market as a whole.
 - d. The growth or decline in population, density of population, and new car registrations in the market.
 - e. If the affected manufacturer, factory branch, distributor, or distributor branch has removed territory from a dealer's area of responsibility or is proposing to remove territory from a dealer's area of responsibility, the projected economic effects, if any, that these changes in the dealer's area of responsibility will have on the petitioning dealer, other same line-make dealers, the public, and the manufacturer, factory branch, distributor, or distributor branch.
 - f. The projected effects that the changes in the petitioning dealer's area of responsibility that have been made or proposed by the affected manufacturer, manufacturer branch, distributor, or distributor branch will have on the consuming public within the market.
 - g. The presence or absence of natural geographical obstacles or boundaries, such as mountains and rivers.
 - h. The proximity of census tracts or other geographic units used by the affected manufacturer, factory branch, distributor, or distributor branch in determining same line-make dealers' respective areas of responsibility.
 - i. The public interest, consumer welfare, and customer convenience.
 - j. The reasonableness of the change or proposed change to the dealer's area of responsibility considering the benefits and harm to the petitioning dealer, other same line-make dealers, and the manufacturer, factory branch, distributor, or distributor branch.

At the evidentiary hearing before the Commissioner, following the filing of a petition by a dealer contesting the proposed assignment or change to the dealer's area of responsibility by a manufacturer, factory branch, distributor, or distributor branch, the affected manufacturer, factory branch, distributor, or distributor branch shall have the burden of proving that all portions of its current or proposed area of responsibility for the petitioning franchised new motor vehicle dealer are reasonable in light of the present or projected future pattern of motor vehicle sales and registrations within the franchised new motor vehicle dealer's market. At an evidentiary hearing before the Commissioner held pursuant to a franchised new motor vehicle dealer's petition to eliminate contested territory from the dealer's existing area of responsibility previously assigned to the dealer by the manufacturer, factory branch, distributor, or distributor branch, the franchised new motor vehicle dealer shall have the burden of proving that it would be unreasonable to continue to include the contested territory in the dealer's area of responsibility due to changes in circumstances under sub-subdivisions a. through j. of this subdivision that are

beyond the control of the dealer. A policy or protocol of a manufacturer, factory branch, distributor, or distributor branch that determines a dealer's area of responsibility based solely on the proximity of census tracts or other geographic units to its franchised dealers and the existence of natural boundaries fails to satisfy the burden of proof on the affected manufacturer, factory branch, distributor, or distributor branch under this subdivision. Upon the filing of a petition before the Commissioner under this subdivision, any changes in the petitioning franchised new motor vehicle dealer's area of responsibility that have been proposed by the affected manufacturer, factory branch, distributor, or distributor branch shall be stayed during the pendency of the determination by the Commissioner. If a protest is or has been filed under G.S. 20-305(5) and the franchised new motor vehicle dealer's area of responsibility is included in the relevant market area under the protest, any protest filed under this subdivision shall be consolidated with that protest for hearing and joint disposition of all of the protests. Nothing in this subdivision shall apply to the determination of whether good cause exists for the establishment by a manufacturer, factory branch, distributor, or distributor branch of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer, which shall be governed in accordance with the requirements and criteria contained in G.S. 20-305(5) and not this subdivision.

- (39) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver, or other written instrument, to require, coerce, or attempt to coerce any of its franchised motor vehicle dealers in this State to purchase, lease, erect, or relocate one or more signs displaying the name of the manufacturer or franchised motor vehicle dealer upon unreasonable or onerous terms or conditions or if installation of the additional signage would violate local signage or zoning laws to which the franchised motor vehicle dealer is subject. Any term, provision, or condition of any agreement, franchise, waiver, novation, or any other written instrument which is in violation of this subdivision shall be deemed null and void and without force and effect.
- (40) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, to require any dealer to floor plan any of the dealer's inventory or finance the acquisition, construction, or renovation of any of the dealer's property or facilities by or through any financial source or sources designated by the manufacturer, factory branch, distributor, or distributor branch, including any financial source or sources that is or are directly or indirectly owned, operated, or controlled by the manufacturer, factory branch, distributor, or distributor branch.
- (41) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, to use or consider the performance of any of its franchised new motor vehicle dealers located in this State relating to the sale of the manufacturer's new motor vehicles or ability to satisfy any minimum sales or market share quota or responsibility relating to the sale of the manufacturer's new motor vehicles in determining:
 - a. The dealer's eligibility to purchase program, certified, or other used motor vehicles from the manufacturer;

- b. The volume, type, or model of program, certified, or other used motor vehicles the dealer shall be eligible to purchase from the manufacturer;
 - c. The price or prices of any program, certified, or other used motor vehicles that the dealer shall be eligible to purchase from the manufacturer; or
 - d. The availability or amount of any discount, credit, rebate, or sales incentive the dealer shall be eligible to receive from the manufacturer for the purchase of any program, certified, or other used motor vehicles offered for sale by the manufacturer.
- (42) Notwithstanding the terms, provisions, or conditions of any agreement or waiver, to directly or indirectly condition the awarding of a franchise to a prospective new motor vehicle dealer, the addition of a line make or franchise to an existing dealer, the renewal of a franchise of an existing dealer, the approval of the relocation of an existing dealer's facility, or the approval of the sale or transfer of the ownership of a franchise on the willingness of a dealer, proposed new dealer, or owner of an interest in the dealership facility to enter into a site control agreement or exclusive use agreement. For purposes of this subdivision, the terms "site control agreement" and "exclusive use agreement" include any agreement that has the effect of either: (i) requiring that the dealer establish or maintain exclusive dealership facilities; or (ii) restricting the ability of the dealer, or the ability of the dealer's lessor in the event the dealership facility is being leased, to transfer, sell, lease, or change the use of the dealership premises, whether by sublease, lease, collateral pledge of lease, right of first refusal to purchase or lease, option to purchase, option to lease, or other similar agreement, regardless of the parties to such agreement. Any provision contained in any agreement entered into on or after August 26, 2009, that is inconsistent with the provisions of this subdivision shall be voidable at the election of the affected dealer, prospective dealer, or owner of an interest in the dealership facility.
- (43) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver, or other written instrument, to require, coerce, or attempt to coerce any of its franchised motor vehicle dealers in this State to change the principal operator, general manager, or any other manager or supervisor employed by the dealer. Any term, provision, or condition of any agreement, franchise, waiver, novation, or any other written instrument that is inconsistent with this subdivision shall be deemed null and void and without force and effect.
- (44) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, to require, coerce, or attempt to coerce any new motor vehicle dealer located in this State to refrain from displaying in the dealer's showroom or elsewhere within the dealership facility any sports-related honors, awards, photographs, displays, or other artifacts or memorabilia; provided, however, that such sports-related honors, awards, photographs, displays, or other artifacts or memorabilia (i) pertain to an owner, investor, or executive manager of the dealership; (ii) relate to professional sports; (iii) do not reference or advertise a

competing brand of motor vehicles; and (iv) do not conceal or disparage any of the required branding elements that are part of the dealership facility.

(45) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, to discriminate against a new motor vehicle dealer located in this State for selling or offering for sale a service contract, debt cancellation agreement, maintenance agreement, or similar product not approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source. For purposes of this subdivision, discrimination includes any of the following:

- a. Requiring or coercing a dealer to exclusively sell or offer for sale service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source.
- b. Taking or threatening to take any adverse action against a dealer (i) because the dealer sells or offers for sale any service contracts, debt cancellation agreements, maintenance agreements, or similar products that have not been approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source or (ii) because the dealer fails to sell or offer for sale service contracts, debt cancellation agreements, maintenance agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, their affiliate, or captive finance source.
- c. Measuring a dealer's performance under a franchise in any part based upon the dealer's sale of service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source.
- d. Requiring a dealer to exclusively promote the sale of service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source.
- e. Considering the dealer's sale of service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source in determining any of the following:
 1. The dealer's eligibility to purchase any vehicles, parts, or other products or services from the manufacturer or distributor.
 2. The volume of vehicles or other parts or services the dealer shall be eligible to purchase from the manufacturer or distributor.
 3. The price or prices of any vehicles, parts, or other products or services that the dealer shall be eligible to purchase from the manufacturer or distributor.
 4. The availability or amount of any vehicle discount, credit, special pricing, rebate, or sales or service incentive the dealer shall be eligible to receive from the manufacturer, distributor, affiliate, or captive finance source in which the incentives are calculated or paid on a per-vehicle basis or any vehicle discount,

credit, special pricing, or rebate that are calculated or paid on a per-vehicle basis.

For purposes of this subdivision, discrimination does not include, and nothing shall prohibit a manufacturer, distributor, affiliate, or captive finance source from, offering discounts, rebates, or other incentives to dealers who voluntarily sell or offer for sale service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source; provided, however, that such discounts, rebates, or other incentives are based solely on the sales volume of the service contracts, debt cancellation agreements, or similar products sold by the dealer and do not provide vehicle sales or service incentives.

For purposes of this subdivision, a service contract provider or its representative shall not complete any sale or transaction of an extended service contract, extended maintenance plan, or similar product using contract forms that do not disclose the identity of the service contract provider.

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

(47) To fail to provide to a dealer, if the goods or services to be supplied to the dealer by a vendor selected, identified, or designated by the manufacturer or distributor are signs or other franchisor image elements to be purchased or leased to the dealer, the right to purchase or lease the signs or other franchisor image elements of similar quality and design from a vendor selected by the dealer. This subdivision and subdivision (46) of this section shall not be construed to

allow a dealer or vendor to violate directly or indirectly the intellectual property rights of the manufacturer or distributor, including, but not limited to, the manufacturer's or distributor's intellectual property rights in any trademarks or trade dress, or other intellectual property interests owned or controlled by the manufacturer or distributor, or to permit a dealer to erect or maintain signs that do not conform to the reasonable intellectual property right or trademark and trade dress usage guidelines of the manufacturer or distributor.

- (48) To unreasonably interfere with a dealer's independence in staffing the dealership by engaging in any of the following conduct: (i) requiring, coercing, or attempting to coerce a dealer located in this State to employ, appoint, or designate an individual to serve full-time or exclusively in any specific capacity, role, or job function at the dealership, other than the employment or appointment of a full-time general manager; (ii) requiring a dealer to employ, appoint, or designate an individual to serve full-time or exclusively in any specific capacity, role, or job function at the dealership, other than the employment or appointment of a full-time general manager, in order to participate in or qualify for any incentive program offered or sponsored by the manufacturer or distributor or to otherwise receive any discounts, credits, rebates, or incentives of any kind that are calculated or paid on a per-vehicle basis; or (iii) requiring that the dealer obtain the approval of the manufacturer or distributor prior to employing or appointing any individual in any capacity, role, or job function at the dealership, other than the employment or appointment of a full-time general manager. Except as expressly provided above, nothing contained in this subdivision shall be deemed to prevent or prohibit a manufacturer or distributor from requiring that a dealer employ a reasonable number of trained employees to sell and service the factory's vehicles.
- (49) A manufacturer or distributor may not charge a dealer more than a reasonable cost for any tool that the manufacturer or distributor sells to a dealer and designates as a special or essential tool. A manufacturer or distributor that collects tool fees as a convenience for the dealer and passes the payment through to a tool manufacturer or supplier which is not owned, operated, or controlled by the manufacturer, distributor, or affiliate shall not be considered to be selling the tool provided that the manufacturer or distributor's involvement does not increase the cost of the special tool or essential tool. Nothing in this subdivision shall prohibit a manufacturer or distributor from charging a reasonable nominal fee in addition to the cost of the special or essential tool that includes manufacturer or distributor handling costs. For any special or essential tool that the manufacturer or distributor sells to the dealer at a price exceeding two hundred fifty dollars (\$250.00), the manufacturer or distributor shall disclose on an invoice or similar billing statement submitted to the dealer for the tool, the actual cost of the special or essential tool paid by the manufacturer or distributor.
- (50) To require, coerce, or attempt to coerce any new motor vehicle dealer located in this State to change location of its dealership, or to make any substantial alterations to its dealership premises or facilities, if the dealer (i) has changed

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

- (51) To establish, implement, or enforce criteria for measuring the sales or service performance of any of its franchised new motor vehicle dealers in this State for any of the purposes in sub-subdivisions a. through c. of this subdivision that (i) are unfair, unreasonable, arbitrary, or inequitable; (ii) do not consider available relevant and material State and regional criteria, data, and facts. Relevant and material criteria, data, or facts include those of motor vehicle dealerships of comparable size in comparable markets; and (iii) if such performance measurement criteria are based, in whole or in part, on a survey, such survey must be based on a statistically significant and valid random sample. In any proceeding under this subdivision, the applicable manufacturer or distributor shall bear the burden of proof (i) with regard to all issues raised in the proceeding and (ii) that the dealer performance measurements comply with all of the provisions hereof and are, and have been, implemented and enforced uniformly by the manufacturer or distributor among its franchised dealers in this State. Prior to taking a final action on an event described in sub-subdivisions a. through c. of this subdivision, if the dealer's current or past sales or service performance constitute any part of the basis for the final action, a manufacturer or distributor shall allow a dealer to present relevant local criteria, data, and facts beyond the control of the dealer, which the manufacturer or distributor shall consider. In the event it is determined that the performance criteria employed by a manufacturer or distributor for measuring the sales, service, or customer satisfaction performance of any of its franchised motor vehicle dealers in this State are unfair, unreasonable, arbitrary, or inequitable,

or that the performance criteria does not consider available State and regional criteria, data, and facts required in this subsection, or that the performance criteria have not been implemented and enforced uniformly by the manufacturer or distributor among its franchised dealers in this State, or that the performance criteria do not consider relevant local criteria, data, and facts presented by the dealer in accordance with this subdivision, the performance criteria of the manufacturer or distributor may not constitute any part of the basis for a determination in any franchise-related decision pertaining to any of the following:

- a. Whether to allow a dealer's proposed transfer of ownership pursuant to subdivision (4) of this section.
- b. Whether good cause exists for the termination of a dealer's franchise pursuant to subdivision (6) of this section.
- c. Whether to allow appointment of a designated successor to a franchise pursuant to subdivision (7) of this section.

If a dealer's current or past performance in sales or service constitutes any part of the basis for the decision of the manufacturer, factory branch, distributor, or distributor branch pertaining to sub-subdivisions a. through c. of this subdivision, the dealer and the applicable manufacturer, factory branch, distributor, or distributor branch shall have the right to present local criteria, data, and facts in any petition or hearing before the Commissioner requested by the dealer pursuant to subdivision (4), (6), or (7) of this section.

- (52) To prohibit or to in any way unreasonably limit or restrict a dealer from offering for sale over the Internet, including online e-commerce marketplaces, parts and accessories obtained by the dealer from the manufacturer, factory branch, distributor, or distributor branch, or from any source recommended or approved by the manufacturer, factory branch, distributor, or distributor branch. Nothing in this subdivision shall eliminate or impair the intellectual property rights of a manufacturer, factory branch, distributor, or distributor branch. (1955, c. 1243, s. 21; 1973, c. 88, ss. 1, 2; 1983, c. 704, ss. 5-10; 1987, c. 827, s. 1; 1991, c. 510, ss. 2-4; 1993, c. 123, s. 1; c. 331, s. 2; 1995, c. 163, s. 13; c. 480, s. 3; 1997-319, s. 3; 1999-335, s. 2; 1999-336, s. 1; 2001-510, ss. 2, 6; 2003-113, ss. 2, 3, 4; 2005-409, s. 2; 2005-463, s. 2; 2007-513, ss. 2-4, 9, 12; 2008-156, s. 3; 2008-187, s. 50; 2009-338, ss. 1, 2, 5; 2009-496, s. 1; 2011-290, ss. 5-9; 2013-302, s. 7; 2014-58, s. 10(e), (f); 2015-209, ss. 2, 3, 4, 5; 2017-102, s. 5.2(b); 2017-148, s. 2; 2018-27, ss. 1, 4; 2019-125, ss. 2-5.)

§ 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, 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 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 in the dealer's market 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, 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 franchised dealers who are selling competing line-makes of vehicles within the dealer's market. 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.

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

- (1) Repairs for manufacturer or distributor special events, specials, coupons, or other promotional discounts for retail customer repairs.
- (2) Parts sold at wholesale or at reduced or specially negotiated rates for insurance repairs.
- (3) Engine assemblies.
- (4) Routine maintenance, including fluids, filters, alignments, flushes, oil changes, belts, and brake drums/rotors and shoes/pads not provided in the course of repairs.
- (5) Nuts, bolts, fasteners, and similar items that do not have an individual part number.
- (6) Tires and vehicle alignments.
- (7) Vehicle reconditioning.
- (8) Batteries and light bulbs.

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

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

(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 rescission or revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer. Any audit, 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 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 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, (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) 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:

- (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.

(b2) A manufacturer may not deny a motor vehicle dealer's claim for sales incentives, service incentives, rebates, or other forms of incentive compensation, reduce the amount to be paid to the dealer, or charge a dealer back subsequent to the payment of the claim unless it can be shown that the claim was false or fraudulent or that the dealer failed to reasonably substantiate the claim either in accordance with the manufacturer's reasonable written procedures or by other reasonable means.

(b3) (1) For purposes of this subsection, the term "manufacturer" shall include the terms "manufacturer," "manufacturer branch," "distributor," and "distributor branch," as those terms are defined in G.S. 20-286.

(2) Notwithstanding the terms of any franchise or other agreement, or the terms of any program, policy, or procedure of any manufacturer, it shall be unlawful for any manufacturer to take or threaten to take any adverse action against a dealer located in this State, or to otherwise discriminate against any dealer located in this State when:

- a. The dealer failed to ensure that the purchaser or lessee paid personal property tax on the vehicle purchased or leased from the dealer;
- b. The dealer failed to ensure that the vehicle being purchased or leased had been permanently registered in this State or in any other state in which the dealer was not required to ensure that the vehicle's permanent registration was processed or submitted at the time of the vehicle's purchase or lease;
- c. The manufacturer extrapolated the imposition of any adverse action based on a certain number or percentage of the vehicles sold or leased by a dealer over a specified period of time having been exported or brokered; or
- d. The dealer sold or leased a motor vehicle to a customer who either exported the vehicle to a foreign country or who resold the vehicle to a third party, unless:
 1. The dealer reasonably should have known that the customer intended to export or resell the motor vehicle prior to the customer's purchase or lease of the vehicle from the dealer;
 2. The vehicle sold or leased by the dealer was exported to a foreign country within 180 days after the date of sale or lease by the dealer; and
 3. The affected manufacturer provided written notification to the affected motor vehicle dealer of the resale or export within 12 months from the date of sale or lease.

Notwithstanding the provisions of sub-subdivision d. of this subdivision, a manufacturer may take adverse action against a dealer located in this State if the dealer sold or leased a motor vehicle to a customer who either exported the vehicle to a foreign country or who resold the vehicle to a third party and the dealer, prior to the customer's purchase or lease of the vehicle from the dealer, had actual knowledge that the customer intended to export or resell the motor vehicle.

(3) The adverse action and discrimination prohibited under this subsection includes, but is not limited to, a manufacturer's actual or threatened:

- a. Failure or refusal to allocate, sell, or deliver motor vehicles to the dealer;
 - b. Discrimination against any dealer in the allocation of vehicles;
 - c. Charging back or withholding payments or other compensation or consideration that a dealer is otherwise entitled to receive and that is not otherwise the subject of a dispute for warranty reimbursement or under a sales promotion, incentive program, contest, or other program or policy that would provide any compensation or support for the dealer;
 - d. Disqualification of a dealer from participating in, or discrimination against any dealer relating to, any sales promotion, incentive program, contest, or other program or policy that would provide any compensation or support for the dealer;
 - e. Termination of a franchise; or
 - f. The imposition of any fine, penalty, chargeback, or other disciplinary or punitive measure.
- (4) In any proceeding brought pursuant to this subsection, the affected manufacturer shall have the burden of proving that the dealer knew or reasonably should have known that the customer intended to export or resell the motor vehicle prior to the customer's purchase or lease of the vehicle from the dealer, subject to the following provisions:
- a. There shall be a rebuttable presumption that the dealer, prior to the customer's purchase or lease of the vehicle, did not know nor should have reasonably known that the customer intended to export or resell the motor vehicle, if:
 - 1. Following the sale or lease, the dealer submitted the requisite documentation to the appropriate governmental entity to enable the vehicle to be titled, registered and, where applicable, sales or highway use tax paid in any state or territory within the United States in the name of a customer who was physically present at the dealership at or prior to the time of sale or lease; and
 - 2. The customer's identifying information was not included on a list of known or suspected exporters or resellers identified and made readily accessible to the dealer by the applicable manufacturer at the time of the sale or lease.
 - b. There shall be a rebuttable presumption that the dealer, prior to the customer's purchase or lease of the vehicle, knew or reasonably should have known that the customer intended to export or resell the motor vehicle if the customer's identifying information was included on a list of known or suspected exporters or resellers identified and made readily accessible to the dealer by the applicable manufacturer at the time of the sale or lease.
 - c. Nothing contained in subdivision (2) of this subsection shall be deemed to prevent or prohibit the Commissioner or the affected manufacturer from considering one or more of the factors delineated in sub-subdivisions a. through c. of subdivision (2) of this subsection in determining whether the dealer knew or reasonably should have known

that the customer intended to export or resell the motor vehicle prior to the customer's purchase or lease of the vehicle from the dealer.

- (5) Any audit of a dealer by a manufacturer for sales or leases made to known exporters or brokers may only be conducted one time within any 12-month period and shall only be for the 12-month period immediately preceding the audit, provided, however, that nothing in this subsection shall prohibit or limit the ability of a manufacturer, factory branch, distributor, or distributor branch to conduct any audit of sales or leases made by one of its franchised dealers to known exporters or brokers for cause at any time during the permitted time period. For purposes of this subdivision, the term "for cause" means the dealer's sale or lease of motor vehicles to individuals identified on a list of known motor vehicle exporters or brokers previously provided by or posted on a Web site made accessible to the dealer by the manufacturer, factory branch, distributor, or distributor branch or reasonable evidence that the dealer knew or reasonably should have known that the customer intended to export or resell the motor vehicle.

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

(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), (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.

(d) Transportation damages. –

- (1) Notwithstanding the terms, provisions or conditions of any agreement or franchise, the manufacturer is liable for all damages to motor vehicles before delivery to a carrier or transporter.

- (2) If a new motor vehicle dealer determines the method of transportation, the risk of loss passes to the dealer upon delivery of the vehicle to the carrier.
- (3) In every other instance, the risk of loss remains with the manufacturer until such time as the new motor vehicle dealer or his designee accepts the vehicle from the carrier.
- (4) Whenever a motor vehicle is damaged while in transit when the carrier or the means of transportation is designated by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to the dealer, the dealer must:
 - a. Notify the manufacturer or distributor of such damage within three working days or within such additional time as authorized by the franchise agreement of the occurrence of the delivery of the motor vehicle as defined in subsection (1) of this section; and
 - b. Must request from the manufacturer or distributor authorization to repair the damages sustained or to replace the parts or accessories damaged.
- (5) In the event the manufacturer or distributor refuses or fails to authorize repair or replacement of any such damage within ten working days after receipt of notification of damage by the dealer, ownership of the motor vehicle shall revert to the manufacturer or distributor, and the dealer shall incur no obligation, financial or otherwise, for such damage to the motor vehicle.
- (5a) No manufacturer shall fail to disclose in writing to a new motor vehicle dealer, at the time of delivery of a new motor vehicle, the nature and extent of any and all damage and post-manufacturing repairs made to such motor vehicle while in the possession or under the control of the manufacturer if the cost of such post-manufacturing repairs exceeds three percent (3%) of the manufacturer's suggested retail price. A manufacturer is not required to disclose to a new motor vehicle dealer that any glass, tires or bumper of a new motor vehicle was damaged at any time if the damaged item has been replaced with original or comparable equipment.
- (6) Nothing in this subsection (d) shall relieve the dealer of the obligation to cooperate with the manufacturer as necessary in filing any transportation damage claim with the carrier.

(e) **Damage/Repair Disclosure.** – Notwithstanding the provisions of subdivision (d)(4) of this section and in supplementation thereof, a new motor vehicle dealer shall disclose in writing to a purchaser of the new motor vehicle prior to entering into a sales contract any damage and repair to the new motor vehicle if the damage exceeds five percent (5%) of the manufacturer's suggested retail price as calculated at the rate of the dealer's authorized warranty rate for labor and parts.

- (1) A new motor vehicle dealer is not required to disclose to a purchaser that any damage of any nature occurred to a new motor vehicle at any time if the total cost of all repairs fails to exceed five percent (5%) of the manufacturer's suggested retail price as calculated at the time the repairs were made based upon the dealer's authorized warranty rate for labor and parts and the damaged item has been replaced with original or comparable equipment.

- (2) If disclosure is not required under this section, a purchaser may not revoke or rescind a sales contract or have or file any cause of action or claim against the dealer or manufacturer for breach of contract, breach of warranty, fraud, concealment, unfair and deceptive acts or practices, or otherwise due solely to the fact that the new motor vehicle was damaged and repaired prior to completion of the sale.
- (3) For purposes of this section, "manufacturer's suggested retail price" means the retail price of the new motor vehicle suggested by the manufacturer including the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer which is not included within the retail price suggested by the manufacturer for the new motor vehicle.

(f) The provisions of subsections (a), (b), (b1), (d) and (e) shall not apply to manufacturers and dealers of "motorcycles" as defined in G.S. 20-4.01(27).

(f1) The provisions of subsections (a), (b), (b1), (b2), and (c) of this section applicable to a motor vehicle manufacturer shall also apply to a component parts manufacturer. For purposes of this section, a component parts manufacturer means a person, resident, or nonresident of this State who manufactures or assembles new motor vehicle "component parts" and directly warrants the component parts to the consumer. For purposes of this section, component parts means an engine, power train, rear axle, or other part of a motor vehicle that is not warranted by the final manufacturer of the motor vehicle.

(f2) The provisions of subsections (d) and (e) of this section shall not apply to a State agency that assists the United States Department of Defense with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad.

(g) **Truck Dealer Cost Reimbursement.** – Every manufacturer, manufacturer branch, distributor, or distributor branch of new motor vehicles, or any affiliate or subsidiary thereof, which manufactures or distributes new motor vehicles with a gross vehicle weight rating of 16,000 pounds or more shall compensate its new motor vehicle dealers located in this State for the cost of special tools, equipment, and training for which its dealers are liable when the applicable manufacturer, manufacturer branch, distributor, or distributor branch sells a portion of its vehicle inventory to converters and other nondealer retailers. The purpose of this reimbursement is to compensate truck dealers for special additional costs these dealers are required to pay for servicing these vehicles when the dealers are excluded from compensation for these expenses at the point of sale. The compensation which shall be paid pursuant to this subsection shall be applicable only with respect to new motor vehicles with a gross vehicle weight rating of 16,000 pounds or more which are registered to end users within this State and that are sold by a manufacturer, manufacturer branch, distributor, or distributor branch to either of the following:

- (1) Persons or entities other than new motor vehicle dealers with whom the manufacturer, manufacturer branch, distributor, or distributor branch has entered into franchises.
- (2) Persons or entities that install custom bodies on truck chassis, including, but not limited to, mounted equipment or specialized bodies for concrete distribution,

firefighting equipment, waste disposal, recycling, garbage disposal, buses, utility service, street sweepers, wreckers, and rollback bodies for vehicle recovery; provided, however, that no compensation shall be required to be paid pursuant to this subdivision with respect to vehicles sold for purposes of manufacturing or assembling school buses. Additionally, no compensation shall be required to be paid pursuant to this subdivision with respect to any vehicles that were sold to the end user by a franchised new motor vehicle dealer.

The amount of compensation that shall be payable by the applicable manufacturer, manufacturer branch, distributor, or distributor branch shall be one thousand five hundred dollars (\$1,500) per new motor vehicle registered in this State whose chassis has a gross vehicle weight rating of 16,000 pounds or more. The compensation required pursuant to this subsection shall be paid by the applicable manufacturer, manufacturer branch, distributor, or distributor branch to its franchised new motor vehicle dealer in closest proximity to the registered address of the end user to whom the motor vehicle has been registered within 30 days after registration of the vehicle. Upon receiving a request in writing from one of its franchised dealers located in this State, a manufacturer, manufacturer branch, distributor, or distributor branch shall promptly make available to the dealer its records relating to the registered addresses of its new motor vehicles registered in this State for the previous 12 months and its payment of compensation to dealers as provided in this subsection.

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

(i) Compensation for Used Motor Vehicle Recall. – Notwithstanding the terms of any franchise or other agreement other than an agreement permitted by this subsection (i) of this section, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to compensate a franchised motor vehicle dealer for any qualifying used motor vehicle in the inventory of a dealer authorized to sell new motor vehicles of the same line-make or by a dealer authorized to perform recall repairs on vehicles of the same line-make in the manner specified in this subsection. The manufacturer, factory branch, distributor, or distributor branch shall compensate the dealer

for any qualifying used motor vehicle in the inventory of the dealer at the prorated rate of at least one and one-half percent (1.5%) per month of the average trade-in value of the qualifying used motor vehicle beginning on the date the vehicle becomes a qualifying used motor vehicle and ending on and including the date the vehicle ceases to be a qualifying used motor vehicle pursuant to subsection (j) of this section. Any claim by a dealer for compensation owed under this subsection may be submitted by the dealer on a monthly basis, and the manufacturer, factory branch, distributor, or distributor branch shall approve or disapprove the claim within 30 days of receipt of the claim and shall process and pay the claim within 60 days after the approval of the claim. Every manufacturer, manufacturer branch, distributor, and distributor branch licensed by the Commissioner under this Article shall establish a simple, convenient, and efficient process for its franchised dealers to submit claims for compensation under this subsection on a monthly basis. Such process shall provide for a manner and method for a dealer to demonstrate the inventory status of a qualifying used motor vehicle, provided the manner and method is reasonable and does not require information that is unduly burdensome. Nothing in this subsection shall prohibit a manufacturer, factory branch, distributor, or distributor branch from compensating a dealer for a qualifying used motor vehicle under a national recall compensation program instead of the basis established in this section, provided that the compensation paid to dealers under the program is equal to or exceeds the level of compensation required by this subsection on a monthly basis and the compensation payments are made within the time periods required by this section. Nothing in this subsection shall prohibit a dealer and a manufacturer, factory branch, distributor, or distributor branch from voluntarily entering an agreement the sole subject matter of which is compensation for a dealer for a used motor vehicle subject to a recall and which provides a compensation amount or other related terms that differ from the compensation amount and other requirements specified in subsection (j) of this section provided that the dealer's ability to participate in or qualify for any incentive program offered or sponsored by the manufacturer or distributor or to otherwise receive any discounts, credits, rebates, or incentives of any kind is not conditioned upon the dealer's willingness to enter such an agreement. Nothing in this subsection shall require a manufacturer, factory branch, distributor, or distributor branch to provide total compensation in excess of the total average trade-in value of the qualifying used motor vehicle.

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

- (1) "Average trade-in value" means the value of a used motor vehicle as determined by reference to a generally accepted, nationally published, third-party used vehicle valuation guide book.
- (2) "Qualifying used motor vehicle" means a motor vehicle that meets all of the following: (i) a used motor vehicle of a line-make for which the dealer holds an active franchise with the manufacturer to sell and service new motor vehicles; (ii) a used motor vehicle of a model subject to a recall notice and subject to or covered under a stop-sale or do-not-drive order issued by the manufacturer of the motor vehicle or issued by the National Highway Traffic Safety Administration; (iii) parts or other remedy sufficient to fully repair the underlying defect that resulted in the recall of the motor vehicle to the extent

that the motor vehicle is no longer subject to or covered by a stop-sale or do-not-drive order issued by the manufacturer of the motor vehicle were not made available to the dealer within 30 days of the date of the notice of recall by the manufacturer; (iv) a motor vehicle in the dealer's inventory or otherwise owned by the dealer at the time a stop-sale or do-not-drive order is issued or taken into the used motor vehicle inventory of the dealer as a consumer trade-in incident to the purchase of a motor vehicle from the dealer after the stop-sale or do-not-drive order is issued. A motor vehicle meeting the definition of a "qualifying used motor vehicle" pursuant to this subdivision shall cease to be a "qualifying used motor vehicle" on the earlier of the following: (i) the date the remedy or parts to fully repair the underlying defect that resulted in the recall of the motor vehicle to an extent that the motor vehicle is no longer subject to or covered by a stop-sale or do-not-drive order issued by the manufacturer of the motor vehicle are made available to the dealer; (ii) the date the dealer sells, trades, or otherwise disposes of the qualifying used motor vehicle; or (iii) the date the manufacturer provides notice to the dealer that the stop-sale or do-not-drive order is no longer in effect.

- (3) "Stop-sale or do-not-drive order" means a notification, directive, or order issued by a manufacturer, factory branch, distributor, or distributor branch to its franchised dealers or issued by the National Highway Traffic Safety Administration stating that motor vehicle models of certain used vehicles in inventory shall not be sold or leased, at either retail or wholesale, due to a federal safety recall for a defect or a noncompliance recall, or a federal emissions recall.

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

(k) Any compensation provided to the dealer that meets the minimum requirements of subsection (i) of this section is exclusive and may not be combined with any other state or federal recall compensation civil remedy for used motor vehicles subject to recall. (1973, c. 88, s. 3; c. 1331, s. 3; 1983, c. 704, ss. 11-13; 1987, c. 827, s. 1; 1989, c. 614, ss. 1, 2; 1991, c. 561, ss. 1-4; 1993, c. 116, ss. 1, 2; 1995, c. 156, s. 1; 1997-319, s. 4; 1999-335, ss. 3, 3.1, 4; 2003-113, s. 5; 2003-258, s. 4; 2007-513, ss. 5-7, 11; 2009-338, ss. 3, 4; 2009-550, s. 2(c); 2011-290, s. 10; 2013-302, s. 10; 2015-209, ss. 6, 7, 8, 9; 2017-148, s. 3; 2018-27, s. 2; 2019-125, ss. 6, 9.)

§ 20-305.2. Unfair methods of competition; protection of car-buying public.

(a) It is unlawful for any motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, to directly or indirectly through any parent, subsidiary, or affiliated entity, whether or not such motor vehicle manufacturer, factory

branch, distributor, distributor branch, or subsidiary thereof has entered into a franchise, within the meaning of G.S. 20-286(8a), with any person or entity in this State, own any ownership interest in, operate, or control any motor vehicle dealer in this State or any entity in this State that provides warranty service or repairs at retail, to file a motor vehicle dealer application with the Division pursuant to G.S. 20-288, or to be licensed by the Division as a motor vehicle dealer, provided that this section shall not be construed to prohibit any of the following:

- (1) The operation by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, of a dealership for a temporary period (not to exceed one year) during the transition from one owner or operator to another.
- (2) The ownership or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, while in a bona fide relationship with an economically disadvantaged or other independent person, other than a manufacturer, factory branch, distributor, distributor branch, or an agent or affiliate thereof, who has made a bona fide, unencumbered initial investment of at least six percent (6%) of the total sales price that is subject to loss in the dealership and who can reasonably expect to acquire full ownership of the dealership within a reasonable period of time, not to exceed 12 years, and on reasonable terms and conditions.
- (3) The ownership, operation or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, if such manufacturer, factory branch, distributor, distributor branch, or subsidiary has been engaged in the retail sale of motor vehicles through such dealership for a continuous period of three years prior to March 16, 1973, and if the Commissioner determines, after a hearing on the matter at the request of any party, that there is no independent dealer available in the relevant market area to own and operate the franchise in a manner consistent with the public interest.
- (4) Repealed by Session Laws 2019-125, s. 10, effective July 19, 2019.
- (4a) The ownership, operation, or control of a maximum total number of five motor vehicle dealership locations within this State prior to December 31, 2020, or a maximum total number of six motor vehicle dealership locations within this State on or after January 1, 2021, by a manufacturer that manufactures and sells only motor vehicles that are plug-in electric vehicles that do not rely on any nonelectric source of power in all modes of operation; provided, however, that this subdivision shall be applicable only to a manufacturer that had at least one motor vehicle dealership licensed in this State by the Division as of March 1, 2019. The Division shall deny any motor vehicle dealer application that, if granted by the Division, would allow said manufacturer, or any parent, subsidiary, or other person or entity affiliated with the manufacturer, to own, operate, or control any more than the maximum total number of motor vehicle dealership locations in this State permitted by this subdivision. Provided further, that the Commissioner shall promptly revoke any motor vehicle dealer license granted under this section upon discovery of the occurrence of any of the following events:

- a. The manufacturer ceases to manufacture or distribute only motor vehicles that are electric vehicles that do not rely on any nonelectric source of power in all modes of operation.
 - b. The manufacturer enters into a franchise with any dealer located in this State.
 - c. The manufacturer acquires a substantial affiliation with any motor vehicle manufacturer or distributor that currently has or at any point in the past has ever entered into a franchise with a dealer located in this State. For purposes of this sub-subdivision, the term "substantial affiliation" means either of the following:
 - 1. The ownership by the manufacturer of a direct or indirect interest of greater than thirty percent (30%) of the shareholder voting control of an entity that is a motor vehicle manufacturer, factory branch, distributor, or distributor branch, as these terms are defined in G.S. 20-286.
 - 2. The combined direct or indirect ownership by one or more motor vehicle manufacturers, factory branches, distributors, or distributor branches, as these terms are defined in G.S. 20-286, or one of their affiliates, of greater than thirty percent (30%) of the shareholder voting control of the manufacturer.
 - d. The manufacturer sells or offers for sale any new motor vehicles identified as, or bearing the logo or brand of, a motor vehicle manufacturer or distributor which has any franchised dealers within this State, provided, however, that this provision shall not be deemed to be violated if any component parts of a motor vehicle are branded with the name of or logo of another motor vehicle manufacturer as long as the vehicle as a whole is clearly identified as, and branded exclusively with the brand of the electric vehicle manufacturer that holds the motor vehicle dealer license.
- (5) The ownership, operation, or control of any facility (location) of a new motor vehicle dealer in this State at which the dealer sells only new and used motor vehicles with a gross weight rating of 8,500 pounds or more, provided that both of the following conditions have been met:
- a. The facility is located within 35 miles of manufacturing or assembling facilities existing as of January 1, 1999, and is owned or operated by the manufacturer, manufacturing branch, distributor, distributor branch, or any affiliate or subsidiary thereof which assembles, manufactures, or distributes new motor vehicles with a gross weight rating of 8,500 pounds or more by such dealer at said location; and
 - b. The facility is located in the largest Standard Metropolitan Statistical Area (SMSA) in the State.
- (6) As to any line make of motor vehicle for which there is in aggregate no more than 13 franchised new motor vehicle dealers (locations) licensed and in operation within the State as of January 1, 1999, the ownership, operation, or control of one or more new motor vehicle dealership trading solely in such line make of vehicle by the manufacturer, factory branch, distributor, distributor

branch, or subsidiary or affiliate thereof, provided however, that all of the following conditions are met:

- a. The manufacturer, factory branch, distributor, distributor branch, or subsidiary or affiliate thereof does not own directly or indirectly, in aggregate, in excess of forty-five percent (45%) interest in the dealership;
- b. At the time the manufacturer, factory branch, distributor, distributor branch, or subsidiary or affiliate thereof first acquires ownership or assumes operation or control with respect to any such dealership, the distance between the dealership thus owned, operated, or controlled and the nearest other new motor vehicle dealership trading in the same line make of vehicle, is no less than 35 miles;
- c. All the manufacturer's franchise agreements confer rights on the dealer of the line make to develop and operate within a defined geographic territory or area, as many dealership facilities as the dealer and manufacturer shall agree are appropriate; and
- d. That as of July 1, 1999, not fewer than half of the dealers of the line make within the State own and operate two or more dealership facilities in the geographic territory or area covered by the franchise agreement with the manufacturer.

(7) The ownership, operation, or control of a dealership that sells primarily recreational vehicles as defined in G.S. 20-4.01 by a manufacturer, factory branch, distributor, or distributor branch, or subsidiary thereof, if the manufacturer, factory branch, distributor, or distributor branch, or subsidiary thereof, owned, operated, or controlled the dealership as of October 1, 2001.

(8) A manufacturer that manufactures and distributes only low-speed vehicles that meet the applicable NHTSA standards for low-speed vehicles; provided, however, that this subdivision is applicable only to a manufacturer that had at least one motor vehicle dealership licensed in this State by the Division as of March 1, 2019.

(b) Subsection (a) of this section does not apply to manufacturers or distributors of trailers or semitrailers that are not recreational vehicles as defined in G.S. 20-4.01.

(c) For purposes of subsection (d) of this section, the following definitions apply:

(1) Former Franchisee. – A new motor vehicle dealer, as defined in G.S. 20-286(13), that has entered into a franchise, as defined in G.S. 20-286(8a) with a predecessor manufacturer and that has either:

- a. Entered into a termination agreement or deferred termination agreement with a predecessor or successor manufacturer related to such franchise; or
- b. Has had such franchise canceled, terminated, nonrenewed, noncontinued, rejected, nonassumed, or otherwise ended.

(2) Relevant market area. – The area within a 10-, 15-, or 20-mile radius around the site of the previous franchisee's dealership facility, as determined in the same manner that the relevant market area is determined under G.S. 20-286(13b) when a manufacturer is seeking to establish an additional new motor vehicle dealer.

- (3) Successor manufacturer. – Any motor vehicle manufacturer, as defined in G.S. 20-286(8e), that, on or after January 1, 2009, acquires, succeeds to, or assumes any part of the business of another manufacturer, referred to as the "predecessor manufacturer," as the result of any of the following:
- a. A change in ownership, operation, or control of the predecessor manufacturer by sale or transfer of assets, corporate stock or other equity interest, assignment, merger, consolidation, combination, joint venture, redemption, court-approved sale, operation of law or otherwise.
 - b. The termination, suspension, or cessation of a part or all of the business operations of the predecessor manufacturer.
 - c. The discontinuance of the sale of the product line.
 - d. A change in distribution system by the predecessor manufacturer, whether through a change in distributor or the predecessor manufacturer's decision to cease conducting business through a distributor altogether.

(d) For a period of four years from the date that a successor manufacturer acquires, succeeds to, or assumes any part of the business of a predecessor manufacturer, it shall be unlawful for such successor manufacturer to enter into a same line make franchise with any person, as defined in G.S. 20-4.01(28), or to permit the relocation of any existing same line make franchise, for a line make of the predecessor manufacturer that would be located or relocated within the relevant market area of a former franchisee who owned or leased a dealership facility in that relevant market area without first offering the additional or relocated franchise to the former franchisee, or the designated successor of such former franchisee in the event the former franchisee is deceased or disabled, at no cost and without any requirements or restrictions other than those imposed generally on the manufacturer's other franchisees at that time, unless one of the following applies:

- (1) As a result of the former franchisee's cancellation, termination, noncontinuance, or nonrenewal of the franchise, the predecessor manufacturer had consolidated the line make with another of its line makes for which the predecessor manufacturer had a franchisee with a then-existing dealership facility located within that relevant market area.
- (2) The successor manufacturer has paid the former franchisee, or the designated successor of such former franchisee in the event the former franchisee is deceased or disabled, the fair market value of the former franchisee's franchise calculated as prescribed in G.S. 20-305(6)d.3.
- (3) The successor manufacturer proves that the former franchisee, or the designated successor of such former franchisee in the event the former franchisee is deceased or disabled, by reason of lack of training, lack of prior experience, poor past performance, lack of financial ability, or poor character, is unfit to own or manage the dealership. A successor manufacturer who seeks to assert that a former franchisee is unfit to own or manage the dealership must file a petition seeking a hearing on this issue before the Commissioner and shall have the burden of proving lack of fitness at such hearing. The Commissioner shall try to conduct the hearing and render a final determination within 120 days after the manufacturer's petition has been filed. No successor dealer, other than the former franchisee, may be appointed or franchised by the successor

manufacturer within the relevant market area until the Commissioner has held a hearing and rendered a determination on the issue of the fitness of the previous franchisee to own or manage the dealership.

(e) For purposes of this section, an unfair method of competition includes any physical or mechanical warranty repair made or provided directly by a manufacturer or distributor to any motor vehicle located within this State requiring the direct participation of a dealer franchised by the manufacturer or distributor and without such dealer receiving reasonable compensation, equal to an amount no less than the amount provided in G.S. 20-305.1.

(f) No claim or cause of action may be brought against a dealer in this State arising out of any warranty repair, fix, repair, or update that was provided by the manufacturer or distributor without the direct involvement and participation of the dealer. Any manufacturer or distributor that provides or attempts to provide a warranty repair, fix, repair, update, or adjustment directly to any motor vehicle located within this State without the direct participation of a dealer franchised by the manufacturer or distributor shall fully indemnify and hold harmless any dealer located in this State for all claims, demands, judgments, damages, attorneys' fees, litigation expenses, and all other costs and expenses incurred by the dealer arising out of the actual or attempted warranty repair, fix, repair, update, or adjustment. (1973, c. 88, s. 3; 1983, c. 704, ss. 14, 15; 1999-335, s. 5; 2001-510, s. 3; 2002-72, ss. 19(d), 19(e); 2003-416, s. 11; 2009-496, s. 2; 2013-302, s. 8; 2019-125, s. 10.)

§ 20-305.3. Hearing notice.

In every case of a hearing before the Commissioner authorized under this Article, the Commissioner shall give reasonable notice of each such hearing to all interested parties, and the Commissioner's decision shall be binding on the parties, subject to the rights of judicial review and appeal as provided in Chapter 150B of the General Statutes. The costs of such hearings shall be assessed by the Commissioner. (1973, c. 88, s. 3; c. 1331, s. 3; 1987, c. 827, s. 1.)

§ 20-305.4. Motor Vehicle Dealers' Advisory Board.

(a) The Motor Vehicle Dealers' Advisory Board shall consist of six members; three of which shall be appointed by the Speaker of the House of Representatives, and three of which shall be appointed by the President Pro Tempore of the Senate to consult with and advise the Commissioner with respect to matters brought before the Commissioner under the provisions of G.S. 20-304 through 20-305.4.

(b) Each member of the Motor Vehicle Dealers' Advisory Board shall be a resident of North Carolina. Three members of the Board shall be franchised dealers in new automobiles or trucks, duly licensed and engaged in business as such in North Carolina, provided that no two of such dealers may be franchised to sell automobiles or trucks manufactured or distributed by the same person or a subsidiary or affiliate of the same person. Three members of the Board shall not be motor vehicle dealers or employees of a motor vehicle dealer.

(c) The Speaker shall appoint two of the dealer members and one of the public members and shall fill any vacancy in said positions and the President Pro Tempore of the Senate shall appoint one of the dealer members and two of the public members and shall fill any vacancy in said positions. In making the initial appointments the Speaker shall designate that the two dealer

members shall serve for one and three years respectively and the public member shall serve for two years, and in making the initial appointments the Lieutenant Governor shall designate that the dealer member shall serve for two years and the two public members shall serve for one and three years respectively.

(d) Two members of the first Board appointed shall serve for a period of three years, two members of the first Board shall serve for a period of two years, and two members of the first Board shall serve for a period of one year. Subsequent appointments shall be for terms of three years, except appointments to fill vacancies which shall be for the unexpired terms. Members of the Board shall meet at the call of the Commissioner and shall receive as compensation for their services seven dollars (\$7.00) for each day actually engaged in the exercise of the duties of the Board and such travel expenses and subsistence allowances as are generally allowed other State commissions and boards. (1973, c. 88, s. 3; 1995, c. 490, s. 36.)

§ 20-305.5. Recreational vehicle manufacturer warranty recall obligations.

(a) It is unlawful for any manufacturer, factory branch, distributor, or distributor branch that manufactures or distributes recreational vehicles to fail to fully compensate its dealers located in this State in accordance with this section for warranty or recall work performed by the dealers related to the living facilities of the vehicle, including all labor and parts used to repair such living facilities and any equipment, plumbing, appliances, and other options included by the manufacturer, factory branch, distributor, or distributor branch in the purchase price paid by the dealer for the vehicle. For purposes of this section, the term "recreational vehicle" includes motor homes, travel trailers, fifth-wheel trailers, camping trailers, and truck campers as defined by G.S. 20-4.01(32b). With respect to those portions of the living facilities of recreational vehicles and any equipment, plumbing, appliances, and other options that are part of such living facilities and that are included by the recreational vehicle manufacturer, factory branch, distributor, or distributor branch in the purchase price paid by the dealer for the vehicle, the term "warrantor" shall mean any manufacturer or distributor of such living facilities or any equipment, plumbing, appliances, and other options that are part of such living facilities that offers a warranty in writing to either the recreational vehicle dealer or to the ultimate purchaser of the recreational vehicle. The term "warrantor" does not include a person that provides a service contract, mechanical or other insurance, or an extended warranty sold for separate consideration by a dealer or other person not controlled by a warrantor. Notwithstanding the terms or conditions of any contract or agreement, it is unlawful for any recreational vehicle manufacturer, factory branch, distributor, or distributor branch to fail to fully and timely compensate any of its franchised recreational vehicle dealers located in this State in accordance with this section for all parts and labor used by such franchised dealers in making warranty or recall repairs to such living facilities of recreational vehicles, including any equipment, plumbing, appliances, and other options included by the recreational vehicle manufacturer, factory branch, distributor, or distributor branch in the purchase price paid by the dealer for the vehicle, to the extent that the individual components of such living facilities are not separately warranted by the manufacturers or distributors of such components. Notwithstanding the terms or conditions of any warranty, contract, or agreement, it is unlawful for any warrantor, as defined in this subdivision, to fail to fully

and timely compensate any franchised recreational vehicle dealer located in this State in accordance with this section for all parts and labor used by such franchised recreational vehicle dealer in making warranty or recall repairs to any component parts of the living facilities of recreational vehicles manufactured or distributed by such warrantor, including any equipment, plumbing, appliances, and other options included by a recreational vehicle manufacturer, factory branch, distributor, or distributor branch in the purchase price paid by the dealer for the vehicle.

(b) Each warrantor as defined in this subdivision and each recreational vehicle manufacturer, factory branch, distributor, and distributor branch that sells or distributes recreational vehicles in this State shall specify in writing to each recreational vehicle dealer licensed in this State who sells products manufactured or distributed by such warrantor or such recreational vehicle manufacturer, factory branch, distributor, or distributor branch, the recreational vehicle dealer's obligations for preparation, delivery, and warranty and recall service on its products, the schedule of compensation to be paid such dealers for parts, work, and service in connection with warranty or recall service, and the time allowances for the performance of such work and service. In no event shall such schedule of compensation fail to include reasonable compensation for diagnostic work and associated administrative requirements as well as repair service, labor, and transportation provided by the dealer to transport a recreational vehicle to and from a location at which the repairs can be made. Provided, however, that with respect to reimbursement for a recreational vehicle dealer's transportation expenses, the dealer is required to obtain the prior written authorization of the affected warrantor before incurring any transportation expenses, which authorization shall not be unreasonably denied by the warrantor, and provided further that any such request for transportation reimbursement must be denied by the warrantor within 5 business days of the warrantor's receipt of the dealer's request for reimbursement or the request shall be deemed authorized and allowed. Time allowances for the performance of warranty work and service shall be reasonable and adequate for the work to be performed. The compensation which must be paid under this section must be reasonable; provided, however, that under no circumstances may the reasonable compensation under this section be in an amount less than the recreational vehicle dealer's current retail labor rate for nonwarranty work of like kind, provided such amount is competitive with the retail rates charged for parts and labor by other franchised recreational dealers within the dealer's market.

(c) A warrantor may not require a dealer to establish the rate customarily charged by the recreational vehicle dealer for labor by an unduly burdensome or time-consuming method or by requiring information that is unduly burdensome or time-consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations.

(d) For any part, equipment, plumbing system or device, or appliance or option, a warrantor shall reimburse the dealer the cost of the part, equipment, plumbing system or device, appliance or option, plus a minimum of a thirty percent (30%) handling charge and pay the cost, if any, of freight to return the part, equipment, appliance, or option to the warrantor.

(e) If a warrantor furnishes a part or component to a dealer, at reduced or no cost, to use in performing repairs under a warranty or recall repair, the warrantor shall compensate the dealer for the part or component in the same manner as warranty parts compensation under this section, by compensating the dealer on the basis of a thirty percent (30%) handling charge for the part or component as listed in the warrantor's price schedule less the cost for the part or component.

(f) Notwithstanding the terms of any warranty, contract, or agreement, all claims made by recreational dealers pursuant to this section for compensation for delivery, preparation, warranty and recall work, and transportation costs, including labor, parts, and other expenses, shall be paid by the affected warrantor 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 warrantor 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 (i) made a good-faith attempt to perform the work in compliance with the written policies and procedures of the warrantor and (ii) actually performed the work.

Notwithstanding the foregoing, a warrantor 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 warrantor's claim documentation procedure or procedures unless both of the following requirements have been met:

- (1) The dealer has, within the previous 12 months, failed to comply with the same specific claim documentation procedure or procedures.
- (2) The warrantor 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.

(g) Every recreational vehicle manufacturer, factory branch, distributor, or distributor branch that manufactures or distributes recreational vehicles for sale in this State shall designate at least one of its employees knowledgeable in warranty administration who shall be the designated warranty contact person with whom its franchised dealers licensed in this State can communicate to assist them in filing and getting paid on warranty claims related to all component parts of all recreational vehicles such recreational vehicle manufacturer, factory branch, distributor, or distributor branch sells or distributes in this State. Each recreational vehicle manufacturer, factory branch, distributor, or distributor branch shall promptly notify, in writing, all of its franchised recreational vehicle dealers licensed in this State, the Commissioner, and the North Carolina Automobile Dealers Association, Incorporated, of the identity and contact information of the designated

warranty contact person and any changes in this information. A recreational vehicle manufacturer or distributor that represents multiple suppliers or multiple line-makes of vehicles shall be permitted to designate a single individual as the designated warranty contact person for all such suppliers and line-makes of vehicles represented by such recreational vehicle manufacturer or distributor.

(h) It shall be unlawful for any warrantor or for any recreational vehicle manufacturer, factory branch, distributor, or distributor branch to recover or attempt to recover all or any portion of its costs for compensating recreational vehicle dealers licensed in this State for warranty or recall parts and service either by reduction in the amount due to the dealer or by separate charge, surcharge, or other imposition.

(i) It shall be unlawful for any recreational vehicle manufacturer, factory branch, distributor, or distributor branch 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 recreational vehicle dealer, arising out of complaints, claims, or lawsuits, including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or rescission or revocation of acceptance of the sale of a 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 recreational vehicles, parts, or accessories or other functions by the manufacturer, factory branch, distributor, or distributor branch beyond the control of the dealer. It shall be unlawful for any warrantor to fail to indemnify and hold harmless any recreational vehicle dealer located in this State who sold one or more products warranted by such warrantor against any judgment for damages or settlements agreed to by the warrantor, including, but not limited to, court costs and reasonable attorneys' fees of the recreational vehicle dealer, arising out of complaints, claims, or lawsuits, including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or rescission or revocation of acceptance of the sale of a vehicle or vehicle part, component, or accessory, 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 a product warranted by the warrantor or other functions of the warrantor beyond the control of the dealer. Any audit for warranty or recall parts or service compensation shall only be for the 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, distributor branch, or warrantor. Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation shall only be for the 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, distributor branch, or warrantor. Provided, however, these limitations shall not be effective in the case of fraudulent claims.

(j) It shall be unlawful for any warrantor or for any recreational vehicle manufacturer, factory branch, distributor, or distributor branch to direct or encourage any owner or purchaser of a recreational vehicle to have warranty or recall service work or other repairs on a recreational vehicle made by a repair facility other than either the franchised dealer that sold the vehicle owner the recreational vehicle or the franchised

dealer closest in proximity to such recreational vehicle owner or purchaser, provided that the recreational vehicle dealer who sold the vehicle to the owner or purchaser or who is located in closest proximity to such recreational vehicle owner or purchaser has sufficiently trained personnel and the necessary tools and equipment to make the required repairs to the vehicle, has not expressly stated in writing its desire to have the repairs made elsewhere, and is willing to make the repairs within a reasonable period of time after the necessary parts have been supplied to the dealer.

(k) In the event there is a dispute between a recreational vehicle dealer and a warrantor or a recreational vehicle manufacturer, factory branch, distributor, or distributor branch, with relating to any matter referred to in 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 warrantor's warranty. Upon the filing of a petition before the Commissioner under this subsection, any chargeback to or any payment required of a recreational vehicle dealer by a warrantor or by a recreational vehicle manufacturer, factory branch, distributor, or distributor branch 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.

(l) The provisions of G.S. 20-305(4) through G.S. 20-305(28) and G.S. 20-305.2 to G.S. 20-305.4 shall not apply to manufacturers of or dealers in mobile or manufactured type housing or who sell or distribute only nonmotorized recreational trailers; provided, however, that unless specifically exempted, each of these provisions shall be applicable to all recreational vehicle manufacturers, factory branches, distributors, and distributor branches who sell or distribute any motorized recreational vehicles in this State. The provisions of G.S. 20-305.1 shall not apply to manufacturers of or dealers in mobile or manufactured type housing.

(m) To the extent not expressly inconsistent with the provisions of this section, all of the terms and provisions of G.S. 20-305.1 shall be applicable to recreational vehicle dealers and to recreational vehicle manufacturers, factory branches, distributors, and distributor branches under this section. For purposes of this section and Article 12 of Chapter 20 of the General Statutes of North Carolina, the relationship between a recreational vehicle manufacturer or recreational vehicle distributor, on the one part, and a recreational vehicle dealer that is located within this State, on the other part, pursuant to which the recreational vehicle dealer purchases and resells new recreational vehicles from the recreational vehicle manufacturer or recreational vehicle distributor, shall be considered a "franchise", as this term is defined in G.S. 20-286(8a), whether or not the rights and responsibilities of the parties have been delineated in a written agreement or contract. (1973, c. 88, s. 4; 1983, c. 704, s. 18; 2017-148, s. 4.)

§ 20-305.6. Unlawful for manufacturers to unfairly discriminate among dealers.

Notwithstanding the terms of any contract, franchise, novation, or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to do any of the following:

- (1) Discriminate against any similarly situated franchised new motor vehicle dealers in this State.
- (2) Unfairly discriminate against franchised new motor vehicle dealers located in this State who have dual facilities at which the vehicles distributed by the manufacturer, factory branch, distributor, or distributor branch are sold or serviced with one or more other line makes of vehicles.
- (3) Unfairly discriminate against one of its franchised new motor vehicle dealers in this State with respect to any aspect of the franchise agreement.
- (4) Use any financial services company or leasing company owned or controlled by the manufacturer or distributor to accomplish what would otherwise be illegal conduct on the part of the manufacturer or distributor pursuant to this section. This section shall not limit the right of the financial services or leasing company to engage in business practices in accordance with the trade. (2001-510, s. 4.)

§ 20-305.7. (Effective until May 1, 2021) Protecting dealership data and consent to access dealership information.

(a) Except as expressly authorized in this section, no manufacturer, factory branch, distributor, or distributor branch shall require a new motor vehicle dealer to provide its customer lists, customer information, consumer contact information, transaction data, or service files. Any requirement by a manufacturer, factory branch, distributor, or distributor branch that a new motor vehicle dealer provide its customer lists, customer information, consumer contact information, transaction data, or service files as a condition to the dealer's participation in any incentive program or contest for a customer or dealer to receive any incentive payments otherwise earned under an incentive program or contest, for the dealer to obtain consumer or customer leads, or for the dealer to receive any other benefits, rights, merchandise, or services for which the dealer would otherwise be entitled to obtain under the franchise or any other contract or agreement, or which shall customarily be provided to dealers, shall be voidable at the option of the dealer, unless all of the following conditions are satisfied: (i) the customer information requested relates solely to the specific program requirements or goals associated with such manufacturer's or distributor's own vehicle makes and does not require that the dealer provide general customer information or other information related to the dealer; (ii) such requirement is lawful and would also not require the dealer to allow any customer the right to opt out under the federal Gramm-Leach-Bliley Act, 15 U.S.C., Subchapter I, § 1608, et seq.; and (iii) the dealer is not required to allow the manufacturer or distributor or any third party to have direct access to the dealer's computer system, but the dealer is instead permitted to provide the same dealer, consumer, or customer data or information specified by the manufacturer or distributor by timely obtaining and pushing or otherwise furnishing the required data in a widely accepted file format such as comma delimited in accordance with subsection (g1) of this section.

Nothing contained in this section shall limit the ability of the manufacturer, factory branch, distributor, or distributor branch to require that the dealer provide, or use in accordance with the law, such customer information related solely to such manufacturer's or distributor's own vehicle makes to the extent necessary to do any of the following:

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

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

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

(b) No manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor may access or utilize customer or prospect information maintained in a dealer management computer system utilized by a motor vehicle dealer located in this State for purposes of soliciting any such customer or prospect on behalf of,

or directing the customer or prospect to, any other dealer. The limitations in this subsection do not apply to any of the following:

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

No manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor may provide access to customer or dealership information maintained in a dealer management computer system utilized by a motor vehicle dealer located in this State, without first obtaining the dealer's prior express written consent, revocable by the dealer upon five business days written notice, to provide the access. Prior to obtaining this consent and prior to entering into an initial contract or renewal of a contract with a dealer located in this State, the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of, or through any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor shall provide to the dealer a written list of all specific third parties to whom any data obtained from the dealer has actually been provided within the 12-month period ending November 1 of the prior year. The list shall further describe the scope and specific fields of the data provided. In addition to the initial list, a dealer management computer system vendor or any third party acting on behalf of or through a dealer management computer system vendor shall provide to the dealer an annual list of each and every third party to whom the data is actually being provided on November 1 of each year and each and every third party to whom the data was actually provided in the preceding 12 months and for each and every third party identified, the scope and specific fields of the data provided to the third party during the 12-month period. This list shall be provided to the dealer by January 1 of each year. The lists required in this subsection of the third parties to whom any data obtained from the dealer has actually been provided shall be specific to each affected dealer. It is insufficient and unlawful for the provider of this information to furnish any dealer a list of third parties who could or may have received any of the affected dealer's data, as the information required to be provided in this subsection requires the provider of this information to state the identity and other specified information of each and every third party to whom the data was actually provided during the relevant period of time. Any dealer management computer system vendor's contract that directly relates to the transfer or accessing of dealer or dealer customer information must conspicuously state, "NOTICE TO DEALER: THIS AGREEMENT RELATES TO THE TRANSFER AND ACCESSING OF CONFIDENTIAL

INFORMATION AND CONSUMER RELATED DATA". This consent does not change any such person's obligations to comply with the terms of this section and any additional State or federal laws (and any rules or regulations adopted under these laws) applicable to the person with respect to the access. In addition, no dealer management computer system vendor shall refuse to provide a dealer management computer system to a motor vehicle dealer located in this State if the dealer refuses to provide any consent under this subsection.

(c) No dealer management computer system vendor, or third party acting on behalf of or through any dealer management computer system vendor, may access or obtain data from or write data to a dealer management computer system utilized by a motor vehicle dealer located in this State, unless the dealer management computer system allows the dealer to reasonably maintain the security, integrity, and confidentiality of the customer and dealership information maintained in the system. No dealer management computer system vendor, or third party acting on behalf of or through any dealer management computer system vendor, shall prohibit a dealer from providing a means to regularly and continually monitor the specific data accessed from or written to the dealer's computer system and from complying with applicable State and federal laws and any rules or regulations adopted under these laws. This section does not impose an obligation on a manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor to provide this capability.

(d) Any manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of or through any dealer management computer system vendor, having electronic access to customer or motor vehicle dealership data in a dealership management computer system utilized by a motor vehicle dealer located in this State shall provide notice to the dealer of any security breach of dealership or customer data obtained through the access, which at the time of the breach was in the possession or custody of the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or third party. The disclosure notification shall be made without unreasonable delay by the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or third party following discovery by the person, or notification to the person, of the breach. The disclosure notification shall describe measures reasonably necessary to determine the scope of the breach and corrective actions that may be taken in an effort to restore the integrity, security, and confidentiality of the data. These measures and corrective actions shall be implemented as soon as practicable by all persons responsible for the breach.

(e) Nothing in this section precludes, prohibits, or denies the right of the manufacturer, factory branch, distributor, or distributor branch to receive customer or dealership information from a motor vehicle dealer located in this State for the purposes of complying with federal or State safety requirements or implementing steps related to manufacturer recalls at such times as necessary in order to comply with federal and State requirements or manufacturer recalls so long as receiving this information from the dealer

does not impair, alter, or reduce the security, integrity, and confidentiality of the customer and dealership information collected or generated by the dealer.

(f) The following definitions apply to this section:

- (1) Dealer management computer system. – A computer hardware and software system that is owned or leased by the dealer, including a dealer's use of Web applications, software, or hardware, whether located at the dealership or provided at a remote location and that provides access to customer records and transactions by a motor vehicle dealer located in this State and that allows the motor vehicle dealer timely information in order to sell vehicles, parts, or services through the motor vehicle dealership.
- (2) Dealer management computer system vendor. – A seller or reseller of dealer management computer systems, a person that sells computer software for use on dealer management computer systems, or a person that services or maintains dealer management computer systems, but only to the extent that each of the sellers, resellers, or other persons listed in this subdivision are engaged in these activities.
- (3) Security breach. – An incident of unauthorized access to and acquisition of records or data containing dealership or dealership customer information where unauthorized use of the dealership or dealership customer information has occurred or is reasonably likely to occur or that creates a material risk of harm to a dealership or a dealership's customer. Any incident of unauthorized access to and acquisition of records or data containing dealership or dealership customer information or any incident of disclosure of dealership customer information to one or more third parties that has not been specifically authorized by the dealer or customer constitutes a security breach.

(g) G.S. 20-308.1(d) does not apply to an action brought under this section against a dealer management computer system vendor.

(g1) Notwithstanding any of the terms or provisions contained in this section or in any consent, authorization, release, novation, franchise, or other contract or agreement, whenever any manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of or through, or approved, referred, endorsed, authorized, certified, granted preferred status, or recommended by, any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor requires that a new motor vehicle dealer provide any dealer, consumer, or customer data or information through direct access to a dealer's computer system, the dealer is not required to provide, and shall not be required to consent to provide in any written agreement, such direct access to its computer system. The dealer may instead provide the same dealer, consumer, or customer data or information specified by the requesting party by timely obtaining and pushing or otherwise furnishing the requested data to the requesting party in a widely accepted file format such as comma delimited. When a dealer would otherwise be required to provide direct access to its computer system under the terms of a consent, authorization, release, novation, franchise, or other contract or agreement, a dealer that elects to provide data or information through other means may be charged a reasonable initial set-up fee and a reasonable processing fee based on the actual incremental costs incurred by the party requesting the data for

establishing and implementing the process for the dealer. Any term or provision contained in any consent, authorization, release, novation, franchise, or other contract or agreement that is inconsistent with any term or provision contained in this subsection is voidable at the option of the dealer.

(g2) Notwithstanding the terms or conditions of any consent, authorization, release, novation, franchise, or other contract or agreement, every manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of or through any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor, having electronic access to consumer or customer data or other information in a computer system utilized by a new motor vehicle dealer, or who has otherwise been provided consumer or customer data or information by the dealer, shall fully indemnify and hold harmless any dealer from whom it has acquired the consumer or customer data or other information from all damages, costs, and expenses incurred by the dealer. This indemnification by the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or third party acting on behalf of these entities includes, but is not limited to, judgments, settlements, fines, penalties, litigation costs, defense costs, court costs, costs related to the disclosure of security breaches, and attorneys' fees arising out of complaints, claims, civil or administrative actions, and, to the fullest extent allowable under the law, governmental investigations and prosecutions to the extent caused by a security breach; the access, storage, maintenance, use, sharing, disclosure, or retention of the dealer's consumer or customer data or other information; or maintenance or services provided to any computer system utilized by a new motor vehicle dealer.

(h) This section applies to contracts entered into on or after November 1, 2005. (2005-409, s. 4; 2007-513, s. 10; 2011-290, s. 11; 2013-302, s. 9; 2018-27, s. 3; 2019-177, s. 4.2.)

§ 20-305.7. (Effective May 1, 2021) Protecting dealership data and consent to access dealership information.

(a) Except as expressly authorized in this section, no manufacturer, factory branch, distributor, or distributor branch shall require a new motor vehicle dealer to provide its customer lists, customer information, consumer contact information, transaction data, or service files. Any requirement by a manufacturer, factory branch, distributor, or distributor branch that a new motor vehicle dealer provide its customer lists, customer information, consumer contact information, transaction data, or service files to the manufacturer, factory branch, distributor, or distributor branch, or to any third party as a condition to the dealer's participation in any incentive program or contest, for a customer or dealer to receive any incentive payments otherwise earned under an incentive program or contest, for the dealer to obtain consumer or customer leads, or for the dealer to receive any other benefits, rights, merchandise, or services for which the dealer would otherwise be entitled to obtain under the franchise or any other contract or agreement, or which shall customarily be provided to dealers, shall be voidable at the option of the dealer, and the dealer shall automatically be entitled to all benefits earned under the applicable incentive program or contest or any other contract or agreement, unless all of the following conditions are satisfied: (i) the customer

information requested relates solely to the specific program requirements or goals associated with such manufacturer's or distributor's own vehicle makes and does not require that the dealer provide general customer information or other information related to the dealer; (ii) such requirement is lawful and would also not require the dealer to allow any customer the right to opt out under the federal Gramm-Leach-Bliley Act, 15 U.S.C., Subchapter I, § 1608, et seq.; and (iii) the dealer is either permitted to restrict the data fields that may be accessed in the dealer's dealer management computer system, or the dealer is permitted to provide the same dealer, consumer, or customer data or information specified by the manufacturer or distributor by timely obtaining and pushing or otherwise furnishing the required data in a widely accepted file format such as comma delimited in accordance with subsection (g1) of this section. Nothing contained in this section shall limit the ability of the manufacturer, factory branch, distributor, or distributor branch to require that the dealer provide, or use in accordance with the law, such customer information related solely to such manufacturer's or distributor's own vehicle makes to the extent necessary to do any of the following:

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

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

No manufacturer, factory branch, distributor, or distributor branch shall access or obtain dealer or customer data from or write dealer or customer data to a dealer management computer system utilized by a motor vehicle dealer located in this State, or require or coerce a motor vehicle dealer located in this State to utilize a particular dealer management computer system, unless the dealer management computer system allows the dealer to reasonably maintain the security, integrity, and confidentiality of the data maintained in the system. No manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor shall prohibit a dealer from providing a means to regularly and continually monitor the specific data accessed from or written to the dealer's computer system and from complying with applicable State and federal laws and any rules or

regulations promulgated thereunder. These provisions shall not be deemed to impose an obligation on a manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor to provide such capability. Notwithstanding the terms or conditions of any incentive program or contest that is either required or voluntary on the part of the dealer, or the terms or conditions of any other contract or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to fail or refuse to provide dealer notice, in a standalone written document, at least 30 days prior to making any changes in any of the dealer or customer data the dealer is requested or required to share with a manufacturer, factory branch, distributor, or distributor branch, or any third party. The changes in any of the dealer or customer data the dealer is required or requested to provide shall be void unless the applicable manufacturer, factory branch, distributor, or distributor branch complies with the notice requirements contained in this paragraph.

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

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

No manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor may provide access to customer or dealership information maintained in a dealer management computer system utilized by a motor vehicle dealer located in this State, without first obtaining the dealer's prior express written consent, revocable by the dealer upon five business days written notice, to provide the access. Prior to obtaining this consent and prior to entering into an initial contract or renewal of a contract with a dealer located in this State, the manufacturer, factory branch, distributor, distributor branch,

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

(b1) Notwithstanding the terms of any contract or agreement with a dealer management computer system vendor or third party, for purposes of this subsection, the dealer's data contained in or on a dealer management computer system owned, leased, or licensed by a dealer located in this State is the property of the dealer. For purposes of this section, the terms "dealer data" and "dealer's data" shall be defined as any information or other data that has been entered, by direct entry or otherwise, or stored on the dealer's dealer management computer system by an officer or employee of the dealer or third party contracted by the dealer, whether stored or hosted on-site at a dealer location or on the cloud or at any other remote location, that contains data or other information about any of the following: (i) the dealer's sales, service, or parts customers or the dealer's customer transactions, (ii) customer leads generated by or provided to the dealer, (iii) the tracking, history, or performance of the dealer's internal processing of customer orders and work, (iv) customer deal files, (v) customer recommendations or complaints communicated by any means to the dealer, (vi) the tracking of dealer or customer incentive payments sought or received from any manufacturer or distributor, (vii) business plans, goals, objectives, or strategies created by any officer, employer, or contractee of the dealer; (viii) the dealer's internal bank, financial, or business records, (ix) email, voice, and other communications between or among the dealer's officers or employees, (x) email, voice, and other

communications between the dealer's officers or employees and third parties, (xi) contracts and agreements with third parties and all records related to the performance of such contracts and agreements, (xii) employee performance, (xiii) dealer personnel records, and (xiv) dealer inventory data. The terms "dealer data" and "dealer's data" specifically exclude the proprietary software, intellectual property, data, or information of a dealer management computer system vendor, manufacturer, factory branch, distributor, or distributor branch, data specifically licensed from a third party by a dealer management computer system vendor, manufacturer, factory branch, distributor, or distributor branch, and data provided to a dealer by a manufacturer, factory branch, distributor, distributor branch, subsidiary, or affiliate.

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

- (1) Unreasonably interfere with a dealer's ability to protect, store, copy, share, or use any dealer data downloaded from a dealer management computer system utilized by a new motor vehicle dealer located in this State. Unlawful conduct prohibited by this section includes, but is not limited to:
 - a. Imposing any unreasonable fees or other restrictions on the dealer or any third party for access to or sharing of dealer data. For purposes of this section, the term "unreasonable fees" means charges for access to customer or dealer data beyond any direct costs incurred by any dealer management computer system vendor in providing access to the dealer's customer or dealer data to a third party that the dealer has authorized to access its dealer management computer system or allowing any third party that the dealer has authorized to access its dealer management computer system to write data to its dealer management computer system. Nothing contained in this subdivision shall be deemed to prohibit the charging of a fee, which includes the ability of the service provider to recoup development costs incurred to provide the services involved and to make a reasonable profit on the services provided. Any charges must be both (i) reasonable in amount and (ii) disclosed to the dealer in reasonably sufficient detail prior to the fees being charged to the dealer, or they will be deemed prohibited, unreasonable fees.
 - b. Imposing unreasonable restrictions on secure integration by any third party that the dealer has explicitly authorized to access its dealer management computer system for the purpose of accessing dealer data. Examples of unreasonable restrictions include, but are not limited to, any of the following:
 1. Unreasonable restrictions on the scope or nature of the dealer's data shared with a third party authorized by the dealer to access the dealer's dealer management computer system.
 2. Unreasonable restrictions on the ability of a third party authorized by the dealer to securely access the dealer's dealer management computer system to share dealer data or securely write dealer data to a dealer management computer system.

3. Requiring unreasonable access to sensitive, competitive, or other confidential business information of a third party as a condition for access dealer data.
 4. It shall not be an unreasonable restriction to condition a third party's access to the dealer management computer system on that third party's compliance with reasonable security standards or operational protocols that the dealer management computer system vendor specifies.
- c. Sharing dealer data with any third party, if sharing the data is not authorized by the dealer.
 - d. Prohibiting or unreasonably limiting a dealer's ability to store, copy, securely share, or use dealer data outside the dealer's dealer management computer system in any manner and for any reason once it has been downloaded from the dealer management computer system.
 - e. Permitting access to or accessing dealer data without first obtaining the dealer's express written consent in a standalone document or contractual provision that is conspicuous in appearance, contained in a separate page or screen from any other written material, and requires an independent mark or affirmation from a dealer principal, general manager, or other management level employee of the dealership expressly authorized in writing by the dealer principal or general manager.
 - f. Upon receipt of a written request from a dealer, failing or refusing to block specific data fields containing dealer data from being shared with one or more third parties. Where blocking hinders, blocks, diminishes, or otherwise interferes with the functionality of a third party's service or product or the dealer's ability to participate in an incentive or other program of a manufacturer, factory branch, distributor, or distributor branch, or other third party authorized by the dealer, the dealer management computer system vendor shall be held harmless from the dealer's decision to block specified data fields, so long as the dealer management computer system vendor was acting at the direction of the dealer.
- (2) Access, use, store, or share any dealer data from a dealer management computer system in any manner other than as expressly permitted in its written agreement with the dealer.
 - (3) Fail to provide the dealer with the option and ability to securely obtain and push or otherwise distribute specified dealer data within the dealer's dealer management computer system to any third party instead of the third party receiving the dealer data directly from the dealer's dealer management computer system vendor or providing the third party direct access to the dealer's dealer management computer system. A dealer management computer system vendor shall be held harmless for any errors, breach, misuse, or any harms directly or indirectly caused by a dealer sharing data with any third party beyond the control of the dealer management computer system vendor. In the event a dealer sharing data with a third party outside of the control of the dealer computer

management system vendor causes damage to the dealer management computer system or any third party, the party or parties that caused the damage shall be liable for the damage.

- (4) Fail to provide the dealer, within seven days of receiving a dealer's written request, access to any SOC 2 audit conducted on behalf of the dealer management computer system vendor and related to the services licensed by the dealer.
- (5) Fail to promptly provide a dealer, upon the dealer's written request, a written listing of all entities with whom it is currently sharing any data from the dealer's dealer management computer system and with whom it has, within the immediately 12 preceding months, shared any data from the dealer's dealer management computer system, the specific data fields shared with each entity identified, and the dates any data was shared, to the extent that information can reasonably be stored by the dealership management computer system vendor.
- (6) Upon receipt of a dealer's written request to terminate any contract or agreement for the provision of hardware or software related to the dealer's dealer management computer system, to fail to promptly provide a copy of the dealer's data maintained on its dealership management computer system to the dealer in a secure, usable format.

Nothing in this section prevents the charging of a fee, which includes the ability of the dealer management computer system vendor to recoup costs incurred to provide the services involved and to make a reasonable profit on the services provided. Charges must be disclosed to and approved by the dealer prior to the time the dealer incurs the charges.

Nothing in this section prevents any dealer or third party from discharging its obligations as a service provider under federal, State, or local law to protect and secure protected dealer data.

Nothing in this section shall be deemed to prohibit a dealer management computer system vendor from conditioning a party's access to, or integration with, a dealer's dealer management computer system on that party's compliance with reasonable security standards or other operational protocols that the dealer's computer management system vendor specifies.

For purposes of this subsection, the term "third party" shall not be applicable to any manufacturer, factory branch, distributor, distributor branch, or subsidiary or affiliate thereof.

(b2) The rights conferred on dealers in this section are not waivable and may not be reduced or otherwise modified by any contract or agreement.

(c) No dealer management computer system vendor, or third party acting on behalf of or through any dealer management computer system vendor, may access or obtain data from or write data to a dealer management computer system utilized by a motor vehicle dealer located in this State, unless the dealer management computer system allows the dealer to reasonably maintain the security, integrity, and confidentiality of the customer and dealership information maintained in the system. No dealer management computer system vendor, or third party acting on behalf of or through any dealer management computer system vendor, shall prohibit a dealer from providing a means to regularly and

continually monitor the specific data accessed from or written to the dealer's computer system and from complying with applicable State and federal laws and any rules or regulations adopted under these laws. This section does not impose an obligation on a manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor to provide this capability.

(d) Any manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of or through any dealer management computer system vendor, having electronic access to customer or motor vehicle dealership data in a dealership management computer system utilized by a motor vehicle dealer located in this State shall provide notice to the dealer of any security breach of dealership or customer data obtained through the access, which at the time of the breach was in the possession or custody of the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or third party. The disclosure notification shall be made without unreasonable delay by the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or third party following discovery by the person, or notification to the person, of the breach. The disclosure notification shall describe measures reasonably necessary to determine the scope of the breach and corrective actions that may be taken in an effort to restore the integrity, security, and confidentiality of the data. These measures and corrective actions shall be implemented as soon as practicable by all persons responsible for the breach.

(e) Nothing in this section precludes, prohibits, or denies the right of the manufacturer, factory branch, distributor, or distributor branch to receive customer or dealership information from a motor vehicle dealer located in this State for the purposes of complying with federal or State safety requirements or implementing steps related to manufacturer recalls at such times as necessary in order to comply with federal and State requirements or manufacturer recalls so long as receiving this information from the dealer does not impair, alter, or reduce the security, integrity, and confidentiality of the customer and dealership information collected or generated by the dealer.

(f) The following definitions apply to this section:

- (1) Dealer management computer system. – A computer hardware and software system that is owned or leased by the dealer, including a dealer's use of Web applications, software, or hardware, whether located at the dealership or provided at a remote location and that provides access to customer records and transactions by a motor vehicle dealer located in this State and that allows the motor vehicle dealer timely information in order to sell vehicles, parts, or services through the motor vehicle dealership.
- (2) Dealer management computer system vendor. – A seller or reseller of dealer management computer systems, a person that sells computer software for use on dealer management computer systems, or a person that services or maintains dealer management computer systems, but only to the extent that each of the

sellers, resellers, or other persons listed in this subdivision are engaged in these activities.

- (3) Security breach. – An incident of unauthorized access to and acquisition of records or data containing dealership or dealership customer information where unauthorized use of the dealership or dealership customer information has occurred or is reasonably likely to occur or that creates a material risk of harm to a dealership or a dealership's customer. Any incident of unauthorized access to and acquisition of records or data containing dealership or dealership customer information or any incident of disclosure of dealership customer information to one or more third parties that has not been specifically authorized by the dealer or customer constitutes a security breach.

(g) G.S. 20-308.1(d) does not apply to an action brought under this section against a dealer management computer system vendor.

(g1) Notwithstanding any of the terms or provisions contained in this section or in any consent, authorization, release, novation, franchise, or other contract or agreement, whenever any manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of or through, or approved, referred, endorsed, authorized, certified, granted preferred status, or recommended by, any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor requires that a new motor vehicle dealer provide any dealer, consumer, or customer data or information through direct access to a dealer's computer system, the dealer is not required to provide, and shall not be required to consent to provide in any written agreement, such direct access to its computer system. The dealer may instead provide the same dealer, consumer, or customer data or information specified by the requesting party by timely obtaining and pushing or otherwise furnishing the requested data to the requesting party in a widely accepted file format such as comma delimited. When a dealer would otherwise be required to provide direct access to its computer system under the terms of a consent, authorization, release, novation, franchise, or other contract or agreement, a dealer that elects to provide data or information through other means may be charged a reasonable initial set-up fee and a reasonable processing fee based on the actual incremental costs incurred by the party requesting the data for establishing and implementing the process for the dealer. Any term or provision contained in any consent, authorization, release, novation, franchise, or other contract or agreement that is inconsistent with any term or provision contained in this subsection is voidable at the option of the dealer.

(g2) Notwithstanding the terms or conditions of any consent, authorization, release, novation, franchise, or other contract or agreement, every manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of or through any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor, having electronic access to consumer or customer data or other information in a computer system utilized by a new motor vehicle dealer, or who has otherwise been provided consumer or customer data or information by the dealer, shall fully indemnify and hold harmless any dealer from whom it has acquired the consumer or customer data or other information from all

damages, costs, and expenses incurred by the dealer. This indemnification by the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or third party acting on behalf of these entities includes, but is not limited to, judgments, settlements, fines, penalties, litigation costs, defense costs, court costs, costs related to the disclosure of security breaches, and attorneys' fees arising out of complaints, claims, civil or administrative actions, and, to the fullest extent allowable under the law, governmental investigations and prosecutions to the extent caused by a security breach; the access, storage, maintenance, use, sharing, disclosure, or retention of the dealer's consumer or customer data or other information; or maintenance or services provided to any computer system utilized by a new motor vehicle dealer.

(h) This section applies to contracts entered into on or after November 1, 2005. (2005-409, s. 4; 2007-513, s. 10; 2011-290, s. 11; 2013-302, s. 9; 2018-27, s. 3; 2019-125, s. 7; 2019-177, s. 4.2; 2020-51, s. 2.)

§ 20-306. Unlawful for salesman to sell except for his employer; multiple employment; persons who arrange transactions involving the sale of new motor vehicles.

It shall be unlawful for any motor vehicle salesman licensed under this Article or an individual who has submitted an application for a license as required in G.S. 20-288 and who is engaging in activities as a supervised sales representative applicant while the application is pending pursuant to G.S. 20-287(a) to sell or exchange or offer or attempt to sell or exchange any motor vehicle other than his own except for the licensed motor vehicle dealer or dealers by whom he is employed, or to offer, transfer or assign, any sale or exchange, that he may have negotiated, to any other dealer or salesman. A salesman may be employed by more than one dealer provided such multiple employment is clearly indicated on his license. It shall be unlawful for any person to, for a fee, commission, or other valuable consideration, arrange or offer to arrange a transaction involving the sale of a new motor vehicle; provided, however, this prohibition shall not be applicable to:

- (1) A franchised motor vehicle dealer as defined in G.S. 20-286(8b) who is licensed under this Article or a sales representative who is licensed under this Article when acting on behalf of the dealer;
- (2) A manufacturer who is licensed under this Article or bona fide employee of such manufacturer when acting on behalf of the manufacturer;
- (3) A distributor who is licensed under this Article or a bona fide employee of such distributor when acting on behalf of the distributor; or
- (4) At any point in the transaction the bona fide owner of the vehicle involved in the transaction.
- (5) A motor vehicle dealer, as defined in G.S. 20-286(11), who offers valuable consideration to a person not licensed under this Article, or a person who is offered or receives valuable consideration from a motor vehicle dealer for the referral of a customer to the dealer, provided that the consideration paid by the motor vehicle dealer does not exceed two hundred fifty dollars (\$250.00) in value per referral and the person receiving the consideration has received no

more than five referral payments from that motor vehicle dealer in the same calendar year. (1955, c. 1243, s. 22; 1993, c. 331, s. 3; 2019-181, s. 3.)

§ 20-307. Article applicable to existing and future franchises and contracts.

The provisions of this Article shall be applicable to all franchises and contracts existing between dealers and manufacturers, factory branches, and distributors at the time of its ratification, and to all such future franchises and contracts. (1955, c. 1243, s. 23.)

§ 20-307.1. Jurisdiction.

A franchisee who is substantially and primarily engaged in the sale of motor vehicles or parts, materials, or components of motor vehicles, including batteries, tires, transmissions, mufflers, painting, lubrication or tune-ups may bring suit against any franchisor, engaged in commerce, in the General Court of Justice in the State of North Carolina that has proper venue. (1983, c. 704, s. 24.)

§ 20-308. Penalties.

Any person violating any of the provisions of this Article, except for G.S. 20-305.7, shall be guilty of a Class 1 misdemeanor. (1955, c. 1243, s. 24; 1993, c. 539, s. 386; 1994, Ex. Sess., c. 24, s. 14(c); 2005-409, s. 5.)

§ 20-308.1. Civil actions for violations.

(a) Notwithstanding the terms, provisions or conditions of any agreement or franchise or other terms or provisions of any novation, waiver or other written instrument, any motor vehicle dealer who is or may be injured by a violation of a provision of this Article, or any party to a franchise who is so injured in his business or property by a violation of a provision of this Article relating to that franchise, or an arrangement which, if consummated, would be in violation of this Article may, notwithstanding the initiation or pendency of, or failure to initiate an administrative proceeding before the Commissioner concerning the same parties or subject matter, bring an action for damages and equitable relief, including injunctive relief, in any court of competent jurisdiction with regard to any matter not within the jurisdiction of the Commissioner or that seeks relief wholly outside the authority or jurisdiction of the Commissioner to award.

(b) Where the violation of a provision of this Article can be shown to be willful, malicious, or wanton, or if continued multiple violations of a provision or provisions of this Article occur, the court may award punitive damages, attorneys' fees and costs in addition to any other damages under this Article.

(c) A new motor vehicle dealer, if he has not suffered any loss of money or property, may obtain final equitable relief if it can be shown that the violation of a provision of this Article by a manufacturer or distributor may have the effect of causing a loss of money or property.

(d) In order to prevent injury or harm to all or a substantial number of its members or to prevent injury or harm to the franchise distribution system of new motor vehicles within this State, any association that is comprised of a minimum of 400 new motor vehicle dealers, or a minimum of 10 motorcycle dealers or recreational vehicle dealers,

substantially all of whom are new motor vehicle dealers located within North Carolina, and which represents the collective interests of its members, shall have standing to intervene as a party in any civil or administrative proceeding in any of the courts or administrative agencies of this State, or to file a petition before the Commissioner or a civil action or cause of action in any court of competent jurisdiction for itself, or on behalf of any or all of its members, seeking declaratory and injunctive relief. An action brought pursuant to this subsection may seek a determination whether one or more manufacturers, factory branches, distributors, or distributor branches doing business in this State have violated any of the provisions of this Article, or for the determination of any rights created or defined by this Article, so long as the association alleges an injury to the collective interest of its members cognizable under this section. A cognizable injury to the collective interest of the members of the association shall be deemed to occur if a manufacturer, factory branch, distributor, or distributor branch doing business in this State, or seeking to be licensed by the Division in any capacity or to otherwise engage in business in this State, applies for licensure to own, operate, or control a motor vehicle dealership in this State in violation of this Article or engages in any conduct or takes any action that either: (i) has harmed or would harm or which has adversely affected or would adversely affect a majority of its franchised new motor vehicle dealers in this State or a majority of all franchised new motor vehicle dealers in this State, or (ii) would erode or cause any other damage or injury to the franchise system of distribution of new motor vehicles within this State, whether or not the manufacturer, factory branch, distributor, or distributor branch currently has or proposes to have any franchised dealer in this State. Notwithstanding the foregoing, nothing in this subsection shall be construed to convey standing for an association to intervene in the denial of a renewal license or revocation of existing licenses issued by the Division pursuant to this Chapter or other enforcement actions taken against individual dealers or other individual licensees that may be initiated by the Division pursuant to G.S. 20-294 or other statute. Intervention by the association shall be limited to seeking declaratory relief, injunctive relief, or both declaratory and injunctive relief. With respect to any administrative or civil action filed by an association pursuant to this subsection, the relief granted shall be limited to declaratory and injunctive relief and in no event shall the Commissioner or court enter an award of monetary damages. In the event that, in any civil action before a court of this State in which an association has exercised standing in accordance with this subsection and becomes a party to the action, the court enters a declaratory ruling as to the facial applicability of any of the provisions contained in this Article, or interpreting the rights and obligations of one or more manufacturers or distributors or the rights and obligations of one or more dealers, the court's determination shall be collateral estoppel in any subsequent civil action or administrative proceeding involving the same manufacturer or manufacturers, or the same distributor or distributors, or the same dealer or dealers on all issues of fact and law decided in the original civil action in which the association was a party, provided the same decision or specific portion of the decision qualifies for application of collateral estoppel under North Carolina law. Notwithstanding anything contained herein, this subsection shall not be applicable to motor vehicle dealer licenses issued by the Division to a manufacturer pursuant to G.S. 20-305.2(a)(4a), provided that

this exclusion from association standing shall not be applicable in the event the manufacturer applies for or is issued more than the maximum total number of motor vehicle dealer licenses permitted in G.S. 20-305.2(a)(4a) or upon the occurrence of any of the events listed in sub-subdivisions a. through d. of G.S. 20-305.2(a)(4a). (1983, c. 704, s. 16; 1991, c. 510, s. 5; 2001-510, s. 5; 2007-513, s. 8; 2019-125, s. 8.)

§ 20-308.2. Applicability of this Article.

(a) Any person who engages directly or indirectly in purposeful contacts within this State in connection with the offering or advertising for sale, or has business dealings, with respect to a new motor vehicle sale within this State, shall be subject to the provisions of this Article and shall be subject to the jurisdiction of the courts of this State.

(b) The applicability of this Article shall not be affected by a choice of law clause in any franchise, agreement, waiver, novation, or any other written instrument.

(c) Any provision of any agreement, franchise, waiver, novation or any other written instrument which is in violation of any section of this Article shall be deemed null and void and without force and effect.

(d) It shall be unlawful for a manufacturer or distributor to use any subsidiary corporation, affiliated corporation, or any other controlled corporation, partnership, association or person to accomplish what would otherwise be illegal conduct under this Article on the part of the manufacturer or distributor.

(e) The provisions of this Article shall apply to all written agreements between a manufacturer, wholesaler, or distributor with a motor vehicle dealer including, but not limited to, the franchise offering, the franchise agreement, sales of goods, services or advertising, leases or deeds of trust of real or personal property, promises to pay, security interests, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts, and all other such agreements between a motor vehicle dealer and a manufacturer, wholesaler, or distributor. (1983, c. 704, s. 17; 2005-409, s. 6.)

§§ 20-308.3 through 20-308.12. Reserved for future codification purposes.