



1 provisions of Article 12 of Chapter 20 of the General Statutes of North Carolina, and with other  
2 lawful regulations of the Division."

3 **SECTION 3.** G.S. 20-301 is amended by adding a new subsection to read:

4 "(g) Notwithstanding any other statute, regulation or rule, or the existence of a pending  
5 legal or administrative proceeding in any other forum, any franchised new motor vehicle dealer  
6 may elect to file a petition before the Commissioner for resolution of any dispute that may arise  
7 with respect to any of the dealer's rights or obligations related to a franchise or franchise-related  
8 form agreement. The Commissioner shall have the authority to apply principles of law, equity,  
9 and good faith in determining such matters. The filing of a petition by a dealer pursuant to this  
10 section shall not preclude the dealer from pursuing any other form of recourse it may have,  
11 either before the Commissioner or in another form, including any damages and injunctive  
12 relief. The Commissioner shall have the authority to receive and evaluate the facts in the matter  
13 of controversy and render a decision by entering an order which shall thereafter become  
14 binding and enforceable with respect to the parties, subject to the right of review of the decision  
15 in a court of competent jurisdiction pursuant to Chapter 150B of the General Statues."

16 **SECTION 4.** G.S. 20-301.1(a) reads as rewritten:

17 "(a) Notwithstanding the terms of any contract, franchise, novation, or agreement, it  
18 shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to  
19 charge or assess one of its franchised motor vehicle dealers located in this State, or to charge or  
20 debit the account of the franchised motor vehicle dealer for merchandise, tools, or equipment,  
21 or other charges or amounts which individually or collectively total more than two hundred  
22 fifty dollars (\$250.00), other than the published cost of new motor vehicles, and merchandise,  
23 tools, or equipment specifically ordered by the franchised motor vehicle dealer, unless the  
24 franchised motor vehicle dealer receives a detailed itemized description of the nature and  
25 amount of each charge in writing at least 10 days prior to the date the charge or account debit is  
26 to become effective or due. For purposes of this subsection, ~~the~~ prior written notice ~~is~~ required  
27 ~~for~~ pursuant to this subsection includes, but is not limited to, all charges or debits to a dealer's  
28 account for ~~the following charges or debits:~~ advertising or advertising materials; advertising or  
29 showroom displays; customer informational materials; computer or communications hardware  
30 or software; special tools; equipment; dealership operation guides; Internet programs; and any  
31 additional charges or surcharges made or proposed for merchandise, tools, or equipment  
32 previously charged to the ~~dealer.~~ dealer; and any other charges or amounts which individually  
33 or collectively total more than two hundred fifty dollars (\$250.00). If the franchised new motor  
34 vehicle dealer disputes all or any portion of an actual or proposed charge or debit to the dealer's  
35 account, the dealer may proceed as provided in G.S. 20-301(b) and G.S. 20-308.1. Upon the  
36 filing of a petition pursuant to G.S. 20-301(b) or a civil action pursuant to G.S. 20-308.1, the  
37 affected manufacturer, factory branch, distributor, or distributor branch shall not require  
38 payment from the dealer, or debit or charge the dealer's account, unless and until a final  
39 judgment supporting the payment or charge had been rendered by the Commissioner or court."

40 **SECTION 5.** G.S. 20-305(4) reads as rewritten:

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

1 assignment, relocation, or change is unreasonable under the circumstances.  
2 No franchise may be transferred, sold, assigned, relocated, or the executive  
3 management or principal operators changed, unless the franchisor has been  
4 given at least 30 days' prior written notice as to the proposed transferee's  
5 name and address, financial ability, and qualifications of the proposed  
6 transferee, a copy of the purchase agreement between the dealership and the  
7 proposed transferee, the identity and qualifications of the persons proposed  
8 to be involved in executive management or as principal operators, and the  
9 location and site plans of any proposed relocation or change in use of a  
10 dealership facility. The franchisor shall send the dealership and the proposed  
11 transferee notice of objection, by registered or certified mail, return receipt  
12 requested, to the proposed transfer, sale, assignment, relocation, or change  
13 within 30 days after receipt of notice from the dealer, as provided in this  
14 section. The notice of objection shall state in detail all factual and legal bases  
15 for the objection on the part of the franchisor to the proposed transfer, sale,  
16 assignment, relocation, or change that is specifically referenced in this  
17 subdivision. An objection to a proposed transfer, sale, assignment,  
18 relocation, or change in the executive management or principal operator of  
19 the dealership may only be premised upon the factual and legal bases  
20 specifically referenced in this subdivision. A manufacturer's notice of  
21 objection which is based upon factual or legal issues that are not specifically  
22 referenced in this subdivision as being issues upon which the Commissioner  
23 shall base his determination shall not be effective to preserve the franchisor's  
24 right to object to the proposed transfer sale, assignment, relocation, or  
25 change, provided the dealership or proposed transferee has submitted written  
26 notice, as required above, as to the proposed transferee's name and address,  
27 financial ability, and qualifications of the proposed transferee, a copy of the  
28 purchase agreement between the dealership and the proposed transferee, the  
29 identity and qualifications of the persons proposed to be involved in the  
30 executive management or as principal operators, and the location and site  
31 plans of any proposed relocation. Failure by the franchisor to send notice of  
32 objection within 30 days shall constitute waiver by the franchisor of any  
33 right to object to the proposed transfer, sale, assignment, relocation, or  
34 change. If the franchisor requires additional information to complete its  
35 review, the franchisor shall notify the dealership within 15 days after receipt  
36 of the proposed transferee's name and address, financial ability, and  
37 qualifications, a copy of the purchase agreement between the dealership and  
38 the proposed transferee, the identity and qualifications of the persons  
39 proposed to be involved in executive management or as principal operators,  
40 and the location and site plans of any proposed relocation or change in use of  
41 the dealership facility. If the franchisor fails to request additional  
42 information from the dealer or proposed transferee within 15 days of receipt  
43 of this initial information, the 30-day time period within which the  
44 franchisor may provide notice of objection shall be deemed to run from the  
45 initial receipt date. Otherwise, the 30-day time period within which the  
46 franchisor may provide notice of objection shall run from the date the  
47 franchisor has received the supplemental information requested from the  
48 dealer or proposed transferee; provided, however, that failure by the  
49 franchisor to send notice of objection within 60 days of the franchisor's  
50 receipt of the initial information from the dealer shall constitute waiver by  
51 the franchisor of any right to object to the proposed transfer, sale,

1 assignment, relocation, or change. With respect to a proposed transfer of  
2 ownership, sale, or assignment, the sole issue for determination by the  
3 Commissioner and the sole issue upon which the Commissioner shall hear or  
4 consider evidence is whether, by reason of lack of good moral character,  
5 lack of general business experience, or lack of financial ability, the proposed  
6 transferee is unfit to own the dealership. For purposes of this subdivision, the  
7 refusal by the manufacturer to accept a proposed transferee who is of good  
8 moral character and who otherwise meets the written, reasonable, and  
9 uniformly applied business experience and financial requirements, if any,  
10 required by the manufacturer of owners of its franchised automobile  
11 dealerships is presumed to demonstrate the manufacturer's failure to prove  
12 that the proposed transferee is unfit to own the dealership. With respect to a  
13 proposed change in the executive management or principal operator of the  
14 dealership, the sole issue for determination by the Commissioner and the  
15 sole issue on which the Commissioner shall hear or consider evidence shall  
16 be whether, by reason of lack of training, lack of prior experience, poor past  
17 performance, or poor character, the proposed candidate for a position within  
18 the executive management or as principal operator of the dealership is unfit  
19 for the position. For purposes of this subdivision, the refusal by the  
20 manufacturer to accept a proposed candidate for executive management or as  
21 principal operator who is of good moral character and who otherwise meets  
22 the written, reasonable, and uniformly applied standards or qualifications, if  
23 any, of the manufacturer relating to the business experience and prior  
24 performance of executive management required by the manufacturers of its  
25 dealers is presumed to demonstrate the manufacturer's failure to prove the  
26 proposed candidate for executive management or as principal operator is  
27 unfit to serve the capacity. With respect to a proposed change in use of a  
28 dealership facility to provide for the sales or service of one or more  
29 additional line-makes of new motor vehicles, the sole issue for determination  
30 by the Commissioner is whether the new motor vehicle dealer has a  
31 reasonable line of credit for each make or line of motor vehicle and remains  
32 in compliance with any reasonable capital standards and facilities  
33 requirements of the manufacturer or distributor. The reasonable facilities  
34 requirements of the manufacturer or distributor shall not include any  
35 requirement that a new motor vehicle dealer establish or maintain exclusive  
36 facilities, personnel, or display space. With respect to a proposed relocation  
37 or other proposed change, the issue for determination by the Commissioner  
38 is whether the proposed relocation or other change is unreasonable under the  
39 circumstances. For purposes of this subdivision, the refusal by the  
40 manufacturer to agree to a proposed relocation which meets the written,  
41 reasonable, and uniformly applied standards or criteria, if any, of the  
42 manufacturer relating to dealer relocations is presumed to demonstrate that  
43 the manufacturer's failure to prove the proposed relocation is unreasonable  
44 under the circumstances. The manufacturer shall have the burden of proof  
45 before the Commissioner under this subdivision. It is unlawful for a  
46 manufacturer to, in any way, condition its approval of a proposed transfer,  
47 sale, assignment, change in the dealer's executive management, principal  
48 operator, or appointment of a designated successor, on the existing or  
49 proposed dealer's willingness to construct a new facility, renovate the  
50 existing facility, acquire or refrain from acquiring one or more line-makes of  
51 vehicles, separate or divest one or more line-makes of vehicle, or establish or

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

19 **SECTION 6.** G.S. 20-305(6)d.3. reads as rewritten:

20 "3. In addition to the other payments set forth in this section, if a  
21 termination, cancellation, or nonrenewal is premised upon  
22 any of the occurrences set forth in G.S. 20-305(6)c.1.IV., then  
23 the manufacturer or distributor shall be liable to the dealer for  
24 an amount at least equivalent to the fair market value of the  
25 franchise on (i) the date the franchisor announces the action  
26 which results in termination, cancellation, or nonrenewal; or  
27 (ii) the date the action which results in termination,  
28 cancellation, or nonrenewal first became general knowledge;  
29 or (iii) the day ~~12 months~~ 3 years prior to the date on which  
30 the notice of termination, cancellation, or nonrenewal is  
31 issued, whichever amount is higher. Payment is due not later  
32 than 90 days after the manufacturer or distributor has  
33 received notice in writing from, or on behalf of, the new  
34 motor vehicle dealer specifying the elements of compensation  
35 requested by the dealer. If the termination, cancellation, or  
36 nonrenewal is due to a manufacturer's change in distributors,  
37 the manufacturer may avoid paying fair market value to the  
38 dealer if the new distributor or the manufacturer offers the  
39 dealer a franchise agreement with terms acceptable to the  
40 dealer."

41 **SECTION 7.** G.S. 20-305(14) reads as rewritten:

42 "(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or  
43 accessories in reasonable quantities relative to the new motor vehicle dealer's  
44 facilities and sales potential in the new motor vehicle dealer's market area as  
45 determined in accordance with reasonably applied economic principles, or  
46 within a reasonable time, after receipt of an order from a dealer having a  
47 franchise for the retail sale of any new motor vehicle sold or distributed by  
48 the manufacturer or distributor, any new vehicle, parts or accessories to new  
49 vehicles as are covered by such franchise, and such vehicles, parts or  
50 accessories as are publicly advertised as being available or actually being  
51 delivered. The delivery to another dealer of a motor vehicle of the same

1 model and similarly equipped as the vehicle ordered by a motor vehicle  
2 dealer who has not received delivery thereof, but who has placed his written  
3 order for the vehicle prior to the order of the dealer receiving the vehicle,  
4 shall be evidence of a delayed delivery of, or refusal to deliver, a new motor  
5 vehicle to a motor vehicle dealer within a reasonable time, without cause.  
6 ~~Except~~ Additionally, except as may be required by any consent decree of the  
7 Commissioner or other order of the Commissioner or court of competent  
8 jurisdiction, each manufacturer, factory branch, distributor, and distributor  
9 branch shall allocate its products in a manner ~~that provides each of its~~  
10 ~~franchised dealers in this State an adequate supply of vehicles by series,~~  
11 ~~product line, and model to achieve the manufacturer's minimum sales~~  
12 ~~requirements, planning volume, or sales objectives and that is fair and~~  
13 ~~equitable to all of its franchised dealers in this State. Additionally, each~~  
14 ~~manufacturer shall make available to each of its franchised dealers in this~~  
15 ~~State a minimum of one of each vehicle series, model, or product line that~~  
16 ~~the manufacturer advertises nationally as being available for purchase. A~~  
17 ~~manufacturer shall not unfairly discriminate among its franchised dealers in~~  
18 ~~this allocation process that:~~

- 19 a. Provides each of its franchised dealers in this State an adequate  
20 supply of vehicles by series, product line, and model to achieve the  
21 manufacturer's minimum sales requirements, planning volume, or  
22 sales objectives.
- 23 b. Is based on each dealer's specific allocation needs and historical  
24 selling patterns, and which provides each of its franchised dealers in  
25 this State an adequate supply of vehicles by series, product line, and  
26 model to remain economically viable.
- 27 c. Does not discriminate against a dealer because the dealer fails to  
28 relocate, update, or renovate the dealer's existing dealership facility.
- 29 d. Is fair and equitable to all of its franchised dealers in this State.
- 30 e. Makes available to each of its franchised dealers in this State a  
31 minimum of one of each vehicle series, model, or product line that  
32 the manufacturer advertises nationally as being available for  
33 purchase.
- 34 f. Does not unfairly discriminate among its franchised dealers in its  
35 allocation process.

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

49 **SECTION 8.** G.S. 20-305(39) reads as rewritten:

50 "(39) Notwithstanding the terms, provisions, or conditions of any agreement,  
51 franchise, novation, waiver, or other written instrument, to require, coerce,

1 or attempt to coerce any of its franchised motor vehicle dealers in this State  
2 to purchase or lease one or more signs displaying the name of the  
3 manufacturer or franchised motor vehicle dealer upon unreasonable or  
4 onerous terms or conditions or if installation of the additional signage would  
5 violate local signage or zoning laws to which the franchised motor vehicle  
6 dealer is subject. For purposes of this subdivision, if a dealer has purchased  
7 or leased such a sign within the previous 10 years, the requirement of a  
8 manufacturer or distributor that the dealer replace the sign or purchase or  
9 lease an additional sign shall be deemed unreasonable and onerous. Any  
10 term, provision, or condition of any agreement, franchise, waiver, novation,  
11 or any other written instrument which is in violation of this subdivision shall  
12 be deemed null and void and without force and effect. Any requirement by a  
13 manufacturer or distributor that a new motor vehicle dealer purchase or lease  
14 a sign in violation of this subdivision as a condition to the dealer's  
15 participation in any incentive program or contest, for a customer or dealer to  
16 receive any incentive payments otherwise earned under an incentive  
17 program or contest, for the dealer to obtain customer leads, or for the dealer  
18 to receive any other benefits, rights, merchandise, or services which the  
19 dealer would otherwise be entitled to obtain under the franchise or any other  
20 contract or agreement, or which shall customarily be provided to dealers,  
21 shall be deemed null and void and without force and effect."

22 **SECTION 9.** G.S. 20-305 is amended by adding two new subdivisions to read:

23 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel**  
24 **franchise; preventing transfer of ownership; granting additional franchises;**  
25 **terminating franchises without good cause; preventing family succession.**

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

28 ...

29 (43) To require, coerce, or attempt to coerce any new motor vehicle dealer in this  
30 State to change location of the dealership, or to make any substantial  
31 alterations to the dealership premises or facilities, if the dealer has changed  
32 the location of the dealership or made substantial alterations to the  
33 dealership premises or facilities within the preceding 10 years at a cost of  
34 more than one hundred thousand dollars (\$100,000) and the change in  
35 location or alteration was made at the request of or with the approval of the  
36 manufacturer, factory branch, distributor, or distributor branch.

37 (44) Notwithstanding the terms, provisions, or conditions of any agreement,  
38 franchise, novation, waiver, or other written instrument, to require, coerce,  
39 or attempt to coerce any of its franchised motor vehicle dealers in this State  
40 to change the principal operator, general manager, or any other manager or  
41 supervisor employed by the dealer. Any term, provision, or condition of any  
42 agreement, franchise, waiver, novation, or any other written instrument that  
43 is inconsistent with this subdivision shall be deemed null and void and  
44 without force and effect."

45 **SECTION 10.** G.S. 20-305.1 reads as rewritten:

46 **"§ 20-305.1. Automobile dealer warranty obligations.**

47 (a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch,  
48 shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's  
49 obligations for preparation, delivery and warranty service on its products, the schedule of  
50 compensation to be paid such dealers for parts, work, and service in connection with warranty  
51 service, and the time allowances for the performance of such work and service. In no event

1 shall such schedule of compensation fail to include reasonable compensation for diagnostic  
2 work and associated administrative requirements as well as repair service and labor. Time  
3 allowances for the performance of warranty work and service shall be reasonable and adequate  
4 for the work to be performed. The compensation which must be paid under this section must be  
5 reasonable, provided, however, that under no circumstances may the reasonable compensation  
6 under this section be in an amount less than the dealer's current retail labor rate and the amount  
7 charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty  
8 work of like kind, provided such amount is competitive with other franchised dealers within the  
9 dealer's market.

10 (a1) The retail rate customarily charged by the dealer for parts may be established at the  
11 election of the dealer by the dealer submitting to the manufacturer or distributor 100 sequential  
12 nonwarranty customer-paid service repair orders which contain warranty-like parts, or 60  
13 consecutive days of nonwarranty customer-paid service repair orders which contain  
14 warranty-like parts, whichever is less, covering repairs made no more than 180 days before the  
15 submission and declaring the average percentage markup. The average of the markup rate shall  
16 be presumed to be fair and reasonable, however, a manufacturer or distributor may, not later  
17 than 30 days after submission, rebut that presumption by reasonably substantiating that the rate  
18 is unfair and unreasonable in light of the practices of all other franchised motor vehicle dealers  
19 in the dealer's market offering the same line-make vehicles. In the event there are no other  
20 franchised dealers offering the same line-make of vehicle in the dealer's market, the  
21 manufacturer or distributor may compare the dealer's rate for parts with the practices of other  
22 franchised dealers who are selling competing line-makes of vehicles within the dealer's market.  
23 The retail rate shall go into effect 30 days following the declaration, subject to audit of the  
24 submitted repair orders by the manufacturer or distributor and a rebuttal of the declared rate as  
25 described above. If the declared rate is rebutted, the manufacturer or distributor shall propose  
26 an adjustment of the average percentage markup based on that rebuttal not later than 30 days  
27 after submission. If the dealer does not agree with the proposed average percentage markup, the  
28 dealer may file a protest with the Commissioner not later than 30 days after receipt of that  
29 proposal by the manufacturer or distributor. If such a protest is filed, the Commissioner shall  
30 inform the manufacturer or distributor that a timely protest has been filed and that a hearing  
31 will be held on such protest. In any hearing held pursuant to this subsection, the manufacturer  
32 or distributor shall have the burden of proving by a preponderance of the evidence that the rate  
33 declared by the dealer was unfair and unreasonable as described in this subsection and that the  
34 proposed adjustment of the average percentage markup is fair and reasonable pursuant to the  
35 provisions of this subsection.

36 (a2) The retail rate customarily charged by the dealer for labor may be established at the  
37 election of the dealer by the dealer submitting to the manufacturer or distributor all  
38 nonwarranty customer-paid service repair orders covering repairs made during the month prior  
39 to the submission and dividing the amount of the dealer's total labor sales by the number of  
40 total labor hours that generated those sales. The average labor rate shall be presumed to be fair  
41 and reasonable, provided the manufacturer or distributor may, not later than 30 days after  
42 submission, rebut such presumption by reasonably substantiating that such rate is unfair and  
43 unreasonable in light of the practices of all other franchised motor vehicle dealers in the  
44 dealer's market offering the same line-make vehicles. In the event there are no other franchised  
45 dealers offering the same line-make of vehicle in the dealer's market, the manufacturer or  
46 distributor may compare the dealer's rate with the practices of other franchised dealers who are  
47 selling competing line-makes of vehicles within the dealer's market. The average labor rate  
48 shall go into effect 30 days following the declaration, subject to the audit of the submitted  
49 repair orders by the franchisor and a rebuttal of such declared rate. If the declared rate is  
50 rebutted, the manufacturer or distributor shall propose an adjustment of the average labor rate  
51 based in such rebuttal not later than 30 days after submission. If the dealer does not agree with

1 the proposed average labor rate, the dealer may file a protest with the Commissioner not later  
2 than 30 days after receipt of that proposal by the manufacturer or distributor. If such a protest is  
3 filed, the Commissioner shall inform the manufacturer or distributor that a timely protest has  
4 been filed and that a hearing will be held on such protest. In any hearing held pursuant to this  
5 subsection, the manufacturer or distributor shall have the burden of proving by a preponderance  
6 of the evidence that the rate declared by the dealer was unfair and unreasonable as described in  
7 this subsection and that the proposed adjustment of the average labor rate is fair and reasonable  
8 pursuant to the provisions of this subsection.

9 (a3) In calculating the retail rate customarily charged by the dealer for parts and labor,  
10 the following work shall not be included in the calculation:

- 11 (1) Repairs for manufacturer or distributor special events, specials, or  
12 promotional discounts for retail customer repairs;
- 13 (2) Parts sold at wholesale or at reduced or specially negotiated rates for  
14 insurance repairs;
- 15 (3) Engine assemblies and transmission assemblies;
- 16 (4) Routine maintenance not covered under warranty, such as fluids, filters, and  
17 belts not provided in the course of repairs;
- 18 (5) Nuts, bolts, fasteners, and similar items that do not have an individual part  
19 number;
- 20 (6) Tires; and
- 21 (7) Vehicle reconditioning.

22 (a4) If a manufacturer or distributor furnishes a part or component to a dealer, at no cost,  
23 to use in performing repairs under a recall, campaign service action, or warranty repair, the  
24 manufacturer or distributor shall compensate the dealer for the part or component in the same  
25 manner as warranty parts compensation under this section by compensating the dealer the  
26 average markup on the cost for the part or component as listed in the manufacturer's or  
27 distributor's price schedule less the cost for the part or component.

28 (a5) A manufacturer or distributor may not require a dealer to establish the retail rate  
29 customarily charged by the dealer for parts and labor by an unduly burdensome or time-  
30 consuming method or by requiring information that is unduly burdensome or time-consuming  
31 to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations.

32 (b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor  
33 vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of  
34 its warranty obligations with respect to a motor vehicle, to fail to fully compensate its motor  
35 vehicle dealers licensed in this State for warranty parts other than parts used to repair the living  
36 facilities of recreational vehicles, at the prevailing retail rate according to the factors in  
37 subsection (a) of this section, or, in service in accordance with the schedule of compensation  
38 provided the dealer pursuant to subsection (a) above, or to otherwise recover all or any portion  
39 of its costs for compensating its motor vehicle dealers licensed in this State for warranty parts  
40 and service either by reduction in the amount due to the dealer, or by separate charge,  
41 surcharge, or other imposition, and to fail to indemnify and hold harmless its franchised dealers  
42 licensed in this State against any judgment for damages or settlements agreed to by the  
43 manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the  
44 motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to,  
45 strict liability, negligence, misrepresentation, express or implied warranty, or rescission or  
46 revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the  
47 extent that the judgment or settlement relates to the alleged defective negligent manufacture,  
48 assembly or design of new motor vehicles, parts or accessories or other functions by the  
49 manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer.  
50 Any audit for warranty parts or service compensation shall only be for the ~~12~~ 6-month period  
51 immediately following the date of the payment of the claim by the manufacturer, factory

1 branch, distributor, or distributor branch. Any audit for sales incentives, service incentives,  
2 rebates, or other forms of incentive compensation shall only be for the ~~12~~ 6-month period  
3 immediately following the date of the payment of the claim by the manufacturer, factory  
4 branch, distributor, or distributor branch pursuant to a sales incentives program, service  
5 incentives program, rebate program, or other form of incentive compensation program.  
6 Provided, however, these limitations shall not be effective in the case of fraudulent claims.

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

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

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

- 26 (1) The dealer has, within the previous ~~12~~ 6 months, failed to comply with the  
27 same specific claim documentation procedure or procedures; and
- 28 (2) The manufacturer has, within the previous ~~12~~ 6 months, provided a written  
29 warning to the dealer by certified United States mail, return receipt  
30 requested, identifying the specific claim documentation procedure or  
31 procedures violated by the dealer.

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

1 dealer's representative, provide the dealer with a written statement containing the basis or  
2 methodology upon which the dealer was selected for audit or review.

3 ...

4 (h) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor  
5 vehicle manufacturer, factory branch, distributor, or distributor branch to deny a franchised  
6 new motor vehicle dealer the right to return any part or accessory that the dealer has not sold  
7 within 12 months where the part or accessory was not obtained through a specific order  
8 initiated by the franchised new motor vehicle dealer but instead was specified for, sold to, and  
9 shipped to the dealer pursuant to an automated ordering system, provided that such part or  
10 accessory is in the condition required for return to the manufacturer, factory branch, distributor,  
11 or distributor branch and the dealer returns the part within 90 days of it becoming eligible under  
12 this subsection. For purposes of this subsection, an "automated ordering system" shall be a  
13 computerized system that automatically specifies parts and accessories for sale and shipment to  
14 the dealer without specific order thereof initiated by the dealer. The manufacturer, factory  
15 branch, distributor, or distributor branch shall not charge a restocking or handling fee for any  
16 part or accessory being returned under this subsection."

17 **SECTION 11.** G.S. 20-305.7 reads as rewritten:

18 **"§ 20-305.7. Protecting dealership data and consent to access dealership information.**

19 (a) All of the data and other information collected by a new motor vehicle dealer from  
20 such dealer's customers and other consumers are the sole and exclusive property of the dealer.  
21 Except as expressly authorized in this section, no manufacturer, factory branch, distributor, or  
22 distributor branch shall require a new motor vehicle dealer to provide its customer lists,  
23 customer information, consumer contact information, transaction data, or service files. Any  
24 requirement by a manufacturer, factory branch, distributor, or distributor branch that a new  
25 motor vehicle dealer provide its customer lists, customer information, consumer contact  
26 information, transaction data, or service files as a condition to the dealer's participation in any  
27 incentive program or contest for a customer or dealer to receive any incentive payments  
28 otherwise earned under an incentive program or contest, for the dealer to obtain consumer or  
29 customer leads, or for the dealer to receive any other benefits, rights, merchandise, or services  
30 for which the dealer would otherwise be entitled to obtain under the franchise or any other  
31 contract or agreement, or which shall customarily be provided to dealers, shall be voidable at  
32 the option of the dealer. Nothing contained in this section shall limit the ability of the  
33 manufacturer, factory branch, distributor, or distributor branch to require that the dealer provide  
34 or to use in accordance with the law such customer information to the extent necessary to  
35 satisfy any safety or recall notice obligations, to complete the sale and delivery of a new motor  
36 vehicle to a customer, to validate and pay customer or dealer incentives, or for the submission  
37 to the manufacturer, factory branch, distributor, or distributor branch for any services supplied  
38 by the dealer for any claim for warranty parts or repairs. No manufacturer, factory branch,  
39 distributor, or distributor branch shall access or obtain dealer or customer data from or write  
40 dealer or customer data to a dealer management computer system utilized by a motor vehicle  
41 dealer located in this State, or require or coerce a motor vehicle dealer located in this State to  
42 utilize a particular dealer management computer system, unless the dealer management  
43 computer system allows the dealer to reasonably maintain the security, integrity, and  
44 confidentiality of the data maintained in the system. No manufacturer, factory branch,  
45 distributor, distributor branch, dealer management computer system vendor, or any third party  
46 acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or dealer  
47 management computer system vendor shall prohibit a dealer from providing a means to  
48 regularly and continually monitor the specific data accessed from or written to the dealer's  
49 computer system and from complying with applicable State and federal laws and any rules or  
50 regulations promulgated thereunder. These provisions shall not be deemed to impose an  
51 obligation on a manufacturer, factory branch, distributor, distributor branch, dealer

1 management computer system vendor, or any third party acting on behalf of any manufacturer,  
2 factory branch, distributor, distributor branch, or dealer management computer system vendor  
3 to provide such capability.

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

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

27 No manufacturer, factory branch, distributor, distributor branch, dealer management computer  
28 system vendor, or any third party acting on behalf of any manufacturer, factory branch,  
29 distributor, distributor branch, or dealer management computer system vendor, may provide  
30 access to customer or dealership information maintained in a dealer management computer  
31 system utilized by a motor vehicle dealer located in this State, without first obtaining the  
32 dealer's prior express written consent, revocable by the dealer upon five business days written  
33 notice, to provide such access. Prior to obtaining said consent and prior to entering into an  
34 initial contract or renewal of a contract with a dealer located in this State, the manufacturer,  
35 factory branch, distributor, distributor branch, dealer management computer system vendor, or  
36 any third party acting on behalf of, or through any manufacturer, factory branch, distributor,  
37 distributor branch, or dealer management computer system vendor shall provide to the dealer a  
38 written list of all third parties to whom any North Carolina dealer management computer  
39 system data has been provided within the 12-month period ending November 1 of the prior  
40 year. The list shall further describe the scope of the data provided. In addition to the initial list,  
41 a dealer management computer system vendor or any third party acting on behalf of, or through  
42 a dealer management computer system vendor shall provide to the dealer an annual list of third  
43 parties to whom said data is being provided on November 1 of each year and to whom said data  
44 has been provided in the preceding 12 months and describe the scope of the data provided.  
45 Such list shall be provided to the dealer by January 1 of each year. Any dealer management  
46 computer system vendor's contract that directly relates to the transfer or accessing of dealer or  
47 dealer customer information must conspicuously state, "NOTICE TO DEALER: THIS  
48 AGREEMENT RELATES TO THE TRANSFER AND ACCESSING OF CONFIDENTIAL  
49 INFORMATION AND CONSUMER RELATED DATA". Such consent does not change any  
50 such person's obligations to comply with the terms of this section and any additional State or  
51 federal laws (and any rules or regulations promulgated thereunder) applicable to them with

1 respect to such access. In addition, no dealer management computer system vendor may refuse  
2 to provide a dealer management computer system to a motor vehicle dealer located in this State  
3 if the dealer refuses to provide any consent under this subsection, ~~except to the extent that~~  
4 ~~consent is deemed by the parties to be reasonably necessary in order for the vendor to provide~~  
5 ~~the system to the dealer.~~subsection.

6 ...

7 (f) The following definitions apply to this section:

- 8 (1) "Dealer management computer system" – A computer hardware and  
9 software system ~~having dealer business process management modules that~~  
10 ~~provide real time system, including a dealer's use of Web applications,~~  
11 software, or hardware, whether located at the dealership or provided at a  
12 remote location and that provides access to customer records and  
13 transactions by a motor vehicle dealer located in this State and that allow  
14 allows such motor vehicle dealer timely information in order to sell vehicles,  
15 parts or services through such motor vehicle dealership.  
16 (2) "Dealer management computer system vendor" – A seller or reseller of  
17 dealer management computer systems (but only to the extent that such  
18 person is engaged in such activities).  
19 (3) "Security breach" – An incident of unauthorized access to and acquisition of  
20 records or data containing dealership or dealership customer information  
21 where unauthorized use of the dealership or dealership customer information  
22 has occurred or is reasonably likely to occur or that creates a material risk of  
23 harm to a dealership or a dealership's customer. Any incident of  
24 unauthorized access to and acquisition of records or data containing  
25 dealership or dealership customer ~~information~~information, or any incident of  
26 disclosure of dealership customer information to one or more third parties  
27 which shall not have been specifically authorized by the dealer, shall  
28 constitute a security breach.

29 ...

30 (h) Notwithstanding any of the terms or provisions contained in this section or in any  
31 consent, authorization, release, novation, franchise, or other contract or agreement, whenever  
32 any manufacturer, factory branch, distributor, distributor branch, dealer management computer  
33 system vendor, or any third party acting on behalf of or through any dealer management  
34 computer system vendor requires that a new motor vehicle dealer provide any dealer,  
35 consumer, or customer data or information through direct access to a dealer's computer system,  
36 the dealer is not required to provide, and may not be required to consent to provide in any  
37 written agreement, such direct access to its computer system and may instead provide such  
38 dealer, consumer, or customer data or information as may be reasonably necessary either by  
39 timely obtaining and pushing the dealer, consumer, or customer data or information to the  
40 requesting party itself or by timely obtaining and providing the required data or other  
41 information through some other commercially reasonable medium or technology. Any term or  
42 provision contained in any consent, authorization, release, novation, franchise, or other contract  
43 or agreement which is inconsistent with any term or provision contained in this subsection shall  
44 be voidable at the option of the dealer.

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

1 from whom it has acquired such consumer or customer data or other information from all  
2 damages, costs, and expenses incurred by such dealer, including, but not limited to, judgments,  
3 settlements, fines, penalties, litigation costs, defense costs, court costs, and attorneys' fees  
4 arising out of complaints, claims, civil or administrative actions, and, to the fullest extent  
5 allowable under the law, governmental investigations and prosecutions related to the access,  
6 storage, maintenance, use, sharing, disclosure, or retention of such dealer's consumer or  
7 customer data or other information."

8           **SECTION 12.** The terms and provisions of this act shall be applicable to all current  
9 and future franchises and other agreements in existence between any new motor vehicle dealer  
10 located in this State and a manufacturer or distributor as of the effective date of this act.

11           **SECTION 13.** If any provision of this act or its application is held invalid, the  
12 invalidity does not affect other provisions or applications of this act that can be given effect  
13 without the invalid provisions or application, and to this end the provisions of this act are  
14 severable.

15           **SECTION 14.** This act is effective when it becomes law.