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SESSION 2019

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SENATE BILL DRS45158-MW-61S

Short Title: Clarify Motor Vehicle Dealer Laws. (Public)

Sponsors: Senator B. Jackson (Primary Sponsor).

Referred to:

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

4
5 **UPDATE DEFINITIONS**

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

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

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

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

16 "(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this
17 State to purchase ~~non-diagnostic~~ or lease computer equipment or programs
18 hardware or software used for any purpose other than the maintenance or
19 repair of motor vehicles, to participate monetarily in an advertising campaign
20 or contest, or to purchase unnecessary or unreasonable quantities of any
21 promotional materials, training materials, training programs, showroom or
22 other display decorations, materials, computer equipment or programs, or
23 special tools at the expense of the new motor vehicle dealer, provided that
24 nothing in this subsection shall preclude a manufacturer or distributor from
25 including an unitemized uniform charge in the base price of the new motor
26 vehicle charged to the dealer where such charge is attributable to advertising
27 costs incurred or to be incurred by the manufacturer or distributor in the
28 ordinary courses of its business. Notwithstanding the terms or conditions of
29 any franchise or other agreement, in lieu of purchasing or leasing any special
30 tools required by any manufacturer, factory branch, distributor, or distributor
31 branch, a dealer may share access to special tools with other dealers; provided,
32 however, that (i) all the participating dealers have franchises with the same
33 manufacturer, factory branch, distributor, or distributor branch, (ii) the
34 participating dealers share access to the special tools pursuant to a written
35 agreement executed by all of the participating dealers which lists with
36 specificity all of the special tools to be shared, (iii) all of the participating



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1 dealers are located within a 75-mile radius of one another, and (iv) the sharing
2 of tools will not unreasonably delay completion of repairs."

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

4 "(46) To require, coerce, or attempt to coerce a dealer located in this State to
5 purchase goods or services of any nature from a vendor selected, identified,
6 or designated by a manufacturer, distributor, affiliate, or captive finance
7 source when the dealer may obtain goods or services of substantially similar
8 quality and design from a vendor selected by the dealer, provided the dealer
9 obtains prior approval from the manufacturer, distributor, affiliate, or captive
10 finance source, for the use of the dealer's selected vendor. Such approval by
11 the manufacturer, distributor, affiliate, or captive finance source may not be
12 unreasonably withheld. For purposes of this subdivision, the term "goods"
13 does not include moveable displays, brochures, and promotional materials
14 containing material subject to the intellectual property rights of a
15 manufacturer or distributor, or special tools or parts as reasonably required by
16 the ~~manufacturer, or parts manufacturer~~ to be used in repairs under warranty
17 obligations of a manufacturer or distributor. If the manufacturer, distributor,
18 affiliate, or captive finance source claims that a vendor chosen by the dealer
19 cannot supply goods and services of substantially similar quality and design,
20 the dealer may file a protest with the Commissioner. When a protest is filed,
21 the Commissioner shall promptly inform the manufacturer, distributor,
22 affiliate, or captive finance source that a protest has been filed. The
23 Commissioner shall conduct a hearing on the merits of the protest within 90
24 days following the filing of a response to the protest. The manufacturer,
25 distributor, affiliate, or captive finance source shall bear the burden of proving
26 that the goods or services chosen by the dealer are not of substantially similar
27 quality and design to those required by the manufacturer, distributor, affiliate,
28 or captive finance source."
29

30 **AREA OF RESPONSIBILITY PROTEST RIGHTS**

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

32 "(38) Notwithstanding the terms, provisions, or conditions of any agreement,
33 franchise, novation, waiver, or other written instrument, to assign or change a
34 franchised new motor vehicle dealer's area of responsibility under the
35 franchise arbitrarily or without due regard to the present or projected future
36 pattern of motor vehicle sales and registrations within the dealer's market and
37 without having provided the affected dealer with written notice of the change
38 in the dealer's area of responsibility and a detailed description of the change
39 in writing by registered or certified mail, return receipt requested. A
40 franchised new motor vehicle dealer who believes that a manufacturer, factory
41 branch, distributor, or distributor branch with whom the dealer has entered
42 into a franchise has assigned or changed the dealer's area of responsibility, is
43 proposing to assign or change the dealer's area of responsibility arbitrarily or
44 without due regard to the present or projected future pattern of motor vehicle
45 sales and registrations within the dealer's market, or failed to provide the
46 dealer with the notice required under this subdivision may file a petition
47 within 60 days of receiving notice of a manufacturer, factory branch,
48 distributor, or distributor branch's proposed assignment or change to the
49 dealer's area of responsibility and have an evidentiary hearing before the
50 Commissioner as provided in G.S. 20-301(b) contesting the franchised new
51 motor vehicle dealer's assigned area of responsibility. A franchised new motor

1 vehicle dealer who at any point in time believes that it is unreasonable for a
2 manufacturer, factory branch, distributor, or distributor branch with whom
3 that dealer has entered into a franchise to include one or more portions of the
4 dealer's existing area of responsibility previously assigned to that dealer by
5 the manufacturer, factory branch, distributor, or distributor branch may
6 request the elimination of the contested territory from the dealer's area of
7 responsibility by submitting the request in writing to the manufacturer, factory
8 branch, distributor, or distributor branch. The dealer's request shall be deemed
9 accepted by the manufacturer, factory branch, distributor, or distributor
10 branch if the manufacturer, factory branch, distributor, or distributor branch
11 has not sent the dealer notice of objection to the dealer's request via U.S.
12 registered or certified mail, return receipt requested, within 30 days after
13 receipt of the dealer's request. A dealer may file a petition within 60 days of
14 receiving notice from the manufacturer, factory branch, distributor, or
15 distributor branch of the manufacturer's rejection, in whole or in part, of the
16 dealer's request for the elimination of the contested territory from the dealer's
17 area of responsibility and have an evidentiary hearing before the
18 Commissioner as provided in G.S. 20-301(b) contesting the manufacturer's
19 rejection, in whole or in part, of the dealer's request for the elimination of the
20 contested territory from the franchised new motor vehicle dealer's assigned
21 area of responsibility. In determining at ~~the~~ an evidentiary hearing requested
22 under this subdivision whether a manufacturer, factory branch, distributor, or
23 distributor branch has assigned or changed the dealer's area of responsibility
24 or is proposing to assign or change the dealer's area of responsibility all or any
25 portion of the existing or proposed area of responsibility assigned to the dealer
26 is unreasonable or has been assigned arbitrarily or without due regard to the
27 present or projected future pattern of motor vehicle sales and registrations
28 within the dealer's market, the Commissioner may take into consideration the
29 relevant circumstances, including, but not limited to:

- 30 a. The investment of time, money, or other resources made for the
31 purpose of developing the market for the vehicles of the same
32 line-make in the existing or proposed area of responsibility by the
33 petitioning dealer, other same line-make dealers who would be
34 affected by the change in the area of responsibility, or by the
35 manufacturer, factory branch, distributor, distributor branch, or any
36 dealer or regional advertising association.
- 37 b. The present and future projected traffic patterns and drive times
38 between consumers and the same line-make franchised dealers of the
39 affected manufacturer, factory branch, distributor, or distributor
40 branch who are located within the market.
- 41 c. The historical and projected future pattern of new vehicle sales and
42 registrations of the affected manufacturer, factory branch, distributor,
43 or distributor branch within various portions of the area of
44 responsibility and within the market as a whole.
- 45 d. The growth or decline in population, density of population, and new
46 car registrations in the market.
- 47 e. If the affected manufacturer, factory branch, distributor, or distributor
48 branch has removed territory from a dealer's area of responsibility or
49 is proposing to remove territory from a dealer's area of responsibility,
50 the projected economic effects, if any, that these changes in the dealer's
51 area of responsibility will have on the petitioning dealer, other same

- 1 line-make dealers, the public, and the manufacturer, factory branch,
- 2 distributor, or distributor branch.
- 3 f. The projected effects that the changes in the petitioning dealer's area
- 4 of responsibility that have been made or proposed by the affected
- 5 manufacturer, manufacturer branch, distributor, or distributor branch
- 6 will have on the consuming public within the market.
- 7 g. The presence or absence of natural geographical obstacles or
- 8 boundaries, such as mountains and rivers.
- 9 h. The proximity of census tracts or other geographic units used by the
- 10 affected manufacturer, factory branch, distributor, or distributor
- 11 branch in determining same line-make dealers' respective areas of
- 12 responsibility.
- 13 i. The public interest, consumer welfare, and customer convenience.
- 14 j. The reasonableness of the change or proposed change to the dealer's
- 15 area of responsibility considering the benefits and harm to the
- 16 petitioning dealer, other same line-make dealers, and the
- 17 manufacturer, factory branch, distributor, or distributor branch.

18 At the evidentiary hearing before the Commissioner, the affected
 19 manufacturer, factory branch, distributor, or distributor branch shall have the
 20 burden of proving that all portions of its current or proposed area of
 21 responsibility for the petitioning franchised new motor vehicle dealer are
 22 reasonable in light of the present or projected future pattern of motor vehicle
 23 sales and registrations within the franchised new motor vehicle dealer's
 24 market. A policy or protocol of a manufacturer, factory branch, distributor, or
 25 distributor branch that determines a dealer's area of responsibility based solely
 26 on the proximity of census tracts or other geographic units to its franchised
 27 dealers and the existence of natural boundaries fails to satisfy the burden of
 28 proof on the affected manufacturer, factory branch, distributor, or distributor
 29 branch under this subdivision. Upon the filing of a petition before the
 30 Commissioner under this subdivision, any changes in the petitioning
 31 franchised new motor vehicle dealer's area of responsibility that have been
 32 proposed by the affected manufacturer, factory branch, distributor, or
 33 distributor branch shall be stayed during the pendency of the determination by
 34 the Commissioner. If a protest is or has been filed under G.S. 20-305(5) and
 35 the franchised new motor vehicle dealer's area of responsibility is included in
 36 the relevant market area under the protest, any protest filed under this
 37 subdivision shall be consolidated with that protest for hearing and joint
 38 disposition of all of the protests. Nothing in this subdivision shall apply to the
 39 determination of whether good cause exists for the establishment by a
 40 manufacturer, factory branch, distributor, or distributor branch of an
 41 additional new motor vehicle dealer or relocation of an existing new motor
 42 vehicle dealer, which shall be governed in accordance with the requirements
 43 and criteria contained in G.S. 20-305(5) and not this subdivision."
 44

PERFORMANCE MEASURES

SECTION 4. G.S. 20-305(51) reads as rewritten:

47 "(51) To establish, implement, or enforce criteria for measuring the sales or service
 48 performance of any of its franchised new motor vehicle dealers in this State
 49 ~~for the purpose of cancelling, terminating or nonrenewing a franchise~~
 50 ~~agreement which that~~ (i) are unfair, unreasonable, arbitrary, or inequitable; (ii)
 51 do not consider available relevant and material local, State, and regional

1 criteria, data, and facts. ~~Relevant facts, relevant~~ and material criteria, data, or
 2 facts include those of motor vehicle dealerships of comparable size in
 3 comparable markets; and (iii) if such performance measurement criteria are
 4 based, in whole or in part, on a survey, such survey must be based on a
 5 statistically significant and valid random sample. In any proceeding under this
 6 subdivision, the applicable manufacturer or distributor shall bear the burden
 7 of proof (i) with regard to all issues raised in the proceeding and (ii) that the
 8 dealer performance measurements comply with all of the provisions hereof
 9 and ~~are are~~, and have ~~been been~~, implemented and enforced uniformly by the
 10 ~~applicable~~ manufacturer or distributor among its franchised dealers in this
 11 State. In the event it is determined that the performance criteria employed by
 12 a manufacturer or distributor for measuring the sales, service, or customer
 13 satisfaction performance of any of its franchised motor vehicle dealers in this
 14 State ~~for the purpose of cancelling, terminating or nonrenewing a franchise~~
 15 ~~agreement~~ are unfair, unreasonable, arbitrary, or inequitable, or that the
 16 performance criteria does not consider available local, State, and regional
 17 criteria, data, and facts required in this subsection, or that the performance
 18 criteria have not been implemented and enforced uniformly by the ~~applicable~~
 19 manufacturer or distributor among its franchised dealers in this State, the
 20 performance criteria of the manufacturer or distributor may not constitute any
 21 part of the basis for a determination in any franchise-related decision
 22 pertaining to ~~whether good cause exists for the termination of a dealer's~~
 23 ~~franchise pursuant to G.S. 20-305(6).~~ any of the following:

- 24 a. Determining eligibility for compensation or any other benefits under
 25 any incentive, bonus, or other policy or program.
- 26 b. Whether to allow a dealer's proposed transfer of ownership, change in
 27 executive management, or relocation pursuant to subdivision (4) of
 28 this section.
- 29 c. Whether good cause exists for the establishment of an additional new
 30 motor vehicle dealer or relocation of an existing dealer pursuant to
 31 subdivision (5) of this section.
- 32 d. Whether good cause exists for the termination of a dealer's franchise
 33 pursuant to subdivision (6) of this section.
- 34 e. Whether to allow appointment of a designated successor to a franchise
 35 pursuant to subdivision (7) of this section."

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

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

39 "(52) To prohibit or to in any way limit or restrict a dealer from selling over the
 40 Internet, including online e-commerce marketplaces, parts and accessories
 41 obtained by the dealer from the manufacturer, factory branch, distributor, or
 42 distributor branch, or from any source recommended or approved by the
 43 manufacturer, factory branch, distributor, or distributor branch."

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

47 SECTION 6. G.S. 20-305.1 reads as rewritten:

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

49 ...

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

1 its warranty or recall obligations with respect to a motor vehicle, to fail to fully compensate its
2 motor vehicle dealers licensed in this State for a qualifying used motor vehicle pursuant to
3 subsections (i) and (j) of this section or warranty and recall parts other than parts used to repair
4 the living facilities of recreational vehicles, including motor homes, travel trailers, fifth-wheel
5 trailers, camping trailers, and truck campers as defined in G.S. 20-4.01(32b), at the prevailing
6 retail rate according to the factors in subsection (a) of this section, or, in service in accordance
7 with the schedule of compensation provided the dealer pursuant to subsection (a) of this section,
8 or to otherwise recover all or any portion of its costs for compensating its motor vehicle dealers
9 licensed in this State for warranty or recall parts and service or for payments for a qualifying
10 used motor vehicle pursuant to subsections (i) and (j) of this section either by reduction in the
11 amount due to the dealer, or by separate charge, surcharge, or other imposition, and to fail to
12 indemnify and hold harmless its franchised dealers licensed in this State against any judgment
13 for damages or settlements agreed to by the manufacturer, including, but not limited to, court
14 costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims
15 or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or
16 implied warranty, or rescission or revocation of acceptance of the sale of a motor vehicle as defined
17 in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective
18 negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other
19 functions by the manufacturer, factory branch, distributor or distributor branch, beyond the
20 control of the dealer. Any audit for warranty or recall parts or service compensation, or
21 compensation for a qualifying used motor vehicle in accordance with subsections (i) and (j) of
22 this section may only be conducted one time within any 12-month period and shall only be for
23 the 12-month period immediately following the date of the payment of the claim by the
24 manufacturer, factory branch, distributor, or distributor branch. Any audit for sales incentives,
25 service incentives, rebates, or other forms of incentive compensation may only be conducted one
26 time within any 12-month period and shall only be for the 12-month period immediately
27 following the date of the payment of the claim by the manufacturer, factory branch, distributor,
28 or distributor branch pursuant to a sales incentives program, service incentives program, rebate
29 program, or other form of incentive compensation program. Provided, however, these limitations
30 shall not be effective in the case of fraudulent claims.

31 ...

32 (5) Any audit of a dealer by a manufacturer for sales or leases made to exporters
33 or brokers may only be conducted one time within any 12-month period and
34 shall only be for the 12-month period immediately preceding the audit.

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

43 44 **MOTOR VEHICLE SUBSCRIPTIONS**

45 **SECTION 7.** G.S. 20-305.2(a) reads as rewritten:

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

DEALERSHIP DATA

SECTION 8. G.S. 20-305.7 reads as rewritten:

"(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 that is either required or voluntary on the part of the dealer, 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, void and the dealer shall automatically be entitled to the benefits offered 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 ~~not required to allow the manufacturer or distributor or any third party to have direct access to is either permitted to restrict the data fields that may be accessed in the dealer's computer system, but or~~ 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

1 system utilized by a motor vehicle dealer located in this State, or require or coerce a motor vehicle
2 dealer located in this State to utilize a particular dealer management computer system, unless the
3 dealer management computer system allows the dealer to reasonably maintain the security,
4 integrity, and confidentiality of the data maintained in the system. No manufacturer, factory
5 branch, distributor, distributor branch, dealer management computer system vendor, or any third
6 party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, or
7 dealer management computer system vendor shall prohibit a dealer from providing a means to
8 regularly and continually monitor the specific data accessed from or written to the dealer's
9 computer system and from complying with applicable State and federal laws and any rules or
10 regulations promulgated thereunder. These provisions shall not be deemed to impose an
11 obligation on a manufacturer, factory branch, distributor, distributor branch, dealer management
12 computer system vendor, or any third party acting on behalf of any manufacturer, factory branch,
13 distributor, distributor branch, or dealer management computer system vendor to provide such
14 capability. Notwithstanding the terms or conditions of any incentive program or contest that is
15 either required or voluntary on the part of the dealer, or the terms or conditions of any other
16 contract or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or
17 distributor branch to fail or refuse to provide dealer notice, in a standalone written document, at
18 least 60 days prior to making any changes in any of the dealer or customer data the dealer is
19 requested or required to share with a manufacturer, factory branch, distributor, or distributor
20 branch, or any third party. The changes in any of the dealer or customer data the dealer is required
21 or requested to provide shall be void unless the applicable manufacturer, factory branch,
22 distributor, or distributor branch complies with the notice requirements contained in this
23 paragraph.

24 ...

25 (b1) It shall be unlawful for any manufacturer, factory branch, distributor, distributor
26 branch, dealer management computer system vendor, or any third party having access to any
27 dealer management computer system, to:

28 (1) Take any action, by contract, by technical means, or otherwise, that would
29 prohibit or limit a dealer's ability to protect, store, copy, share, or use any
30 customer or dealer information maintained in a dealer management computer
31 system utilized by a new motor vehicle dealer located in this State. Unlawful
32 conduct prohibited by this section includes, but is not limited to:

33 a. Imposing any unreasonable fees or other restrictions of any kind on
34 the dealer or any third party for access to or sharing of customer or
35 dealer information, or for writing data to a dealer management
36 computer system. For purposes of this section, the term "unreasonable
37 fees" means charges for access to customer or dealer data beyond any
38 direct costs incurred by any dealer management computer system
39 vendor in providing access to the dealer's customer or dealer data to a
40 third party that the dealer has authorized to access its dealer
41 management computer system or allowing any third party that the
42 dealer has authorized to access its dealer management computer
43 system to write data to its dealer management computer system. Any
44 charges must be (i) disclosed to the dealer and (ii) justified by
45 documentary evidence of the costs associated with access or it will be
46 deemed a prohibited unreasonable fee under this section.

47 b. Prohibiting any third party that the dealer has authorized to access its
48 dealer management computer system from integrating into that
49 dealer's dealer management computer system, or placing unreasonable
50 restrictions on integration by any authorized third party that the dealer
51 has selected to access its dealer management computer system.

- 1 Examples of unreasonable restrictions include, but are not limited to,
2 any of the following:
- 3 1. Unreasonable restrictions on the scope or nature of the data
4 shared with a third party authorized by the dealer to access the
5 dealer's dealer management computer system.
 - 6 2. Unreasonable restrictions on the ability of a third party
7 authorized by the dealer to access the dealer's dealer
8 management computer system to write data to a dealer
9 management computer system.
 - 10 3. Unreasonable restrictions or conditions on a third party
11 authorized by the dealer to access the dealer's dealer
12 management computer system to share customer or dealer
13 information.
 - 14 4. Requiring unreasonable access to sensitive, competitive, or
15 other confidential business information of a third party as a
16 condition for access to customer or dealer information or
17 sharing customer or dealer information with any third party
18 authorized by the dealer to access the dealer's dealer
19 management computer system.
 - 20 c. Prohibiting or limiting a dealer's ability to store, copy, securely share,
21 or use customer or dealer information outside the dealer's dealer
22 management computer system in any manner and for any reason.
 - 23 d. Permitting access to or accessing customer or dealer information
24 without first obtaining the dealer's express written consent in a
25 standalone document.
- 26 (2) Engage in any act of cyber ransom. For purposes of this section, the term
27 "cyber ransom" shall mean to encrypt, restrict or prohibit access, or threaten
28 or attempt to encrypt, restrict, or prohibit access to a dealer's customer or
29 dealer data for monetary gain or for political or ideological purposes.
- 30 (b2) It is unlawful for any dealer management computer system vendor or other third party
31 who has access to any dealer management computer system to fail or refuse to:
- 32 (1) Adopt and make available a standardized framework for the exchange,
33 integration, and sharing of data from dealer management computer systems
34 with any party authorized to access a dealer management computer system,
35 and retrieval of such data by any party authorized to access a dealer
36 management computer system (use of the Standards for Technology in
37 Automotive Retail (STAR) or a standard compatible with the STAR Standards
38 shall be deemed to be in compliance with this requirement).
 - 39 (2) Provide access to open application programming interfaces (APIs) to any
40 party authorized to access a dealer management computer system. In the event
41 that APIs are no longer the reasonable commercial or technical standard for
42 secure data integration, a similar open access integration method may be
43 provided, to the extent it provides the same or better access to any party
44 authorized to access a dealer management computer system as an API and
45 utilizes the required standardized framework.
 - 46 (3) Access, use, store, or share any data from a dealer management computer
47 system only to the extent permitted in its written agreement with the dealer.
 - 48 (4) Make any agreement regarding access to, sharing or selling of, copying, using,
49 or transmitting data on any dealer management computer system terminable
50 upon no more than 90 days' notice from the dealer.

- 1 (5) Upon receipt of notice of the dealer's intent to terminate its contract and in
 2 order to prevent any risk of consumer harm or inconvenience, work to ensure
 3 a secure transition to a successor dealer management computer system vendor
 4 or any other party authorized to access a dealer management computer system.
 5 This includes, but is not limited to: (i) providing unrestricted access to all data
 6 maintained on the dealer management computer system in a commercially
 7 reasonable time and format that a successor dealer management computer
 8 system vendor or other party authorized to access a dealer management
 9 computer system can access and use and (ii) returning to the dealer all
 10 confidential or proprietary information obtained from the dealer management
 11 computer system prior to termination of the contract pursuant to any written
 12 directions of the dealer.
- 13 (6) Promptly provide a dealer, upon the dealer's request, with a listing of all
 14 entities with whom it is sharing any data from the dealer management
 15 computer system, or to whom it has allowed access to any data from the dealer
 16 management computer system.
- 17 (7) Allow and facilitate a dealer to audit the dealer management computer system
 18 vendor's access and use of its dealer management computer system and any
 19 data obtained or obtainable from its dealer management computer system.
- 20 (b3) The rights conferred on dealers in this section are not waivable and may not be
 21 reduced or otherwise modified by any contract or agreement.
 22 "

23

24 **STANDING TO INITIATE AN ACTION**

25 **SECTION 9.** G.S. 20-308.1(d) reads as rewritten:

26 "(d) Any association that is comprised of a minimum of 400 new motor vehicle dealers,
 27 or a minimum of 10 motorcycle dealers, substantially all of whom are new motor vehicle dealers
 28 located within North Carolina, and which represents the collective interests of its members, shall
 29 have standing to initiate an action or participate as a party to any civil or administrative
 30 proceeding in any of the courts or administrative agencies of this State, including the right to file
 31 a petition before the Commissioner or a cause of action in any court of competent jurisdiction for
 32 itself, or on behalf of any or all of its members, seeking declaratory and injunctive relief. ~~Prior~~
 33 ~~to bringing an action, the association and manufacturer, factory branch, distributor, or distributor~~
 34 ~~branch shall initiate mediation as set forth in G.S. 20-301.1(b).~~ An action brought pursuant to
 35 this subsection may seek a determination whether one or more manufacturers, factory branches,
 36 distributors, or distributor branches doing business in this State have violated any of the
 37 provisions of this Article, or for the determination of any rights created or defined by this Article,
 38 so long as the association alleges an injury to the collective interest of its members cognizable
 39 under this section. A cognizable injury to the collective interest of the members of the association
 40 shall be deemed to occur if a manufacturer, factory branch, distributor, or distributor branch
 41 doing business in this State ~~has engaged in any conduct or taken any action which actually harms~~
 42 ~~or affects all of the franchised new motor vehicle dealers holding franchises with that~~
 43 ~~manufacturer, factory branch, distributor, or distributor branch in this State.~~ engages in any
 44 conduct or takes any action which has harmed or would harm or which has affected or would
 45 affect all or a substantial number of franchised new motor vehicle dealers in this State. With
 46 respect to any administrative or civil action filed by an association pursuant to this subsection,
 47 the relief granted shall be limited to declaratory and injunctive relief and in no event shall the
 48 Commissioner or court enter an award of monetary damages."

49

50 **SEVERABILITY CLAUSE**

1 **SECTION 10.** If any provision of this act or its application is held invalid, the
2 invalidity does not affect other provisions or applications of this act that can be given effect
3 without the invalid provisions or application, and to this end the provisions of this act are
4 severable.

5

6 **EFFECTIVE DATE**

7 **SECTION 11.** This act is effective when it becomes law and applies to all current
8 and future franchises and other agreements in existence between any new motor vehicle dealer
9 located in this State and a manufacturer or distributor as of the effective date of this act.