

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 327

Short Title: Clarify Motor Vehicle Licensing Law. (Public)

Sponsors: Senators Apodaca (Primary Sponsor); Bryant, Daniel, Jackson, Jenkins, and Newton.

Referred to: Commerce.

March 19, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE MOTOR VEHICLE DEALERS AND MANUFACTURERS
3 LICENSING LAW.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 20-286(11)a. is amended by adding a new sub-sub-subdivision
6 to read:

7 "(11) Motor vehicle dealer or dealer. –

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

9 ...

10 6. Engages in the purchase, sale, lease, or exchange of motor
11 vehicles by providing, either directly or indirectly, any
12 computer or other communications facilities, hardware, or
13 equipment at any location within this State that uses the
14 computer or other communications facilities, hardware, or
15 equipment for the purpose of transmitting applications,
16 contracts, or orders for motor vehicles purchased or leased by
17 retail purchasers or lessees located in this State."

18 **SECTION 2.** G.S. 20-287(a) reads as rewritten:

19 "(a) License Required. – It shall be unlawful for any new motor vehicle dealer, used
20 motor vehicle dealer, motor vehicle sales representative, manufacturer, factory branch, factory
21 representative, distributor, distributor branch, distributor representative, or wholesaler to
22 engage in business in this State without first obtaining a license as provided in this Article. If
23 any motor vehicle dealer acts as a motor vehicle sales representative, the dealer shall obtain a
24 motor vehicle sales representative's license in addition to a motor vehicle dealer's license. A
25 sales representative may have only one license. The license shall show the name of the dealer
26 or wholesaler employing the sales representative. The following license holders may operate as
27 a motor vehicle dealer without obtaining a motor vehicle dealer's license or paying an
28 additional fee: a manufacturer, a factory branch, a distributor, and a distributor branch. Any of
29 these license holders who operates as a motor vehicle ~~dealer~~dealer, including a person who
30 engages in the purchase, sale, lease, or exchange of motor vehicles by providing, either directly
31 or indirectly, any computer or other communications facilities, hardware, or equipment at any
32 location within this State that uses the computer or other communications facilities, hardware,
33 or equipment for the purpose of transmitting applications, contracts, or orders for motor
34 vehicles purchased or leased by retail purchasers or lessees located in this State, may sell motor
35 vehicles at retail only at an established salesroom."



1 **SECTION 3.** G.S. 20-305 reads as rewritten:

2 "**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel**
3 **franchise; preventing transfer of ownership; granting additional franchises;**
4 **terminating franchises without good cause; preventing family succession.**

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

7 ...

8 (30) To vary the price charged to any of its franchised new motor vehicle dealers
9 located in this State for new motor vehicles based on the dealer's purchase of
10 new facilities, supplies, tools, equipment, or other merchandise from the
11 manufacturer, the dealer's relocation, remodeling, repair, or renovation of
12 existing dealerships or construction of a new facility, the dealer's
13 participation in training programs sponsored, endorsed, or recommended by
14 the manufacturer, whether or not the dealer is dualed with one or more other
15 line makes of new motor vehicles, or the dealer's sales penetration. Except as
16 provided in this subdivision, it shall be unlawful for any manufacturer,
17 factory branch, distributor, or distributor branch, or any field representative,
18 officer, agent, or any representative whatsoever of any of them to vary the
19 price charged to any of its franchised new motor vehicle dealers located in
20 this State for new motor vehicles based on the dealer's sales volume, the
21 dealer's level of sales or customer service satisfaction, the dealer's purchase
22 of advertising materials, signage, nondiagnostic computer hardware or
23 software, communications devices, or furnishings, or the dealer's
24 participation in used motor vehicle inspection or certification programs
25 sponsored or endorsed by the manufacturer.

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

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

- 35 a. With respect to manufacturer to consumer rebates and incentives, the
36 manufacturer's criteria for determining eligibility shall:
- 37 1. Permit all of the manufacturer's franchised new motor vehicle
38 dealers in this State to offer the rebate or incentive; and
 - 39 2. Be uniformly applied and administered to all eligible
40 consumers.
- 41 b. With respect to manufacturer to dealer rebates and incentives, the
42 rebate or incentive program shall:
- 43 1. Be based solely on the dealer's actual or reasonably
44 anticipated sales volume or on a uniform per vehicle sold or
45 leased basis;
 - 46 2. Be uniformly available, applied, and administered to all of the
47 manufacturer's franchised new motor vehicle dealers in this
48 State; and
 - 49 3. Provide that any of the manufacturer's franchised new motor
50 vehicle dealers in this State may, upon written request, obtain
51 the method or formula used by the manufacturer in

1 establishing the sales volumes for receiving the rebates or
2 incentives and the specific calculations for determining the
3 required sales volumes of the inquiring dealer and any of the
4 manufacturer's other franchised new motor vehicle dealers
5 located within 75 miles of the inquiring dealer.

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

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

15 In the event that as of October 1, 1999, a manufacturer was operating a
16 program that varied the price charged to its franchised dealers in this State in
17 a manner that would violate this subdivision, or had in effect a documented
18 policy that had been conveyed to its franchised dealers in this State and that
19 varied the price charged to its franchised dealers in this State in a manner
20 that would violate this subdivision, it shall be lawful for that program or
21 policy, including amendments to that program or policy that are consistent
22 with the purpose and provisions of the existing program or policy, or a
23 program or policy similar thereto implemented after October 1, 1999, to
24 continue in effect as to the manufacturer's franchised dealers located in this
25 State until June 30, ~~2014~~2016.

26 In the event that as of June 30, 2001, a manufacturer was operating a
27 program that varied the price charged to its franchised dealers in this State in
28 a manner that would violate this subdivision, or had in effect a documented
29 policy that had been conveyed to its franchised dealers in this State and that
30 varied the price charged to its franchised dealers in this State in a manner
31 that would violate this subdivision, and the program or policy was
32 implemented in this State subsequent to October 1, 1999, and prior to June
33 30, 2001, and provided that the program or policy is in compliance with this
34 subdivision as it existed as of June 30, 2001, it shall be lawful for that
35 program or policy, including amendments to that program or policy that
36 comply with this subdivision as it existed as of June 30, 2001, to continue in
37 effect as to the manufacturer's franchised dealers located in this State until
38 June 30, ~~2014~~2016.

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

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

47 ...
48 (33) To either (i) fail to reimburse a dealer located in this State in full for the
49 actual cost of providing a loaner vehicle to any customer who is having a
50 vehicle serviced at the dealership if the provision of such a loaner vehicle is
51 required by the ~~manufacturer~~ manufacturer or (ii) require a dealer to

1 purchase, lease, or otherwise title one or more new motor vehicles for use as
 2 a loaner vehicle in order to participate in or qualify for any incentive
 3 program offered or sponsored by the manufacturer or distributor, or to
 4 otherwise receive any discounts, credits, rebates, or incentives of any kind
 5 that are calculated or paid on a per vehicle basis.

6 (34) To require, coerce, or attempt to coerce any new motor vehicle dealer in this
 7 State to participate ~~monetarily~~ in any unreasonable training session, meeting,
 8 training program, or certification program for any purpose, including as a
 9 condition or a requirement of the manufacturer or distributor for the dealer to
 10 qualify for any incentive program offered or sponsored by the manufacturer
 11 or distributor, or to otherwise receive any discounts, credits, rebates, or
 12 incentives of any kind that are calculated or paid on a per vehicle basis.
 13 Examples of an unreasonable training session, meeting, training program, or
 14 certification program with respect to which a manufacturer is prohibited
 15 from requiring or coercing the dealer's participation include the following:

16 a. Any training session, meeting, training program, or certification
 17 program ~~whose~~including subject matter that is not expressly limited
 18 to specific information necessary to sell or service the models of
 19 vehicles the dealer is authorized to sell or service under the dealer's
 20 franchise with that manufacturer. ~~Examples of training programs~~
 21 ~~with respect to which a manufacturer is prohibited from requiring the~~
 22 ~~dealer's monetary participation include, but are not limited to, those~~

23 b. Any training session, meeting, training program, or certification
 24 program ~~_____~~ which ~~_____~~ purportpurporting to teach
 25 ~~morale boosting~~morale-boosting, employee motivation, teamwork,
 26 or general principles of customer relations.

27 c. ~~A manufacturer is further prohibited from requiring~~Any training
 28 session, meeting, training program, or certification program requiring
 29 the personal attendance of an owner or dealer principal of any
 30 dealership located in this State ~~at any meeting or training program at~~
 31 ~~which~~when it is reasonably possible for another member of the
 32 dealer's management to attend and later relate the subject matter of
 33 the ~~meeting or training~~ session, meeting, training program, or
 34 certification program to the dealership's owners or principal operator.

35 ...
 36 (44) Notwithstanding the terms, provisions, or conditions of any agreement or
 37 franchise, to require, coerce, or attempt to coerce any new motor vehicle
 38 dealer located in this State to refrain from prominently displaying in the
 39 dealer's showroom or elsewhere within the dealership facility, as determined
 40 in the sole discretion of the dealer, any honors, awards, photographs,
 41 displays, or other artifacts or memorabilia related to the dealership, dealer
 42 principal, or any of the owners, investors, officers, directors, or employees of
 43 the dealer.

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

- 1 a. Requiring, coercing, or attempting to coerce a dealer to exclusively
2 sell or offer for sale service contracts, debt cancellation agreements,
3 or similar products approved, endorsed, sponsored, or offered by the
4 manufacturer, distributor, affiliate, or captive finance source.
- 5 b. Taking or threatening to take any adverse action against a dealer (i)
6 who sells or offers for sale any service contracts, debt cancellation
7 agreements, maintenance agreements, or similar products that have
8 not been approved, endorsed, sponsored, or offered by the
9 manufacturer, distributor, affiliate or captive finance source or (ii)
10 who fails to sell or offer for sale service contracts, debt cancellation
11 agreements, maintenance agreements, or similar products approved,
12 endorsed, sponsored, or offered by the manufacturer, distributor,
13 affiliate, or captive finance source.
- 14 c. Measuring a dealer's performance under a franchise in any part based
15 upon the dealer's sale of service contracts, debt cancellation
16 agreements, or similar products approved, endorsed, sponsored, or
17 offered by the manufacturer, distributor, affiliate, or captive finance
18 source.
- 19 d. Requiring a dealer to promote the sale of service contracts, debt
20 cancellation agreements, or similar products approved, endorsed,
21 sponsored, or offered by the manufacturer, distributor, affiliate, or
22 captive finance source.
- 23 e. Considering the dealer's sale of service contracts, debt cancellation
24 agreements, or similar products approved, endorsed, sponsored, or
25 offered by the manufacturer, distributor, affiliate, or captive finance
26 source in determining any of the following:
- 27 1. The dealer's eligibility to purchase any vehicles, parts, or
28 other products or services from the manufacturer or
29 distributor.
- 30 2. The volume of vehicles or other parts or services the dealer
31 shall be eligible to purchase from the manufacturer or
32 distributor.
- 33 3. The price or prices of any vehicles, parts, or other products or
34 services that the dealer shall be eligible to purchase from the
35 manufacturer or distributor.
- 36 4. The availability or amount of any vehicle discount, credit,
37 special pricing, rebate, or sales or service incentive the dealer
38 shall be eligible to receive from the manufacturer, distributor,
39 affiliate, or captive finance source.

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

- 50 (46) To require, coerce, or attempt to coerce a dealer located in this State to
51 purchase goods or services of any nature from a vendor selected, identified,

1 or designated by a manufacturer, distributor, affiliate, or captive finance
2 source. For purposes of this subdivision, unlawful coercion includes any
3 requirement of a manufacturer, distributor, affiliate, or captive finance
4 source that a dealer use a specific vendor or group of vendors as a condition
5 to receive any discount, credit, rebate, or sales incentive. When a
6 manufacturer, distributor, affiliate, or captive finance source recommends or
7 designates to a dealer a specific vendor or group of vendors, the
8 manufacturer, distributor, affiliate, or captive finance source shall
9 contemporaneously and conspicuously also disclose to the dealer the option
10 to obtain the goods or services of substantially similar kind and quality from
11 a vendor selected by the dealer. For purposes of this subdivision, the term
12 "goods" does not include moveable displays, brochures, and promotional
13 materials containing material subject to the intellectual property rights of a
14 manufacturer or distributor, or special tools as reasonably required by the
15 manufacturer, or parts to be used in repairs under warranty obligations of a
16 manufacturer or distributor. If the manufacturer, distributor, affiliate, or
17 captive finance source claims that a vendor chosen by the dealer cannot
18 supply goods and services of substantially similar kind and quality, the
19 manufacturer or distributor may file a protest with the Commissioner. When
20 a protest is filed, the Commissioner shall promptly inform the dealer that a
21 protest has been filed. The Commissioner shall conduct a hearing on the
22 merits of the protest within 90 days following the dealer's filing of a
23 response to the protest. The manufacturer, distributor, affiliate, or captive
24 finance source shall bear the burden of proving that the goods or services
25 chosen by the dealer are not of substantially similar kind and quality to those
26 required by the manufacturer.

27 (47) To fail to provide to a dealer, if the goods or services to be supplied to the
28 dealer by a vendor selected, identified, or designated by the manufacturer or
29 distributor are signs or other franchisor image elements to be purchased or
30 leased to the dealer, the right to purchase or lease the signs or other
31 franchisor image elements of like kind and quality from a vendor selected by
32 the dealer. If the vendor selected by the manufacturer or distributor is the
33 only available vendor, the dealer must be given the opportunity to purchase
34 the signs or other franchisor image elements at a price substantially similar
35 to the capitalized lease costs thereof. This subdivision shall not be construed
36 to allow a dealer to impair or eliminate the intellectual property rights of the
37 manufacturer or distributor, or to permit a dealer to erect or maintain signs
38 that do not conform to the reasonable intellectual property usage guidelines
39 of the manufacturer or distributor.

40 (48) To unreasonably interfere with a dealer's independence in staffing the
41 dealership by engaging in any of the following conduct: (i) requiring,
42 coercing, or attempting to coerce a dealer located in this State to employ,
43 appoint, or designate an individual to serve full-time or exclusively in any
44 specific capacity, role, or job function at the dealership, other than the
45 employment or appointment of a full-time general manager; (ii) requiring a
46 dealer to employ, appoint, or designate an individual to serve full-time or
47 exclusively in any specific capacity, role, or job function at the dealership,
48 other than the employment or appointment of a full-time general manager, in
49 order to participate in or qualify for any incentive program offered or
50 sponsored by the manufacturer or distributor or to otherwise receive any
51 discounts, credits, rebates, or incentives of any kind that are calculated or

1 paid on a per vehicle basis; or (iii) requiring that the dealer obtain the
2 approval of the manufacturer or distributor prior to employing or appointing
3 any individual in any capacity, role, or job function at the dealership, other
4 than the employment or appointment of a full-time general manager. Except
5 as expressly provided above, nothing contained in this subdivision shall be
6 deemed to prevent or prohibit a manufacturer or distributor from requiring
7 that a dealer employ a reasonable number of trained employees to sell and
8 service the factory's vehicles."

9 **SECTION 4.** G.S. 20-305.2 is amended by adding a new subsection to read:

10 "(e) For purposes of this section, an unfair method of competition includes any warranty
11 or nonwarranty fix, repair, update, or adjustment made or provided directly by a manufacturer
12 or distributor to any motor vehicle located within this State without the direct participation of a
13 dealer franchised by the manufacturer or distributor and without such dealer receiving
14 reasonable compensation for such fix, repair, update, or adjustment as provided in
15 G.S. 20-305.1."

16 **SECTION 5.** G.S. 20-305.7 reads as rewritten:

17 **"§ 20-305.7. Protecting dealership data and consent to access dealership information.**

18 ...

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

- 20 (1) "Dealer management computer system" – A computer hardware and
21 software system that is owned or leased by the dealer, including a dealer's
22 use of Web applications, software, or hardware, whether located at the
23 dealership or provided at a remote location and that provides access to
24 customer records and transactions by a motor vehicle dealer located in this
25 State and that allows such motor vehicle dealer timely information in order
26 to sell vehicles, parts or services through such motor vehicle dealership.
- 27 (2) "Dealer management computer system vendor" – A seller or reseller of
28 dealer management computer ~~systems~~ systems, a person that sells
29 computer software for use on dealer management computer systems, or a
30 person who services or maintains dealer management computer systems, but
31 only to the extent that such person is each of the sellers, resellers, or other
32 persons listed in this subdivision are engaged in such activities). ~~activities.~~
- 33 (3) "Security breach" – An incident of unauthorized access to and acquisition of
34 records or data containing dealership or dealership customer information
35 where unauthorized use of the dealership or dealership customer information
36 has occurred or is reasonably likely to occur or that creates a material risk of
37 harm to a dealership or a dealership's customer. Any incident of
38 unauthorized access to and acquisition of records or data containing
39 dealership or dealership customer information, or any incident of disclosure
40 of dealership customer information to one or more third parties which shall
41 not have been specifically authorized by the dealer or customer, shall
42 constitute a security breach.

43 (g1) Notwithstanding any of the terms or provisions contained in this section or in any
44 consent, authorization, release, novation, franchise, or other contract or agreement, whenever
45 any manufacturer, factory branch, distributor, distributor branch, dealer management computer
46 system vendor, or any third party acting on behalf of or ~~through~~ through, or approved, referred,
47 endorsed, authorized, certified, granted preferred status, or recommended by, any manufacturer,
48 factory branch, distributor, distributor branch, or dealer management computer system vendor
49 requires that a new motor vehicle dealer provide any dealer, consumer, or customer data or
50 information through direct access to a dealer's computer system, the dealer is not required to
51 provide, and may not be required to consent to provide in any written agreement, such direct

1 access to its computer system. The dealer may instead provide the same dealer, consumer, or
2 customer data or information specified by the requesting party by timely obtaining and pushing
3 or otherwise furnishing the requested data to the requesting party in a widely accepted file
4 format such as comma delimited; provided that, when a dealer would otherwise be required to
5 provide direct access to its computer system under the terms of a consent, authorization,
6 release, novation, franchise, or other contract or agreement, a dealer that elects to provide data
7 or information through other means may be charged a reasonable initial set-up fee and a
8 reasonable processing fee based on the actual incremental costs incurred by the party
9 requesting the data for establishing and implementing the process for the dealer. Any term or
10 provision contained in any consent, authorization, release, novation, franchise, or other contract
11 or agreement which is inconsistent with any term or provision contained in this subsection shall
12 be voidable at the option of the dealer.

13 (g2) Notwithstanding the terms or conditions of any consent, authorization, release,
14 novation, franchise, or other contract or agreement, every manufacturer, factory branch,
15 distributor, distributor branch, dealer management computer system vendor, or any third party
16 acting on behalf of or through any manufacturer, factory branch, distributor, distributor branch,
17 or dealer management computer system vendor, having electronic access to consumer or
18 customer data or other information in a computer system utilized by a new motor vehicle
19 dealer, or who has otherwise been provided consumer or customer data or information by the
20 dealer, shall fully indemnify and hold harmless any dealer from whom it has acquired such
21 consumer or customer data or other information from all damages, costs, and expenses incurred
22 by such dealer, including, but not limited to, judgments, settlements, fines, penalties, litigation
23 costs, defense costs, court costs, costs related to the disclosure of security breaches, and
24 attorneys' fees arising out of complaints, claims, security breaches, civil or administrative
25 actions, and, to the fullest extent allowable under the law, governmental investigations and
26 prosecutions to the extent caused by the access, storage, maintenance, use, sharing, disclosure,
27 or retention of such dealer's consumer or customer data or other ~~information~~information, or
28 maintenance or services provided to any computer system utilized by a new motor vehicle
29 dealer by the manufacturer, factory branch, distributor, distributor branch, dealer management
30 computer system vendor, or third party acting on behalf of or through such manufacturer,
31 factory branch, distributor, distributor branch, or dealer management computer system vendor.

32"

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

34 "**§ 20-305.1. Automobile dealer warranty obligations.**

35 (a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch,
36 shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's
37 obligations for preparation, delivery and warranty service on its products, the schedule of
38 compensation to be paid such dealers for parts, work, and service in connection with warranty
39 service, and the time allowances for the performance of such work and service. In no event
40 shall such schedule of compensation fail to include reasonable compensation for diagnostic
41 work and associated administrative requirements as well as repair service and labor. Time
42 allowances for the performance of warranty work and service shall be reasonable and adequate
43 for the work to be performed. The compensation which must be paid under this section must be
44 reasonable, provided, however, that under no circumstances may the reasonable compensation
45 under this section be in an amount less than the dealer's current retail labor rate and the amount
46 charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty
47 work of like kind, provided such amount is competitive with the retail rates charged for parts
48 and labor by other franchised dealers within the dealer's market.

49 (a1) The retail rate customarily charged by the dealer for parts and labor may be
50 established at the election of the dealer by the dealer submitting to the manufacturer or
51 distributor 100 sequential nonwarranty customer-paid service repair orders which contain

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

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

- 31 (1) Repairs for manufacturer or distributor special events, specials, or
 32 promotional discounts for retail customer ~~repairs; repairs.~~
- 33 (2) Parts sold at wholesale or at reduced or specially negotiated rates for
 34 insurance ~~repairs; repairs.~~
- 35 (3) Engine assemblies and transmission ~~assemblies; assemblies.~~
- 36 (4) Routine maintenance not covered under warranty, such as fluids, filters, and
 37 belts not provided in the course of ~~repairs; repairs.~~
- 38 (5) Nuts, bolts, fasteners, and similar items that do not have an individual part
 39 ~~number; number.~~
- 40 (6) ~~Tires; and~~ Tires.
- 41 (7) Vehicle reconditioning.
- 42 (8) Batteries and light bulbs.

43"

44 **SECTION 7.** The terms and provisions of this act shall be applicable to all current
 45 and future franchises and other agreements in existence between any new motor vehicle dealer
 46 located in this State and a manufacturer or distributor as of the effective date of this act.

47 **SECTION 8.** If any provision of this act or its application is held invalid, the
 48 invalidity does not affect other provisions or applications of this act that can be given effect
 49 without the invalid provisions or application, and to this end the provisions of this act are
 50 severable.

51 **SECTION 9.** This act is effective when it becomes law.