

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

H

D

HOUSE BILL 619  
PROPOSED COMMITTEE SUBSTITUTE H619-PCS30354-SU-13

Short Title: Clarify Motor Vehicle Dealer Laws.

(Public)

Sponsors:

Referred to:

April 10, 2017

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

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 20-288(a1)(2) reads as rewritten:

6 "(2) Proof that the applicant, within the last 12 months, has completed a 12-hour  
7 licensing course approved by the Division if the applicant is seeking an  
8 initial license and a six-hour course approved by the Division if the applicant  
9 is seeking a renewal license. The requirements of this subdivision do not  
10 apply to a used motor vehicle dealer the primary business of which is the  
11 sale of salvage vehicles on behalf of insurers or to a manufactured home  
12 dealer licensed under G.S. 143-143.11 who complies with the continuing  
13 education requirements of G.S. 143-143.11B. The requirement of this  
14 subdivision does not apply to persons age 62 or older as of July 1, 2002, who  
15 are seeking a renewal license. This subdivision also does not apply to an  
16 applicant who holds a license as a new motor vehicle dealer as defined in  
17 G.S. 20-286(13) and operates from an established showroom ~~20 miles or less~~  
18 ~~from~~ located in an area within a radius of 30 miles around the location of the  
19 established showroom for which the applicant seeks a used motor vehicle  
20 dealer license. An applicant who also holds a license as a new motor vehicle  
21 dealer may designate a representative to complete the licensing course  
22 required by this subdivision."

23 **SECTION 2.** G.S. 20-305 is amended by adding a new subdivision to read:

24 "(50) To require, coerce, or attempt to coerce any new motor vehicle dealer  
25 located in this State to change location of its dealership, or to make any  
26 substantial alterations to its dealership premises or facilities, if the dealer (i)  
27 has changed the location of its dealership or made substantial alterations to  
28 its dealership premises or facilities within the preceding 10 years at a cost of  
29 more than one hundred thousand dollars (\$100,000) over this 10-year period  
30 and (ii) the change in location or alteration was made at the request of, or  
31 with the knowledge, acquiescence, or approval of, the manufacturer, factory  
32 branch, distributor, or distributor branch. For any dealer that did not change  
33 the location of its dealership or make substantial alterations to its dealership  
34 premises or facilities within the preceding 10 years at a cost of more than  
35 one hundred thousand dollars (\$100,000), the dealer's obligation to change  
36 location of its dealership, or to make any substantial alteration to its



\* H 6 1 9 - P C S 3 0 3 5 4 - S U - 1 3 \*

1 dealership premises or facilities, at the request of a manufacturer, factory  
2 branch, distributor, or distributor branch, or to satisfy a requirement or  
3 condition of an incentive program sponsored by a manufacturer, factory  
4 branch, distributor, or distributor branch, shall be governed by the applicable  
5 provisions of subdivisions (4), (11), (12), (25), (30), (32), and (42) of this  
6 section."

7 **SECTION 3.** G.S. 20-305.1 reads as rewritten:

8 "**§ 20-305.1. Automobile dealer warranty and recall obligations.**

9 (a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch,  
10 shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's  
11 obligations for preparation, ~~delivery and warranty~~ delivery, warranty, and recall service on its  
12 products, including any service performed under a maintenance plan, extended warranty,  
13 certified pre-owned warranty, or service contract issued by or through the manufacturer, factory  
14 branch, distributor, distributor branch, or any person or entity contracted or otherwise affiliated  
15 with the manufacturer, factory branch, distributor, or distributor branch. The disclosure  
16 required under this subsection shall include the schedule of compensation to be paid ~~such~~the  
17 dealers for parts, work, and service in connection with ~~warranty~~ preparation, delivery, warranty,  
18 and recall service, and any services performed by the dealers under any warranty, maintenance  
19 plan, extended warranty, certified pre-owned warranty, or service contract issued by or through  
20 the manufacturer, factory branch, distributor, distributor branch, or any person or entity  
21 contracted or otherwise affiliated with the manufacturer, factory branch, distributor, or  
22 distributor branch, and the time allowances for the performance of ~~such~~the work and service. In  
23 no event shall ~~such~~the schedule of compensation fail to include reasonable compensation for  
24 diagnostic work and associated administrative requirements as well as repair service and labor.  
25 Time allowances for the performance of ~~warranty~~ preparation, delivery, warranty, and recall  
26 work and ~~services~~ service, and any services performed by the dealers under any warranty,  
27 maintenance plan, extended warranty, certified pre-owned warranty, or service contract issued  
28 by or through the manufacturer, factory branch, distributor, distributor branch, or any person or  
29 entity contracted or otherwise affiliated with the manufacturer, factory branch, distributor, or  
30 distributor branch, shall be reasonable and adequate for the work to be performed. The  
31 compensation ~~which must be paid~~ under this section ~~must~~shall be reasonable, provided,  
32 however, that under no circumstances ~~may~~shall the reasonable compensation under this section  
33 be in an amount less than the dealer's current retail labor rate and the amount charged to retail  
34 customers for the manufacturer's or distributor's original parts for nonwarranty work of like  
35 kind, provided ~~such~~the amount is competitive with the retail rates charged for parts and labor  
36 by other franchised dealers within the dealer's market.

37 ...

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

44 ...

45 (b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor  
46 vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of  
47 its warranty or recall obligations with respect to a motor vehicle, to fail to fully compensate its  
48 motor vehicle dealers licensed in this State for warranty and recall parts ~~other than parts used to~~  
49 ~~repair the living facilities of recreational vehicles,~~ at the prevailing retail rate according to the  
50 factors in subsection (a) of this section, or, in service in accordance with the schedule of  
51 compensation provided the dealer pursuant to subsection (a) ~~above,~~ of this section, or to

1 otherwise recover all or any portion of its costs for compensating its motor vehicle dealers  
2 licensed in this State for warranty or recall parts and service either by reduction in the amount  
3 due to the dealer, or by separate charge, surcharge, or other imposition, and to fail to indemnify  
4 and hold harmless its franchised dealers licensed in this State against any judgment for  
5 damages or settlements agreed to by the manufacturer, including, but not limited to, court costs  
6 and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims or  
7 lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or  
8 implied warranty, or rescission or revocation of acceptance of the sale of a motor vehicle as  
9 defined in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged  
10 defective negligent manufacture, assembly or design of new motor vehicles, parts or  
11 accessories or other functions by the manufacturer, factory branch, distributor or distributor  
12 branch, beyond the control of the dealer. It is unlawful for any manufacturer, factory branch,  
13 distributor, or distributor branch that manufactures or distributes recreational vehicles to fail to  
14 fully compensate its dealers located in this State in accordance with this section for warranty  
15 work performed by the dealers related to all parts of the vehicle, including labor and parts used  
16 to repair the living facilities of the vehicle and any equipment, appliances, and other options  
17 included by the manufacturer, factory branch, distributor, or distributor branch in the purchase  
18 price paid by the dealer. Any audit for warranty or recall parts or service  
19 compensation, including compensation for any service performed under any  
20 warranty, maintenance plan, extended warranty, certified pre-owned warranty, or service  
21 contract issued by or through the manufacturer, factory branch, distributor, distributor branch,  
22 or any person or entity contracted or otherwise affiliated with the manufacturer, factory branch,  
23 distributor, or distributor branch, shall only be for the 12-month period immediately following  
24 the date of the payment of the claim by the manufacturer, factory branch, distributor, or  
25 distributor branch. Any audit for sales incentives, service incentives, rebates, or other forms of  
26 incentive compensation shall only be for the 12-month period immediately following the date  
27 of the payment of the claim by the manufacturer, factory branch, distributor, or distributor  
28 branch pursuant to a sales incentives program, service incentives program, rebate program, or  
29 other form of incentive compensation program. Provided, however, these limitations shall not  
30 be effective in the case of fraudulent claims.

31 ...

32 (c) In the event there is a dispute between the manufacturer, factory branch, distributor,  
33 or distributor branch, and the dealer with respect to any matter referred to in subsection (a), (b),  
34 (b1), (b2), (b3), or (d) of this section, either party may petition the Commissioner in writing,  
35 within 30 days after either party has given written notice of the dispute to the other, for a  
36 hearing on the subject and the decision of the Commissioner shall be binding on the parties,  
37 subject to rights of judicial review and appeal as provided in Chapter 150B of the General  
38 Statutes; provided, however, that nothing contained herein shall give the Commissioner any  
39 authority as to the content of any manufacturer's or distributor's warranty. Upon the filing of a  
40 petition before the Commissioner under this subsection, any chargeback to or any payment  
41 required of a dealer by a manufacturer relating to warranty or recall parts or service  
42 compensation, including compensation paid to a dealer for any services performed under any  
43 warranty, maintenance plan, extended warranty, certified pre-owned warranty, or service  
44 contract issued by or through the manufacturer, factory branch, distributor, distributor branch,  
45 or any person or entity contracted or otherwise affiliated with the manufacturer, factory branch,  
46 distributor, or distributor branch, or to sales incentives, service incentives, rebates, other forms  
47 of incentive compensation, or the withholding or chargeback of other compensation or support  
48 that a dealer would otherwise be eligible to ~~receive~~ receive, shall be stayed during the pendency  
49 of the determination by the Commissioner.

50 ...

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

15 **SECTION 4.** G.S. 20-305.5 reads as rewritten:

16 "**§ 20-305.5. Sections 20-305, subdivisions (4) through (28), and ~~20-305.1~~20-305.2 to**  
 17 **20-305.4 not applicable to certain manufacturers and dealers.**

18 The provisions of G.S. 20-305(4) through G.S. 20-305(28) and ~~20-305.1~~20-305.2 to  
 19 20-305.4 shall not apply to manufacturers of, or dealers in, mobile or manufactured type  
 20 housing or recreational trailers."

21 **SECTION 5.** G.S. 20-305.2 reads as rewritten:

22 "**§ 20-305.2. Unfair methods of competition.**

23 ...

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

26 (b1) It is unlawful for any motor vehicle manufacturer, factory branch, distributor, or  
 27 distributor branch that has any franchised motor vehicles dealers in this State to, directly or  
 28 indirectly, or through any parent, subsidiary, affiliate, or other related entity, own any  
 29 ownership interest in, operate, or control any entity in this State that leases or rents motor  
 30 vehicles to the general public in competition with any of its franchised dealers located in this  
 31 State.

32 ...."

33 **SECTION 6.** G.S. 20-305.7(b) reads as rewritten:

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

- 41 (1) A customer that requests a reference to another ~~dealership;~~dealership.
- 42 (2) A customer that moves more than 60 miles away from the dealer whose data  
 43 was ~~accessed;~~accessed.
- 44 (3) Customer or prospect information that was provided to the dealer by the  
 45 manufacturer, factory branch, distributor, or distributor ~~branch;~~orbranch.

46 ...

47 No manufacturer, factory branch, distributor, distributor branch, dealer management computer  
 48 system vendor, or any third party acting on behalf of any manufacturer, factory branch,  
 49 distributor, distributor branch, or dealer management computer system vendor, may provide  
 50 access to customer or dealership information maintained in a dealer management computer  
 51 system utilized by a motor vehicle dealer located in this State, without first obtaining the

1 dealer's prior express written consent, revocable by the dealer upon five business days written  
2 notice, to provide such access. Prior to obtaining said consent and prior to entering into an  
3 initial contract or renewal of a contract with a dealer located in this State, the manufacturer,  
4 factory branch, distributor, distributor branch, dealer management computer system vendor, or  
5 any third party acting on behalf of, or through any manufacturer, factory branch, distributor,  
6 distributor branch, or dealer management computer system vendor shall provide to the dealer a  
7 written list of all specific third parties to whom any data obtained from the dealer has actually  
8 been provided within the 12-month period ending November 1 of the prior year. The list shall  
9 further describe the scope and specific fields of the data provided. In addition to the initial list,  
10 a dealer management computer system vendor or any third party acting on behalf of, or through  
11 a dealer management computer system vendor shall provide to the dealer an annual list of each  
12 and every third party to whom said data is actually being provided on November 1 of  
13 each year and each and every third party to whom said data ~~has~~ was actually ~~been~~  
14 the preceding 12 months ~~and describe~~ and, for each and every third party identified, the list shall  
15 detail the scope and specific fields of the data provided ~~provided~~ to the third party during the  
16 12-month period. Such list shall be provided to the dealer by January 1 of each year. The lists  
17 required under this subsection of the third parties to whom any data obtained from the dealer  
18 has actually been provided shall be specific to each affected dealer, and it shall be insufficient  
19 and unlawful for the provider of this information to furnish any dealer a list of third parties who  
20 could or may have received any of the affected dealer's data, as the information required to be  
21 provided under this subsection requires the provider of this information to state the identity and  
22 other specified information of each and every third party to whom the data was actually  
23 provided during the relevant period of time. It shall be unlawful for any third party to whom  
24 any of the dealer's data has been provided to pass on or charge the dealer any fee, cost, or  
25 surcharge, any part of which is intended to reimburse the third party for charges or fees paid by  
26 the third party to access the dealer's data. Any dealer management computer system vendor's  
27 contract that directly relates to the transfer or accessing of dealer or dealer customer  
28 information must conspicuously state, "NOTICE TO DEALER: THIS AGREEMENT  
29 RELATES TO THE TRANSFER AND ACCESSING OF CONFIDENTIAL INFORMATION  
30 AND CONSUMER RELATED DATA". Such consent does not change any such person's  
31 obligations to comply with the terms of this section and any additional State or federal laws  
32 (and any rules or regulations promulgated thereunder) applicable to them with respect to such  
33 access. In addition, no dealer management computer system vendor may refuse to provide a  
34 dealer management computer system to a motor vehicle dealer located in this State if the dealer  
35 refuses to provide any consent under this subsection. The rights conferred under this subsection  
36 on a motor vehicle dealer are not waivable and may not be modified by any contract or  
37 agreement."

38 **SECTION 7.** Article 3 of Chapter 20 of the General Statutes is amended by adding  
39 a new section to read:

40 **§ 20-101.3. Conspicuous disclosure of dealer shop and other service-related fees.**

41 (a) Requirement. – A motor vehicle dealer shall not charge shop fees in conjunction  
42 with service work performed by the dealer, or other discretionary fees relating to environmental  
43 or regulatory compliance, record retention, or other costs incurred by the dealer in conjunction  
44 with service work performed by the dealer, whether or not the fees are attributable to or include  
45 the dealer's internal overhead or profit, unless the dealer complies with both of the following  
46 requirements:

- 47 (1) The dealer shall post a conspicuous notice in the service area of the  
48 dealership measuring at least 24 inches on each side informing customers  
49 that fees regulated by this section may or will be charged and that customers  
50 should inquire of dealership personnel if they would like to know the type  
51 and amount or basis of the fees charged by the dealer.

1           (2)    The total amount of all fees regulated by this section shall be disclosed on  
2                    the customer's repair order or repair invoice. Nothing in this subdivision  
3                    shall be construed as requiring a dealer to list separately each fee charged by  
4                    the dealer.

5           (b)    Discretion. – Notwithstanding any provision of law to the contrary, a dealer is not  
6                    required to charge a shop or other service-related fee regulated under this section and may  
7                    reduce the amount of any or all fees charged."

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

12                   **SECTION 9.** Sections 1 through 6 of this act are effective when it becomes law  
13                   and apply to all current and future franchises and other agreements in existence between any  
14                   new motor vehicle dealer located in this State and a manufacturer or distributor as of the  
15                   effective date of this act. Section 7 of this act becomes effective January 1, 2018, and applies to  
16                   fees charged on or after that date. The remainder of this act is effective when it becomes law.