



SENATE BILL 384: Clarify Motor Vehicle Dealer Laws.

2019-2020 General Assembly

Committee:	Senate Commerce and Insurance. If favorable, re-refer to Rules and Operations of the Senate	Date:	May 2, 2019
Introduced by:	Sen. B. Jackson	Prepared by:	Amy Darden
Analysis of:	Second Edition		Committee Counsel

OVERVIEW: *Senate Bill 384 makes changes to North Carolina's Motor Vehicle Dealers and Manufacturers Licensing Law.*

[As introduced, this bill was identical to H455, as introduced by Reps. Ross, Wray, which is currently in House Transportation.]

BILL ANALYSIS: Senate Bill 384 makes the following changes to motor vehicle dealer and manufacturer licensing laws:

Section 1 defines "special tool" or "essential tool", as used in the dealers and manufacturers licensing law, as a tool required by the manufacturer that is not readily available from another source that is used for performing service repairs. This term is used in existing law for purposes of regulating the costs of tools sold by manufacturers to dealers and designated as special or essential and prohibiting manufacturers from requiring dealers to purchase unnecessary or unreasonable quantities of them.

Section 2 adds new provisions to the law allowing dealers who sell fewer than 350 new motor vehicles per year to request approval from the manufacturer to enter into tool loaner agreements with other dealers instead of purchasing special tools required by the manufacturer. The agreements would only be allowed between up to five same line-make dealers within a 40-mile radius of the dealer purchasing the tool and would have to meet other conditions set out in statute.

This section also clarifies an existing prohibition on manufacturers requiring dealers to purchase nondiagnostic computer equipment or programs to instead prohibit manufacturers from requiring dealers to purchase or lease a specific dealer management computer system or any hardware or software used for purposes other than the maintenance or repair of vehicles.

Section 3 amends a provision that allows a dealer to protest an assignment or change in the dealer's area of responsibility to also allow a dealer to request elimination of portions from the dealer's existing area of responsibility. If the manufacturer rejects the request, the dealer would be able to file a petition contesting the rejection, and the burden would be on the dealer to show that inclusion of the contested territory is unreasonable or arbitrary.

Section 4 makes it unlawful for manufacturers to prohibit or unreasonably restrict a dealer from offering parts or accessories for sale on the Internet.

Section 5 limits manufacturers to conducting audits one time within any 12-month period for warranty or recall parts or service compensation or incentive compensation, unless it is an audit conducted for cause. And audit conducted for cause is defined as one based on statistical evidence that the dealer's claims are

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unreasonably high compared to other dealers or the dealer's claims violate documentation or other requirements of the manufacturer. This section also adds a new provision prohibiting a manufacturer from employing an auditor whose compensation is based on the amount of chargebacks resulting to a dealer from the audit.

The section also limits a manufacturer to conducting audits of dealers for sales or leases made to known exporters one time within any 12-month period unless the audit is for cause. In this case, for cause would be the dealer's sale or lease to an individual identified on a list of known motor vehicle exporters previously provided to the dealer.

Section 6 makes clear that the prohibition in existing law against manufacturers owning and operating dealerships in the State prohibits manufacturers from offering vehicles for sale, lease, or subscription.

Section 7 defines what is included in "dealer data" or "dealer's data" stored on a dealer management computer system and prohibits a dealer management computer system vendor, or third party having access to the system, from taking any action limiting the dealer's ability to protect its data, using dealer data in a manner other than expressly permitted by the dealer, failing to provide the dealer with the ability to securely push data to a third party, failing to promptly provide a dealer a list of entities with whom it is currently sharing any dealer data, failing to allow the dealer the ability to verify data being shared with third parties, failing to allow a dealer to audit the vendor's use of data obtained from its dealer management computer system, or failure to promptly facilitate transfer of the dealer's data to another dealer management computer system of the dealer's choosing in a secure manner.

Section 8 amends the provision giving standing to a dealer association to bring an action for declaratory or injunctive relief on behalf of its members. This section allows an association to initiate an action or participate as a party to any civil or administrative proceeding, deletes the requirement for mediation prior to bringing an action, and allows an association to allege an injury to its members when a manufacturer has engaged in conduct that harms a majority of its franchised dealers in the State OR a majority of all franchised dealers in the State. It also provides that a court's determination in an action where an association has exercised standing is collateral estoppel in a subsequent action involving the same manufacturers or dealers on issues of fact and law decided in the original action.

Section 9 is a severability clause that provides that if any part of the act is found to be invalid, the remaining provisions are still in effect.

EFFECTIVE DATE: The act is effective when it becomes law and applies to all current and future agreements between new motor vehicle dealers and manufacturers or distributors.

Wendy Ray, Staff Attorney, substantially contributed to this summary.