SENATE BILL 384:
Clarify Motor Vehicle Dealer Laws.

2019-2020 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	**Date:**	June 26, 2019
Introduced by:	Sen. B. Jackson	**Prepared by:**	Wendy Ray Staff Attorney
Analysis of:	Third Edition		

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

- ***Defines special or essential tool and allows small dealers to enter into tool loaner agreements with other line-make dealers rather than purchasing them.***
- ***Allows a dealer to request elimination of portions of the dealer's area of responsibility.***
- ***Prohibits a manufacturer from using unfair performance data to decide proposed dealership ownership transfers or the appointment of successors.***
- ***Makes it unlawful for a manufacturer to prohibit a dealer from selling parts or accessories online.***
- ***Limits frequency of audits for warranty or recall parts, incentive compensation, or for sales or leases made to known exporters, unless for cause, and prohibits a manufacturer from employing an auditor whose compensation is based on the number of chargebacks resulting from the audit.***
- ***Makes changes to strengthen existing law protecting dealership data.***
- ***Makes changes to existing law giving dealer associations standing to bring an action for injury to the collective interest of its members, including by clarifying and expanding the circumstances under which an association may intervene or bring an action.***
- ***Increases the amount of reimbursement paid to truck dealers by manufacturers when they sell trucks directly to nondealer retailers from $900 to $1500 per vehicle.***
- ***Makes clarifying changes to the unfair methods of competition statute and amends the exceptions to the prohibition to allow up to six licensed dealerships in the State operated by a manufacturer of electric vehicles under specified conditions.***
- ***Requires dealer license applicants to certify whether they are manufacturers and, if so, under which exception to the unfair methods of competition prohibition they claim to qualify for a license, and requires published notice of a license application by a manufacturer who has not been previously licensed.***

[As introduced, this bill was identical to H455, as introduced by Reps. Ross, Wray, which is currently in Senate Commerce and Insurance.]

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 prohibiting manufacturers from requiring dealers to purchase unnecessary or unreasonable quantities of them and regulating the cost to dealers.

Section 2 adds new provisions to the law allowing dealers who sell fewer than 250 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, either party would be able to request mediation if the manufacturer has a mediation program. After mediation is concluded, or if it is not requested, 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.

Section 4 prohibits a manufacturer from using performance data that is unfair or unreasonable or does not consider relevant data to decide proposed dealership ownership transfers and the appointment of successors in addition to terminations of dealer franchises.

Section 5 makes it unlawful for a manufacturer to prohibit or unreasonably restrict a dealer from offering parts or accessories for sale on the Internet.

Section 6 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. An audit conducted for cause is defined as one based on statistical evidence that the dealer's claims are unreasonably high, that the dealer's claims violate documentation or other requirements of the manufacturer, that is a follow up to an earlier audit where the dealer was notified of a claim documentation procedure violation, or where there is evidence of malfeasance or fraud.

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, or evidence that the dealer knew or should have known the customer intended to export or resell the vehicle.

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.

Section 7 defines what is included in "dealer data" or "dealer's data" stored on a dealer management computer system. It also prohibits a dealer management computer system vendor, or third party having access to the system, from unreasonably interfering with 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 provide the dealer with certain audit information; failing to promptly provide a dealer a list of entities with whom it is currently sharing any dealer data; or failing

to promptly provide a copy of the dealer's data in a secure, usable format upon receipt of the dealer's request to terminate an agreement for the provision of hardware or software related to its dealer management computer system.

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 intervene as a party to any civil or administrative proceeding in order to prevent injury or harm to all or a substantial number of its members or to prevent injury or harm to the franchise system. It deletes the requirement for mediation prior to bringing an action. An association has to allege a cognizable injury to its members, which this section would clarify could be caused by a manufacturer applying for a license to operate a dealership in violation of the law, or engaging in conduct that harms or would harm a majority of its franchised dealers in the State or a majority of all franchised dealers in the State or would injure the franchise system. 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 distributors or dealers on issues of fact and law decided in the original action.

This section provides that association standing does not apply to dealer licenses issued to a manufacturer under the exception from the unfair competition law that would be enacted under section 10 of this act for certain electric vehicle manufacturers, as long as the manufacturer is not applying for and is not issued more than the total number of licenses allowed under that exception.

Section 9 increases the amount of reimbursement paid to heavy duty truck dealers by manufacturers when they sell trucks directly to converters and other nondealer retailers rather than going through a dealer. The amount is increased from $900 to $1500 per vehicle. The reimbursement is intended to compensate dealers for expenses incurred in servicing the vehicles, which they are required to do under franchise agreements, even when they are excluded from the sale.

Section 10 amends the unfair methods of competition statute that prohibits manufacturers from owning or operating dealerships in this State. This section clarifies that the prohibition applies also to affiliated entities and applies regardless of whether the manufacturer has franchises in the State. It also clarifies that it prohibits operating dealerships or any entity that provides warranty service or repairs at retail, filing a dealer application with the Division, or being licensed as a dealer.

This section also amends the exceptions to the prohibitions on unfair competition by creating a new exception that applies narrowly to a manufacturer of solely electric vehicles if that manufacturer had at least one dealership licensed by the Division as of March 1, 2019. The exception would allow that manufacturer to have up to five dealerships prior to December 31, 2020, and up to six dealerships on or after January 1, 2021. A license issued under this exception would be revoked if the manufacturer does any of the following:

- Ceases to manufacture only vehicles that are solely electric.
- Enters into a franchise agreement with a dealer in this State.
- Acquires a substantial affiliation with a manufacturer that has a franchised dealer in this State.
- Sells any new motor vehicle bearing the logo of another manufacturer that has a franchised dealer in this State.

The section adds a second new exception to the prohibition on unfair competition that applies to a manufacturer that manufactures and distributes only low-speed vehicles. This exception is only applicable to a manufacturer that has at least one dealership licensed by the Division as of March 1, 2019.

Section 11 requires an application for a motor vehicle dealer license (new or used) to be accompanied by a certification of whether the applicant or any other entity related to the applicant, is a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative. If so, the following provisions apply:

- For a new motor vehicle dealer applicant, a license could not be issued until the applicant states the specific exception to the unfair competition prohibition under which it contends it qualifies for a license AND, if the applicant does not currently hold a license, the Commissioner determines, after a hearing, that the applicant qualifies.
- For a used motor vehicle dealer, the applicant would be required to state whether it contends it qualifies for a motor vehicle dealer license under an exception to the unfair competition prohibition.

This section also requires the Division to promptly publish notice in the North Carolina Register of any license application by a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative who has not been previously licensed by the Division.

Section 12 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: Section 7, pertaining to dealership data, becomes effective October 1, 2020. The remainder of the act is effective when it becomes law. Provisions apply to all current and future franchises and other agreements.