



HOUSE BILL 447: Clarify Motor Vehicle Dealer Laws.

2023-2024 General Assembly

Committee: Senate Rules and Operations of the Senate	Date: June 28, 2023
Introduced by: Reps. B. Jones, Ross, Wray	Prepared by: Wendy Ray
Analysis of: Third Edition	Staff Attorney

OVERVIEW: *House Bill 447 would make the following changes to North Carolina laws related to motor vehicle dealers and manufacturers:*

- *Provide additional requirements and prohibitions for manufacturers regarding availability of vehicles and parts to dealers and dealer control over sales and business decisions.*
- *Prohibit manufacturers from unreasonably interfering with dealer websites and prohibit manufacturers from using their websites to negotiate directly with customers or in a way that provides unequal visibility to its dealers.*
- *Provide additional requirements for manufacturers with regard to allocation of vehicles to dealers.*
- *Regulate sales of add-on products by manufacturers to retail customers.*
- *Clarify provision regarding retail rates for warranty work reimbursed by manufacturers.*
- *Extend existing grandfather provisions allowing certain manufacturer incentive programs.*
- *Require the Division of Motor Vehicles to determine whether entering settlement agreements or consent orders with dealer and manufacturer licensees for violations of licensing laws would promote interests of justice and administrative efficiency.*
- *For conditionally delivered vehicles, require the purchaser to notify the insurer that financing has been approved and clarify that the purchaser is solely responsible for obtaining insurance on the vehicle.*
- *Require publication of notice of a manufacturer's application for a dealer license in the North Carolina Register and that the hearing determining whether the manufacturer qualifies for a license be held no earlier than 30 days from the date of publication.*

[As introduced, this bill was identical to S356, as introduced by Sens. Jackson, Perry, Lazzara, which is currently in House Rules. The bill now combines the contents of H447/S356 and the contents of H448, which was identical to S357, as introduced by Sens. Jackson, Perry, Lazzara, and is currently in House Rules.]

CURRENT LAW: Article 12 of Chapter 20 of the General Statutes provides for regulation and licensing of motor vehicle dealers and manufacturers in North Carolina and governs the relationship between manufacturers and dealers. G.S. 20-305 makes it unlawful for manufacturers to do a number of things with regard to their franchised dealers, limiting what manufacturers may require of dealers and setting out processes to ensure equitable treatment. G.S. 20-305.1 sets out obligations of dealers and manufacturers

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with regard to warranty and recall service on the manufacturer's products, including processes for setting retail rates charged for warranty work.

BILL ANALYSIS: House Bill 447 would make the following changes to motor vehicle dealer and manufacturer licensing laws:

Availability of vehicles for dealers/manufacturer requirements. **Section 1(a)** would require manufacturers to make all makes and models of new vehicles available for direct purchase from any of its franchised dealers authorized to sell those vehicles. Manufacturers would also be required, with regard to all of their dealers, to: provide a reasonable on the ground supply of all makes and models of vehicle; allow for storage of batteries for electric vehicles and compensate dealers for extended storage; provide opportunity for purchase of used vehicle inventory without unreasonable requirements; provide opportunity to stock a reasonable supply of manufacturer's parts required for service; and allow dealers to independently determine advertising. Manufacturers would be prohibited from: retaining ownership of vehicles until sold or consign vehicles to dealers for inventory; reserving the right to negotiate terms of sales directly with customers or designating dealers to be only delivery agents; unreasonably interfering with the ability of dealers to obtain and sell models of technologically advanced vehicles the manufacturer makes available for sale by its other same line-make dealers; withholding incentive payments because of a dealer's noncompliance with an unlawful condition; or requiring a dealer to make expenditures to achieve carbon neutrality at the dealer's expense.

Interference with dealer independence. **Sections 1(b) and (c)** would prohibit a manufacturer from interfering with the trade name used by the dealer and the dealer's corporate structure. However, it would allow the manufacturer to require the dealer to designate a single individual responsible for business communications with the manufacturer.

Dealer and manufacturer websites. **Section 2** would prohibit a manufacturer from unreasonably interfering with a dealer's use of and control over its website used for advertising and selling vehicles. With regard to manufacturer websites, this section would require a manufacturer to provide equal visibility for all of its dealers on its website where customers are permitted to order or reserve vehicles, and it would prohibit a manufacturer from maintaining a website where price and terms for sale of a vehicle are negotiated directly between the manufacturer and customer.

Allocation of vehicles to dealers. **Section 3** would require manufacturers to allocate vehicle features and options to dealers in a fair and equitable manner that considers the dealer's historical experience with selling similarly configured vehicles with similar options. It would also require a manufacturer to disclose in detail to each of its dealers its system of allocation.

Direct sale of add-on products by manufacturer. **Section 4** would prohibit a manufacturer from selling remotely activated add-on products to retail customers unless the manufacturer complies with specified requirements, including permitting its dealers to sell the same add-ons on the same terms and providing reasonable compensation to dealers involved in the sale of the vehicle, sale of the add-on, or provide assistance or repair of the add-on.

Clarify warranty reimbursement. **Section 5** would clarify that transmission assemblies are not included in the calculation of the warranty retail rate paid by manufacturers to dealers.

Extend expiration date of certain manufacturer incentive programs. **Section 6** would extend for three years, from June 30, 2025, to June 30, 2028, existing grandfather provisions that allow certain manufacturer incentive programs to continue.

Notice of potential license violations. G.S. 20-296 sets out requirements for notice of complaints against dealers and other licensees under the manufacturer and dealer licensing law and hearing prior to the

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Division taking action to suspend, revoke, place on probation, or refuse to renew a license. **Section 7** would require the Division to determine for each violation alleged whether entering into a settlement agreement or consent order would promote the interests of justice and administrative efficiency.

Clarify insurance requirements for conditionally delivered vehicles. G.S. 20-75.1 allows a dealer to deliver a vehicle to a purchaser on the condition that the purchaser will obtain financing for the vehicle, at which time the certificate of origin or title is executed. The law provides that the dealer's insurance policy covers a conditionally delivered vehicle until financing is approved and the certificate of origin or title is executed, and the dealer is required to notify the purchaser's insurer of the purchase after approval of the purchaser's financing and execution of the certificate of origin or title. **Section 8** would amend G.S. 20-75.1 to require the purchaser to notify the insurer when the financing is approved. This section would further clarify that it is the purchaser's sole responsibility to obtain and pay for insurance on the vehicle, and the dealer is not liable if the purchaser fails to do so.

Manufacturer applications for dealer license. G.S. 20-288 sets out application requirements for motor vehicle dealer licenses. G.S. 20-305.2 makes it unlawful for a manufacturer to be licensed and operate as a motor vehicle dealer in North Carolina except under circumstances specified in statute. When a manufacturer applies for a dealer license, the Division may not issue a license unless the applicant states on the application the specific exception under G.S. 20-305.2 that would qualify the manufacturer to be licensed and the Commissioner determines after a hearing that the applicant qualifies. **Section 9** would add additional requirements that the Division publish notice of the manufacturer's application for a dealer license in the North Carolina Register, including notice of the specific exceptions under which the applicant claims to qualify, and that the hearing to determine whether the applicant qualifies be held no earlier than 30 days from the date of publication of the notice.

Section 10 of the bill is a severability clause, which would provide that if any part of the act is found to be invalid, the remaining provisions would still be in effect.

EFFECTIVE DATE: Except for the provision related to manufacturer websites, which would become effective November 1, 2023, sections 1 through 6 would become effective September 1, 2023, and would apply to all current and future franchises and other agreements between new motor vehicle dealers and manufacturers or distributors. Section 7 would become effective on December 1, 2023, and the remainder of the act would be effective when it becomes law.