



SENATE BILL 356: Clarify Motor Vehicle Dealer Laws.

2023-2024 General Assembly

Committee:	Senate Commerce and Insurance. If favorable, re-refer to Rules and Operations of the Senate	Date:	April 24, 2023
Introduced by:	Sens. Jackson, Perry, Lazzara	Prepared by:	Bill Patterson*
Analysis of:	PCS to First Edition S356-CSTG-15		Committee Co-Counsel

OVERVIEW: *The Proposed Committee Substitute for Senate Bill 356 would make the following changes to North Carolina's Motor Vehicle Dealers and Manufacturers Licensing Law:*

- *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.*
- *Make it unlawful for a manufacturer to distribute certain advanced technology vehicles without making the same or similar vehicles available to all of its dealers.*
- *Provide additional requirements for manufacturers with regard to allocation of vehicles to dealers, including minimum allocations for smaller dealers.*
- *Prohibit economic coercion to influence dealers to participate in programs sponsored by manufacturers.*
- *Define "sell or selling" for purposes of the dealer and manufacturer licensing laws.*
- *Regulate sales of add-on products by manufacturers directly to dealer customers.*
- *Clarify provisions regarding retail rates for warranty work reimbursed by manufacturers.*
- *Extend existing grandfather provisions allowing certain manufacturer incentive programs.*

[As introduced, this bill was identical to H447, as introduced by Reps. B. Jones, Ross, Wray, which is currently in House Transportation.]

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

BILL ANALYSIS: The Senate Bill 356 would make the following changes to motor vehicle dealer and manufacturer licensing laws:

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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 additional 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; negotiating 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. **Section 1(b)** 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.

Availability of advanced technology vehicles to all dealers. **Section 3** would add to the unfair methods of competition statute (G.S. 20-305.2) a prohibition on manufacturers distributing electric and other advanced technology vehicles in the State unless it makes some vehicles utilizing the same or similar technology available to all of its franchised dealers in the State. The vehicles would have to be made available within 12 months of the first vehicle being delivered to a dealer or when the manufacturer has sold at least 2,500 of the vehicles, whichever occurs first.

Allocation of vehicles to dealers. **Section 4** would require manufacturers to allocate vehicles to a dealer in a 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 all of its dealers its system of allocation and provide minimum allocation rights for dealers selling fewer than 250 vehicles in a 12-month period.

Prohibit economic coercion. **Section 5** would prohibit a manufacturer from using economic coercion to influence a dealer to participate in programs sponsored by the manufacturer. Coercion would include requiring compliance with programs in order to sell or receive specific vehicle models or products offered by the manufacturer. A manufacturer would still be able to require a dealer to meet reasonable requirements to sell specific models as long as they are scaled appropriately based on anticipated future sales.

Definition of "sell or selling". **Section 6** would provide a new definition for "sell or selling" applicable to the laws regulating motor vehicle dealers and manufacturers in Article 12. The definition would be a non-exclusive list of activities related to retail sales, leases, exchanges, or subscriptions of motor vehicles.

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Direct sale of add-on products by manufacturer. **Section 7** would prohibit a manufacturer from competing with its dealers in the State by selling directly to customers remotely activated add-on products the dealer is authorized to sell. It would further prohibit a manufacturer from activating for a fee any accessory or add-on to a vehicle sold or leased in the State within five years after the sale or lease, other than through its dealers, unless the manufacturer pays the dealer a percentage of the gross revenue received during the five-year period.

Clarify setting of retail rate for warranty work. **Section 8** would clarify the process for setting the retail rate charged by a dealer for warranty work by providing that the manufacturer can rebut the submitted rate, which is presumed to be accurate, by substantiating that it is either inaccurate or fraudulent.

Extend expiration date of certain manufacturer incentive programs. **Section 9** extends for three years, from June 30, 2025, to June 30, 2028, existing grandfather provisions that allow certain manufacturer incentive programs to continue.

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: The act would be effective when it becomes law and provisions apply to all current and future franchises and other agreements between new motor vehicle dealers and manufacturers or distributors.

**Wendy Ray, counsel to House Transportation Committee, substantially contributed to this summary.*