SENATE BILL 342:
Clarify Motor Vehicle Franchise Laws.

2021-2022 General Assembly

Committee:	Senate Commerce and Insurance. If favorable, re-refer to Rules and Operations of the Senate	**Date:**	May 6, 2021
Introduced by:	Sens. B. Jackson, Perry, Sawyer	**Prepared by:**	Wendy Ray Staff Attorney
Analysis of:	Second Edition		

OVERVIEW: Senate Bill 342 makes the following changes to North Carolina's Motor Vehicle Dealers and Manufacturers Licensing Law:

- ***Prohibits conditioning approval of dealership transfers on dealer's willingness to renovate, relocate, or enter into a right of first refusal.***
- ***Clarifies provisions regulating franchise agreements to facilitate dealers' ability to sell electric vehicles.***
- ***Prohibits manufacturers from requiring dealers to purchase pre-owned vehicles.***
- ***Requires manufacturer to buy a dealer's existing facility if it does not sell if the manufacturer required the dealer to relocate.***
- ***Extends existing grandfather provisions allowing certain manufacturer incentive programs.***
- ***Modifies vehicle allocation requirements for dealers and requires information be provided to dealers regarding how allocations are made by manufacturers.***
- ***Clarifies provisions regarding reimbursement to dealers who provide loaner vehicles to customers having vehicles serviced when required by the manufacturer.***
- ***Provides that certain dealer facility improvements required by a manufacturer in the 10 years preceding an incentive program comply with program requirements; addresses programs that are discontinued or revised.***
- ***Makes clarifying changes to existing law regarding warranty obligations and provides audits for warranty or incentive compensation may only be conducted once in a 24-month period.***
- ***Clarifies definition of motor vehicle dealer includes one who leases vehicles or offers vehicles for subscription.***
- ***Prohibits manufacturers from requiring dealers to provide financial statements specific to a franchise or line-make if the dealer operates more than one franchise or sells more than one line-make.***

BILL ANALYSIS: Senate Bill 342 makes the following changes to motor vehicle dealer and manufacturer licensing laws:

<u>*Dealership transfer clarifications.*</u> Section 1 makes clear that a manufacturer may not condition its approval of a dealership transfer on the dealer's willingness to renovate or relocate or enroll in a facility program, or on the dealer's willingness to enter into a right of first refusal in favor of the manufacturer. It also makes other organizational, technical, and clarifying changes to existing provisions.

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Electric vehicles. Section 2 adds clarifying language to provisions regulating franchise agreements regarding electric vehicles. It provides that establishment by a manufacturer of a separate franchise for sale of electric vehicles is considered a change in an established plan of distribution, such that it would have to be offered to its franchised dealers in the same line-make. It also prohibits the manufacturer from coercing franchised dealers to purchase more charging stations than are reasonably necessary or requiring the purchase of unnecessary diagnostic equipment. This section also amends the definition of motor vehicle in the dealers and manufacturers licensing law to clarify a motor propelled vehicle includes motors of all sizes, types, and sources of power.

No requirement to purchase pre-owned vehicles. Section 3 makes clear that a manufacturer is prohibited from requiring a franchised dealer to purchase off-lease or pre-owned vehicles.

Dealer relocation. Section 4 provides that, if a dealer is required by a manufacturer to relocate, the manufacturer is required to buy the dealer's existing facility if it does not sell within 90 days of listing. The purchase price would be fair market value as determined by an appraiser agreed upon by the dealer and manufacturer.

Incentive program grandfather extension. Section 5 extends for two years, from 2022 to 2024, existing grandfather provisions that allow for certain manufacturer incentive programs.

Vehicle allocation. Section 6 provides vehicle allocation requirements for manufacturers based on the number of vehicles sold by dealers. It also requires manufacturers to establish a process for its franchised dealers to appeal vehicle allocations and to provide its formula for allocating vehicles in writing to each dealer along with a summary of allocations made to all of its franchised dealers in the State.

Loaner/rental car reimbursement. Section 7 makes clarifying changes to an existing provision prohibiting a manufacturer from failing to reimburse its dealer for the cost of providing a loaner car to a customer having a vehicle serviced if required by the manufacturer. This section clarifies the manufacturer must provide full reimbursement regardless of whether the loaner or rental vehicle is a similar model to the one the customer is having serviced and when all or part of the time the loaner or rental is provided is due to the unavailability of a part provided by the manufacturer. It also clarifies that reimbursement includes applicable taxes and third-party fees.

Facility expenditures/incentive programs. Section 8 provides that a dealer is in compliance with a manufacturer's incentive program requiring facility improvements if improvements that were required or approved by the manufacturer were made within the preceding 10 years. It also provides for continued eligibility for certain facility benefits under a prior program that is revised or discontinued over the 10-year period.

Warranty requirements. Section 9 makes clarifying changes to existing law related to dealer warranty obligations, including items included in the schedule of compensation, and providing that audits for warranty or incentive compensation may only be conducted one time in any 24-month period (currently one in any 12-month period).

Motor vehicle dealer definition. Section 10 amends the definition of motor vehicle dealer in the dealers and manufacturers licensing law to specifically include a person who leases vehicles at retail or offers vehicles for subscription.

Dealership financial statements. Section 11 prohibits a manufacturer from requiring its dealers to provide financial statements specific to a franchise or line-make if the dealer operates more than one franchise or sells more than one line-make.

Section 12 of the bill is a severability clause providing 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 provisions apply to all current and future franchises and other agreements between new motor vehicle dealers and manufacturers or distributors.