

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 385
Commerce and Insurance Committee Substitute Adopted 5/2/19
House Committee Substitute Favorable 6/25/19

Short Title: Clarify/Auto Dealers Regulatory Req.

(Public)

Sponsors:

Referred to:

March 28, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY MOTOR VEHICLE DEALER REGULATORY REQUIREMENTS.
3 The General Assembly of North Carolina enacts:
4

5 **SALESMAN LICENSING/PENDING APPLICATION**

6 **SECTION 1.** G.S. 20-287(a) reads as rewritten:

7 "(a) License Required. – It shall be unlawful for any new motor vehicle dealer, used motor
8 vehicle dealer, motor vehicle sales representative, manufacturer, factory branch, factory
9 representative, distributor, distributor branch, distributor representative, or wholesaler to engage
10 in business in this State without first obtaining a license as provided in this Article. If any motor
11 vehicle dealer acts as a motor vehicle sales representative, the dealer shall obtain a motor vehicle
12 sales representative's license in addition to a motor vehicle dealer's license. A sales representative
13 may have only one license. The license shall show the name of the dealer or wholesaler
14 employing the sales representative. ~~The following license holders may operate as a motor vehicle
15 dealer without obtaining a motor vehicle dealer's license or paying an additional fee: a
16 manufacturer, a factory branch, a distributor, and a distributor branch. Any of these license
17 holders who operates as a motor vehicle dealer may sell motor vehicles at retail only at an
18 established salesroom.~~ An individual who has submitted an application to the Division for a sales
19 representative license pursuant to G.S. 20-288(a) shall be permitted to engage in activities as a
20 sales representative while the application is pending provided that the sales representative
21 applicant is actively and directly supervised by a licensed motor vehicle dealer or a licensed sales
22 representative designated by the dealer, provided further that the applicant certifies in the
23 application that the applicant has not been previously denied a sales representative license for
24 any dealer by the Division and that the applicant has not been previously convicted of a felony.
25 Any license issued by the Division to a motor vehicle dealer, manufacturer, factory branch,
26 factory representative, distributor, distributor branch, distributor representative, or wholesaler
27 under this Article may not be assigned, sold, or otherwise transferred to any other person or
28 entity."
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30 **THIRD-PARTY VEHICLE REPORTS**

31 **SECTION 2.** Article 7 of Chapter 20 of the General Statutes is amended by adding
32 a new section to read:

33 **"§ 20-219.5. Dealer liability for third-party motor vehicle history reports.**

34 A motor vehicle dealer, as defined in G.S. 20-286(11), and the dealer's owners, shareholders,
35 officers, employees, and agents who, in conjunction with the actual or potential sale or lease of



1 a motor vehicle, arrange to provide, provide, or otherwise make available to a vehicle purchaser,
2 lessee, or other person any third-party motor vehicle history report, shall not be liable to the
3 vehicle purchaser, lessee, or other person for any errors, omissions, or other inaccuracies
4 contained in the third-party motor vehicle history report that are not based on information
5 provided directly to the preparer of the third-party motor vehicle history report by that dealer.
6 For purposes of this section, a "third-party motor vehicle history report" means any information
7 prepared by a party other than the dealer, relating to any one or more of the following: vehicle
8 ownership or titling history; liens on the vehicle; vehicle service, maintenance, or repair history;
9 vehicle condition; or vehicle accident or collision history."

10 DEALERSHIP PROMOTIONAL REFERRALS PERMITTED

11 SECTION 3. G.S. 20-306 reads as rewritten:

12 "§ 20-306. **Unlawful for salesman to sell except for his employer; multiple employment;**
13 **persons who arrange transactions involving the sale of new motor vehicles.**

14 It shall be unlawful for any motor vehicle salesman licensed under this Article or an
15 individual who has submitted an application for a license as required in G.S. 20-288 and who is
16 engaging in activities as a supervised sales representative applicant while the application is
17 pending pursuant to G.S. 20-287(a) to sell or exchange or offer or attempt to sell or exchange
18 any motor vehicle other than his own except for the licensed motor vehicle dealer or dealers by
19 whom he is employed, or to offer, transfer or assign, any sale or exchange, that he may have
20 negotiated, to any other dealer or salesman. A salesman may be employed by more than one
21 dealer provided such multiple employment is clearly indicated on his license. It shall be unlawful
22 for any person to, for a fee, commission, or other valuable consideration, arrange or offer to
23 arrange a transaction involving the sale of a new motor vehicle; provided, however, this
24 prohibition shall not be applicable to:

- 25 (1) A franchised motor vehicle dealer as defined in G.S. 20-286(8b) who is
26 licensed under this Article or a sales representative who is licensed under this
27 Article when acting on behalf of the dealer;
- 28 (2) A manufacturer who is licensed under this Article or bona fide employee of
29 such manufacturer when acting on behalf of the manufacturer;
- 30 (3) A distributor who is licensed under this Article or a bona fide employee of
31 such distributor when acting on behalf of the distributor; or
- 32 (4) At any point in the transaction the bona fide owner of the vehicle involved in
33 the transaction.
- 34 (5) A motor vehicle dealer, as defined in G.S. 20-286(11), who offers valuable
35 consideration to a person not licensed under this Article, or a person who is
36 offered or receives valuable consideration from a motor vehicle dealer for the
37 referral of a customer to the dealer, provided that the consideration paid by
38 the motor vehicle dealer does not exceed two hundred fifty dollars (\$250.00)
39 in value per referral and the person receiving the consideration has received
40 no more than five referral payments from that motor vehicle dealer in the same
41 calendar year."

42 CLARIFY SALE OF CERTAIN CREDIT RELATED PRODUCTS

43 SECTION 4. Article 12 of Chapter 20 of the General Statutes is amended by adding
44 a new section to read:

45 "**§ 20-298.1. Provision of certain products and services to those covered under the Military**
46 **Lending Act.**

47 A motor vehicle dealer that does not market or extend to a covered borrower a loan or credit
48 transaction covered by Section 987 of Title 10 of the United States Code, or any subsequent
49 amendments thereto, and Part 232 (commencing with Section 232.1) of Subchapter M of Chapter
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1 I of Subtitle A of Title 32 of the Code of Federal Regulations, or any subsequent amendments
2 thereto, shall not be in violation of G.S. 127B-11 or otherwise under the law with respect to all
3 transactions entered into on or after October 3, 2016, regardless of whether the motor vehicle
4 dealer markets or extends the loan or credit transaction to other persons who are not covered
5 borrowers. For purposes of this section, "covered borrower" has the same meaning as provided
6 in Part 232 (commencing with Section 232.1) of Subchapter M of Chapter I of Subtitle A of Title
7 32 of the Code of Federal Regulations and any subsequent amendments thereto."

8 9 **TITLE IN TRANSIT CLARIFICATIONS**

10 **SECTION 5.(a)** G.S. 20-52.1(d) reads as rewritten:

11 "(d) When a manufacturer's statement of origin or an existing certificate of title on a motor
12 vehicle is unavailable, a motor vehicle dealer licensed under Article 12 of this Chapter may also
13 transfer title to a vehicle currently titled in this State to another by certifying in writing in a sworn
14 statement to the Division signed by the dealer principal, general manager, general sales manager,
15 controller, ~~or owner~~ owner, or other manager of the dealership that, to the best of the signatory's
16 knowledge and information as of the date of sworn certification, all prior perfected liens on the
17 vehicle that are known or reasonably ascertainable by the signatory have been paid and that the
18 motor vehicle dealer, despite having used reasonable diligence, is unable to obtain the vehicle's
19 statement of origin or certificate of title. For purposes of this subsection, a dealer may certify that
20 the dealer is unable to obtain the vehicle's statement of origin or certificate of title because the
21 statement of origin or certificate of title was either (i) not delivered to the dealer or (ii) lost or
22 misplaced. The Division is authorized to require any information it deems necessary for the
23 transfer of the vehicle and shall develop a form for this purpose. The knowing and intentional
24 filing of a false sworn certification with the Division pursuant to this subsection shall constitute
25 a Class H felony. A dealer principal, owner, or manager who is not a signatory of the sworn
26 certification under this subsection may only be charged for a criminal violation for filing a false
27 certification under this subsection by another dealership employee if the dealer principal, owner,
28 or manager had actual knowledge of the falsity of the sworn certification at the time the sworn
29 certification was submitted to the Division. The dealer shall hold harmless and indemnify the
30 consumer-purchaser from any damages arising from the use of the procedure authorized by this
31 subsection. No person shall have a cause of action against the Division or Division contractors
32 arising from the transfer of a vehicle by a sworn certification pursuant to this section."

33 **SECTION 5.(b)** G.S. 20-72(b) reads as rewritten:

34 "(b) In order to assign or transfer title or interest in any motor vehicle registered under the
35 provisions of this Article, the owner shall execute in the presence of a person authorized to
36 administer oaths an assignment and warranty of title on the reverse of the certificate of title in
37 form approved by the Division, including in such assignment the name and address of the
38 transferee; and no title to any motor vehicle shall pass or vest until such assignment is executed
39 and the motor vehicle delivered to the transferee. The provisions of this section shall not apply
40 to any foreclosure or repossession under a chattel mortgage or conditional sales contract or any
41 judicial sale. The provisions of this subsection shall not apply to (i) any transfer to an insurer
42 pursuant to G.S. 20-109.1(b)(2) or (ii) any transfer to a used motor vehicle dealer pursuant to
43 G.S. 20-109.1(e1).

44 When a manufacturer's statement of origin or an existing certificate of title on a motor vehicle
45 is unavailable, a motor vehicle dealer licensed under Article 12 of this Chapter may also transfer
46 title to a vehicle currently titled in this State to another by certifying in writing in a sworn
47 statement to the Division that is signed by the dealer principal, general manager, general sales
48 manager, controller, ~~or owner~~ owner, or other manager of the dealership that, to the best of the
49 signatory's knowledge and information as of the date of the sworn certification, all prior perfected
50 liens on the vehicle that are known or reasonably ascertainable by the signatory have been paid
51 and that the motor vehicle dealer, despite having used reasonable diligence, was unable to obtain

1 the vehicle's statement of origin or certificate of title. For purposes of this subsection, a dealer
2 may certify that the dealer is unable to obtain the vehicle's statement of origin or certificate of
3 title if the statement of origin or certificate of title has either (i) not been delivered to the dealer
4 or (ii) has been lost or misplaced. The Division is authorized to request any information it deems
5 necessary to transfer the vehicle and shall develop a form for this purpose. The knowing and
6 intentional filing of a false sworn certification with the Division pursuant to this subsection shall
7 constitute a Class H felony. A dealer principal, owner, or manager of a motor vehicle dealership
8 who is not a signatory of the sworn certification required under this subsection may only be
9 charged for a criminal violation for filing a false certification under this subsection by another
10 dealership employee if the dealer principal, owner, or manager had actual knowledge of the
11 falsity of the sworn certification at the time the sworn certification was submitted to the Division.

12 Any person transferring title or interest in a motor vehicle shall deliver the certificate of title
13 duly assigned in accordance with the foregoing provision to the transferee at the time of
14 delivering the vehicle, except when a certificate of title is unavailable as provided in this
15 subsection or in G.S. 20-72.1, and except that where a security interest is obtained in the motor
16 vehicle from the transferee in payment of the purchase price or otherwise, the transferor shall
17 deliver the certificate of title to the lienholder and the lienholder shall forward the certificate of
18 title together with the transferee's application for new title and necessary fees to the Division
19 within 20 days. If the title to a vehicle is unavailable and the dealer transfers the vehicle on a
20 sworn certification pursuant to this section or G.S. 20-52.1, and the title is subsequently received
21 or found by the dealer, the dealer shall retain a copy for its records and submit the title to the
22 Division. Any person who delivers or accepts a certificate of title assigned in blank shall be guilty
23 of a Class 2 misdemeanor. No person shall have a cause of action against the Division or Division
24 contractors arising from the transfer of a vehicle by a sworn certification pursuant to this section.

25 The title to a salvage vehicle shall be forwarded to the Division as provided in G.S. 20-109.1,
26 except with respect to the title of any salvage vehicle transferred pursuant to G.S. 20-109.1(b)(2)
27 or G.S. 20-109.1(e1)."

28 **SECTION 5.(c)** G.S. 20-72.1 reads as rewritten:

29 **"§ 20-72.1. Transfer by owner when a certificate of title is unavailable; consumer remedies.**

30 (a) Notwithstanding any other provision in this Article, when a manufacturer's statement
31 of origin or an existing certificate of title on a motor vehicle is unavailable, a motor vehicle dealer
32 licensed under Article 12 of this Chapter shall deliver the manufacturer's statement of origin or
33 certificate of title to the Division within 20 days of receipt of the title, but no later than 60 days
34 following the later of the date of the sale or transfer of the vehicle or the date of the creation of a
35 security interest in the vehicle pursuant to G.S. 20-58(b). The dealer may offer the vehicle for
36 sale provided that the purchaser is given written notice prior to sale that the dealer is not in
37 possession of the manufacturer's statement of origin or certificate of title and that the purchaser
38 may be entitled to liquidated damages pursuant to subsection (b) of this section if the dealer fails
39 to deliver the manufacturer's statement of origin or certificate of title to the Division in
40 accordance with this subsection. For purposes of this subsection, a vehicle's manufacturer's
41 statement of origin or existing certificate of title shall be considered unavailable under either of
42 the following circumstances:

- 43 (1) The manufacturer's statement of origin or certificate of title has not been
44 actually delivered to the dealer on or prior to the date the dealer sold or
45 transferred the vehicle.
- 46 (2) The manufacturer's statement of origin or certificate of title was lost or
47 misplaced on or prior to the date the dealer sold or transferred the vehicle. ~~If~~
48 ~~the motor vehicle being sold or transferred is a used motor vehicle, the dealer~~
49 ~~is required to make application to the Division for a duplicate title within five~~
50 ~~working days of the date of the sale or transfer of the vehicle. If the vehicle~~
51 ~~being sold or transferred is a new motor vehicle, the dealer is required to~~

1 ~~request a new or duplicate manufacturer's statement of origin from the~~
2 ~~applicable manufacturer or distributor within five working days of the date of~~
3 ~~the sale or transfer of the vehicle.~~

4 (b) In any case where a dealer fails to deliver the manufacturer's statement of origin or
5 certificate of title to the Division within the 60-day time period allowed in subsection (a) of this
6 section, the vehicle purchaser may elect to receive liquidated damages from the dealer in the
7 amount of five percent (5%) of the vehicle purchase price, not to exceed one thousand dollars
8 (\$1,000), provided that the dealer receives written demand for liquidated damages from the
9 purchaser within 10 days after the expiration of the 60-day period provided in subsection (a) of
10 this section. The liquidated damages provided in this subsection shall be payable by the dealer
11 within 30 days after the receipt of the purchaser's written demand. Nothing in this section shall
12 be construed to limit any other civil remedies or consumer protections available to the vehicle
13 purchaser. Nothing in this section shall be construed to prohibit a motor vehicle dealer who pays
14 liquidated damages or other valuable consideration to a vehicle purchaser or lessee from
15 obtaining a release from the purchaser or lessee for any other damages or liability arising out of
16 or related to the sale or lease of the vehicle.

17 (c) Notwithstanding any other provision in this Article, a motor vehicle dealer licensed
18 under Article 12 of this Chapter may sell or transfer a motor vehicle when a manufacturer's
19 statement of origin or an existing certificate of title on the motor vehicle is unavailable and the
20 motor vehicle is sold or transferred to a current lessee of the motor vehicle regardless of whether
21 the payment of any residual amount or payoff amount for the vehicle has been made to the lessor
22 who holds legal title to the motor vehicle at the time of the sale or transfer. The vehicle purchaser
23 notice requirement in subsection (a) of this section, liquidated damages requirements in
24 subsections (a) and (b) of this section, and sworn certification requirements of G.S. 20-52.1(d)
25 and G.S. 20-72(b) shall not be applicable when a motor vehicle is sold or transferred to the
26 current lessee of the motor vehicle."

27 **SECTION 5.(d)** G.S. 20-79.1(h) reads as rewritten:

28 "(h) Temporary registration plates or markers shall expire and become void upon the
29 receipt of the limited registration plates or the annual registration plates from the Division, or
30 upon the rescission of a contract to purchase a motor vehicle, or upon the expiration of 30 days
31 from the date of issuance, depending upon whichever event shall first occur. No refund or credit
32 or fees paid by dealers to the Division for temporary registration plates or markers shall be
33 allowed, except in the event that the Division discontinues the issuance of temporary registration
34 plates or markers or unless the dealer discontinues business. In this event the unissued registration
35 plates or markers with the unissued registration certificates shall be returned to the Division and
36 the dealer may petition for a refund. Upon the expiration of the 30 days from the date of issuance,
37 a second 30-day temporary registration plate or marker may be issued by the dealer upon showing
38 the vehicle has been sold, ~~a temporary lien has been filed as provided in G.S. 20-58, sold or~~
39 ~~leased,~~ and that the dealer, having used reasonable diligence, is unable to obtain the vehicle's
40 statement of origin or certificate of title so that the lien may be perfected. For purposes of this
41 subsection, a dealer shall be considered unable to obtain the vehicle's statement of origin or
42 certificate of title if the statement of origin or certificate of title either (i) has not been delivered
43 to the dealer or (ii) was lost or misplaced."
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45 **EFFECTIVE DATE**

46 **SECTION 6.** This act is effective when it becomes law.