

Senate Bill 81

By: Senators Brass of the 6th, Walker III of the 20th, Summers of the 13th, Kennedy of the 18th, Jones II of the 22nd and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 22 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated,
2 relating to motor vehicle franchise practices, so as provide for protection of consumer data
3 in motor vehicle sales or lease transactions by affiliates of franchisors, manufacturers, and
4 distributors; to provide for procedures, conditions, and limitations on the use of motor
5 vehicle dealer data; to provide for standards for access and integration of data collected and
6 maintained by dealers and by third parties on behalf of dealers; to provide for applicability;
7 to provide for requirements of franchisors, manufacturers, and distributors in relation to
8 dealers; to provide for additional unlawful activities by franchisors; to revise legislative
9 findings; to provide for definitions; to amend Code Section 40-2-39 of the Official Code of
10 Georgia Annotated, relating to registration and licensing of new motor vehicle dealers,
11 temporary site permits, administrative fines, and penalty, so as to provide for activities which
12 qualify as activity as a new motor vehicle dealer; to provide for related matters; to repeal
13 conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15

SECTION 1.

16 Article 22 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to
17 motor vehicle franchise practices, is amended by revising Code Section 10-1-621, relating
18 to legislative findings, as follows:

19 "10-1-621.

20 The General Assembly finds and declares that:

21 (1) The distribution and sale of motor vehicles within this state are vital to the general
22 economy of this state and to the public interest and public welfare;

23 (2) The provision for warranty service, recall service, and the repair of predelivery
24 transportation damages to motor vehicles is of substantial concern to the people of this
25 state;

26 (3) Robust competition among dealers benefits consumers through competitive pricing,
27 service, and convenient repair facilities, thus the ~~The~~ maintenance of full and fair
28 inter-brand and intra-brand competition among dealers and others is in the public interest;
29 and

30 (4) The maintenance of strong and sound dealerships is essential to provide continuing
31 and necessary reliable services to the consuming public in this state, to the introduction
32 of new automotive technology and support and maintenance of such after a sale, to
33 protect against the creation or perpetuation of monopolies and other practices that are
34 detrimental to public welfare and local businesses, and to provide stable employment to
35 the citizens of this state."

36

SECTION 2.

37 Said article is further amended by revising Code Section 10-1-632, relating to protection of
38 consumer data in motor vehicle sales or lease transactions and burden of proof for violations,
39 as follows:

40 "10-1-632.

41 (a) With respect to consumer data, a franchisor, manufacturer, distributor, or affiliate
42 thereof or a third party acting on behalf of a franchisor, manufacturer, or distributor, or
43 affiliate thereof:

44 (1) Shall comply with and shall not cause a dealer to violate any applicable restrictions
45 on reuse or disclosure of the consumer data established by federal or state law;

46 (2) Shall provide a written statement to the dealer upon request describing the established
47 procedures adopted by such franchisor, manufacturer, distributor, or affiliate thereof or
48 third party acting on behalf of the franchisor, manufacturer, or distributor which meet or
49 exceed any federal or state requirements to safeguard the consumer data, including, but
50 not limited to, those established in the federal Gramm-Leach-Bliley Act, 15 U.S.C.
51 Section 6801, et seq.;

52 (3) Shall, upon the written request of the dealer, provide a written list of the consumer
53 data obtained from the dealer and all persons to whom any consumer data has been
54 provided by the franchisor, manufacturer, distributor, or affiliate thereof or a third party
55 acting on behalf of a franchisor, manufacturer, or distributor during the preceding six
56 months. The dealer may make such a request no more than once every six months. The
57 list must indicate the specific fields of consumer data which were provided to each
58 person. Notwithstanding the foregoing, such a list shall not be required to include:

59 (A) A person to whom consumer data was provided, or the specific consumer data
60 provided to such person, if the person was, at the time such consumer data was
61 provided, a service provider, subcontractor, or consultant acting in the course of
62 performance of services on behalf of or for the benefit of the dealer, franchisor,
63 manufacturer, distributor, third party, or ~~dealer~~ affiliate, provided that the dealer,
64 franchisor, manufacturer, distributor, third party, or ~~dealer~~ affiliate has entered into an
65 agreement with such person requiring that such person comply with the safeguard
66 requirements of applicable state and federal law, including, but not limited to, those

67 established in the federal Gramm-Leach-Bliley Act, 15 U.S.C. Section 6801, et seq.;

68 and

69 (B) A person to whom consumer data was provided, or the specific consumer data

70 provided to such person, if the dealer has previously consented in writing to such

71 person receiving such consumer data and the dealer has not withdrawn such consent in

72 writing;

73 (4) May not require that a dealer grant the franchisor, manufacturer, distributor, or

74 affiliate thereof or a third party acting on behalf of a franchisor, manufacturer, or

75 distributor direct or indirect access to such dealer's data management system to obtain

76 consumer data. A franchisor, manufacturer, distributor, affiliate, or a third party acting

77 on behalf of a franchisor, manufacturer, or distributor ~~must~~ shall permit a dealer to

78 furnish consumer data in a widely accepted file format, such as comma delimited, and

79 through a third-party vendor selected by the dealer; ~~provided, however, that~~ However,

80 a franchisor, manufacturer, ~~or~~ distributor, or affiliate thereof or a third party acting on

81 behalf of a franchisor, manufacturer, or distributor may access or obtain consumer data

82 directly from a dealer's data management system with the express consent of the dealer.

83 Such consent shall ~~The consent must~~ be in the form of a written document that is separate

84 from the parties' franchise agreement, is executed by the dealer, and ~~may be withdrawn~~

85 allow for withdrawal by the dealer upon 30 days' written notice to the franchisor,

86 manufacturer, or distributor as applicable. For incentive programs beginning on or after

87 July 1, 2019, such consent shall not be required as a condition to a motor vehicle dealer's

88 participation in an incentive program unless such consent is necessary to obtain consumer

89 data to implement the program; and

90 (5) Shall indemnify the dealer for any third-party claims asserted against or damages

91 incurred by the dealer to the extent caused by access to, use of, or disclosure of consumer

92 data in violation of this Code section by the franchisor, manufacturer, distributor, or

93 affiliate thereof or a third party to whom the franchisor, manufacturer, or distributor has
 94 provided consumer data.

95 (b) Nothing contained in this Code section shall limit the ability of ~~the a~~ franchisor, the
 96 manufacturer, or distributor; to require that the dealer provide, or use in accordance with
 97 the law, such customer information related solely to such manufacturer's or distributor's
 98 own vehicle makes to the extent necessary to do any of the following:

99 (1) Satisfy any safety or recall notice obligations or other legal notice obligations on the
 100 part of the manufacturer;

101 (2) Complete the sale and delivery of a new motor vehicle to a customer;

102 (3) Validate and pay customer or dealer incentives;

103 (4) Submit to the franchisor, manufacturer, or distributor claims for any services supplied
 104 by the dealer for any claim for warranty parts or repairs;

105 (5) Market analysis;

106 (6) Evaluate sales and service customer satisfaction with the dealer, including surveys;
 107 or

108 (7) Reasonable marketing purposes that benefit the dealer.

109 (c) In any cause of action against a franchisor, manufacturer, ~~or~~ distributor, or affiliate
 110 thereof for a violation of this Code section, the party bringing the action shall have the
 111 burden of proof."

112 **SECTION 3.**

113 Said article is further amended by adding a new Code section to read as follows:

114 "10-1-633.

115 (a) As used in this Code section, the term:

116 (1) 'Authorized integrator' means a third party with whom a dealer has entered into a
 117 written contract to perform a specific function which requires such third party to access
 118 protected dealer data or write data to a dealer data system or both.

119 (2) 'Data access overcharge' means any charge to a dealer or person authorized to
120 perform integration that is greater than an amount which reimburses direct costs incurred
121 by a dealer data systems vendor for integration. When a dealer data systems vendor fails
122 to disclose the direct costs of integration and provide documentation of such costs, any
123 direct costs sought to be reimbursed shall be considered a data access overcharge.

124 (3) 'Dealer data system' means any software or hardware provided by a third party and
125 used by a dealer in its business operations to store, process, or maintain protected dealer
126 data.

127 (4) 'Dealer data systems vendor' means any third party that stores protected dealer data
128 pursuant to written contract with a dealer and shall include a dealer management system
129 or customer relations management system provided by a third party. Such term shall not
130 include a manufacturer, distributor, or affiliate subject to Code Section 10-1-632.

131 (5) 'Integration' means access by an authorized integrator to protected dealer data which
132 does not require access to any copyright protected material but allows for access to all
133 protected dealer data and which can be accomplished by any commercially reasonable
134 means not otherwise in violation of this Code section.

135 (6) 'Prior express written consent' means written consent provided by the dealer that is
136 contained in a document separate from any other consent, contract, franchise agreement,
137 or other writing and that specifically outlines a dealer's consent for an authorized
138 integrator to obtain protected dealer data, including the scope and duration of such
139 consent, and may be unilaterally revoked by the dealer upon 30 days' notice without
140 cause and immediately with cause.

141 (7) 'Protected dealer data' means any of the following data that is stored in a dealer data
142 system:

143 (A) Personal, financial, or other data pertaining to a consumer that is provided to a
144 dealer by a consumer;

145 (B) Motor vehicle diagnostic data; or

146 (C) Any other data relating to the business operations of a dealer stored or maintained
147 within a dealer data system.

148 (8) 'Secure open application programming interface' or 'secure open API' means an
149 application programming interface that allows an authorized integrator to integrate with
150 a dealer data system remotely and securely.

151 (9) 'STAR standards' means standards for the automotive retail industry established by
152 the Standards for Technology in Automotive Retail organization.

153 (10) 'Third party' includes service providers, vendors, including dealer data systems
154 vendors and authorized integrators, and any other individual or entity other than a dealer.
155 Such term shall not include any manufacturer; distributor; affiliate of a manufacturer or
156 distributor; a third party acting on behalf of or engaged contractually or by other
157 agreement with a manufacturer or distributor; any governmental entity acting pursuant
158 to federal, state, or local law; or any third party acting pursuant to a valid court order.

159 (b) It shall be unlawful for a third party to:

160 (1) Access, share, sell, copy, use, or transmit protected dealer data from a dealer data
161 system without the prior express written consent of a dealer;

162 (2) Take any action, by contract, technical means, or otherwise, that would prohibit or
163 limit a dealer's ability to protect, store, copy, share, or use any protected dealer data,
164 including, but not limited to:

165 (A) Imposing any data access overcharges or other restrictions of any kind on the
166 dealer or any authorized integrator for integration;

167 (B) Prohibiting an authorized integrator or any third party identified by a dealer as an
168 authorized integrator that has satisfied or is compliant with the STAR standards, or a
169 standard compatible with such standards, from performing integration or placing
170 unreasonable restrictions on integration, which shall include, but not be limited to:

171 (i) Unreasonable restrictions on the scope or nature of the data shared with an
172 authorized integrator;

- 173 (ii) Unreasonable restrictions on the ability of an authorized integrator to write data
174 to a dealer data system;
- 175 (iii) Unreasonable restrictions or conditions on a third party accessing or sharing
176 protected dealer data or writing data to a dealer data system; and
- 177 (iv) Requiring unreasonable access to sensitive, competitive, or other confidential
178 business information of a third party as a condition for access to protected dealer data
179 or as a condition to share protected dealer data with an authorized integrator;
- 180 (C) Prohibiting or limiting a dealer's ability to store, copy, securely share, or use
181 protected dealer data outside the dealer data system in any manner and for any reason;
182 or
- 183 (D) Permitting access to or accessing protected dealer data without prior express
184 written consent by the dealer.
- 185 (c)(1) A secure open application programming interface shall:
- 186 (A) Be made available by a dealer data systems vendor to any authorized integrator
187 upon request by a dealer;
- 188 (B) Include all relevant endpoints to allow for access to all protected dealer data or to
189 integrate with protected dealer data; and
- 190 (C) Provide granularity and control necessary for dealers and authorized integrators to
191 integrate the data necessary pursuant to contract terms between the dealer and
192 authorized integrator.
- 193 (2) For purposes of this Code section, secure open application programming shall not
194 require that an application programming interface be available to the public or at no cost
195 to an authorized integrator, provided that no data access overcharge may be assessed in
196 connection with a secure open API.
- 197 (d)(1) A dealer data systems vendor shall adopt and make available a standardized
198 integration framework that allows for integration through secure open APIs to authorized
199 integrators. In the event that application programming interfaces are no longer the

200 reasonable commercial or technical standard for secure data integration, a similar open
201 access integration method may be provided to the extent such method provides the same
202 or better secure integration to dealers and authorized integrators as a secure open API.
203 Any dealer data systems vendor that utilizes STAR standards or a comparable system
204 shall comply with the requirements of this subsection.

205 (2) A dealer data systems vendor and authorized integrator:

206 (A) Shall be authorized to integrate, or otherwise access, use, store, or share protected
207 dealer data to the extent only outlined in and authorized by the dealer data systems
208 vendor contract or authorized integrator contract;

209 (B) Shall provide that any dealer data systems vendor contract or authorized integrator
210 contract may be terminated upon no more than 90 days' notice from the dealer; and

211 (C) Shall, in order to prevent any risk of consumer harm or inconvenience, ensure a
212 secure transition of all protected dealer data to a successor dealer data systems vendor
213 or authorized integrator upon notice of a dealer's intent to terminate a dealer data
214 systems vendor contract or authorized integrator contract. The requirements of this
215 subparagraph may be satisfied by taking any of the following actions:

216 (i) Providing unrestricted access to all protected dealer data and all other data stored
217 in the dealer data system within a commercially reasonable time and in a format that
218 a successor dealer data systems vendor or authorized integrator is capable of
219 accessing and using;

220 (ii) Deleting or returning to the dealer all protected dealer data prior to termination
221 of the contract pursuant to any written directions of the dealer;

222 (iii) Providing a dealer, upon request, with a list of all entities with whom it is sharing
223 or has shared protected dealer data or to whom it has allowed access to protected
224 dealer data; and

225 (iv) Allowing a dealer to audit access to and use of any protected dealer data by the
226 dealer data systems vendor or authorized integrator access.

227 (3) Any dealer data systems vendor, authorized integrator, or third party acting
228 pursuant to a written contract with or on behalf of a dealer shall indemnify the dealer
229 for any third-party claims asserted against or damages incurred by the dealer from
230 complaints, claims, or actions arising out of the willful, negligent, or impermissible use
231 or disclosure of protected dealer data, customer data, or other sensitive information in
232 a dealer data system by the dealer data system vendor, authorized integrator, or third
233 party. Such indemnification shall include, but not be limited to, judgments, settlements,
234 finances, penalties, litigation costs, defense costs, court costs, costs related to the disclosure
235 of security breaches, and attorneys' fees arising out of complaints, claims, civil, or
236 administrative actions.

237 (e) A manufacturer, franchisor, distributor, or affiliate thereof, or any third party acting on
238 behalf of a manufacturer, franchisor, distributor, or affiliate thereof; a data systems vendor;
239 or dealer shall not prohibit a dealer from regularly and continually monitoring or auditing
240 the specific data accessed from or written to a dealer data system or from complying with
241 applicable state and federal laws or any rules or regulations promulgated thereunder. This
242 subsection shall not impose an obligation on a manufacturer, franchisor, distributor, or
243 affiliate thereof, a data systems vendor, or a third party to perform such monitoring or
244 auditing.

245 (f) A manufacturer, franchisor, distributor, data systems vendor or any third party acting
246 on behalf of a manufacturer, franchisor, distributor, data systems vendor, or dealer shall not
247 prohibit a dealer from copying, storing, or backing up data stored on its dealer data
248 systems, or duplicating the critical components or functions thereof, for the purpose of
249 allowing a dealer to restore business operations in the event of a security breach or other
250 event that renders a dealer data system inoperable. This subsection shall not impose an
251 obligation on a manufacturer, franchisor, distributor, data systems vendor, or third party
252 to provide such capabilities. This subsection shall not relieve a dealer from any contractual

253 obligation relating to the safeguard, storage, copy, use, ownership, or sharing of or access
254 to data.

255 (g) A dealer data systems vendor or authorized integrator shall not be held responsible for
256 any action taken directly by a dealer or for any appropriately taken action upon written
257 request of a dealer to the extent that such action prevents such vendor or integrator from
258 meeting any legal obligation regarding the protection of protected dealer data or results in
259 any liability as a consequence of such actions by the dealer.

260 (h) A dealer shall not be held responsible for any action taken directly by any of its dealer
261 data systems vendors or authorized integrators or for any appropriately taken action upon
262 written request of a dealer data systems vendor or authorized integrator to the extent that
263 such action prevents such dealer from meeting any legal obligation regarding the protection
264 of protected dealer data or results in any liability as a consequence of such actions by the
265 dealer data systems vendor or authorized integrator.

266 (i) The rights conferred on dealers in this Code section are not waivable and may not be
267 reduced or otherwise modified by any contract, agreement, or incentive program.

268 (j) Nothing in this Code section shall:

269 (1) Be interpreted to prevent a dealer or third party from discharging its obligations or
270 limiting responsibilities as a service provider to protect and secure protected dealer data
271 under an agreement or as otherwise required pursuant to federal, state, or local law;

272 (2) Give a new motor vehicle dealer any ownership or rights to share or use motor
273 vehicle diagnostic data beyond what is necessary to fulfill a dealer's obligation to provide
274 warranty, repair, or service work to its customers;

275 (3) Govern, restrict, or apply to data that exists outside of a dealer data system; or

276 (4) Relieve a manufacturer, franchisor, distributor, third party acting on behalf of a
277 manufacturer, franchisor, distributor, or affiliate thereof from the requirements of Code
278 Section 10-1-632."

279

SECTION 4.

280 Said article is further amended in Code Section 10-1-641, relating to requirements of
281 franchisor, manufacturer, and distributor, reasonable compensation for parts and labor, recall
282 notices, and stop-sales, by revising paragraph (1) of subsection (a) as follows:

283 "(a)(1) Each franchisor, manufacturer, or distributor:

284 (A) Shall specify in writing to each of its dealers in this state the dealer's obligations
285 for predelivery preparation including the repair of damages incurred in the
286 transportation of vehicles as set forth in Code Section 10-1-642, recall work, and
287 warranty service on its products;

288 (B) Shall, at the election of the dealer, reasonably compensate the dealer for parts and
289 labor provided for such warranty service work as provided in paragraph (2) of this
290 subsection;

291 (C) Shall provide the dealer with a schedule of compensation to be paid such dealer for
292 parts, work, and service in connection therewith; ~~and~~

293 (D) Shall provide the dealer with a schedule of the time allowance for the performance
294 of such work and service. Any such schedule of compensation shall include reasonable
295 compensation for diagnostic work, repair service, and labor. Time allowances for the
296 diagnosis and performance of such work and service shall be reasonable and adequate
297 for the work to be performed; and

298 (E) Shall provide compensation to the dealer for assistance provided to a retail buyer
299 or lessee whose vehicle required a change, repair, or update by remote means to any
300 part, system, or accessory or to any function of his or her vehicle by the vehicle
301 manufacturer, franchisor, or distributor when such service was performed at the
302 dealership or by dealership personnel at another location at the request of the customer
303 or at the request of the manufacturer, franchisor, distributor on behalf of the customer."

304

SECTION 5.

305 Said article is further amended in Code Section 10-1-662, relating to unlawful activities by
 306 franchisors, by revising paragraphs (1), (20), and (21) of and adding a new paragraph to
 307 subsection (a) to read as follows:

308 "(1)(A) To delay, refuse, or fail to deliver new motor vehicles or new motor vehicle
 309 parts or accessories in a reasonable time and in reasonable quantity if such vehicles,
 310 parts, or accessories are publicly advertised as being available for immediate delivery.

311 Upon written request of the dealer, the franchisor shall communicate its allocation
 312 process in writing in a clear and concise manner within 30 days from receipt of the
 313 dealer's request. For purposes of this paragraph, a reasonable quantity of vehicles:

314 (i) Is fair and equitable to all line-make dealers in this state; and

315 (ii) Does not unfairly discriminate among line-make dealers in its allocation process.

316 (B) This paragraph is not violated, however, if such failure is caused by acts or causes
 317 the occurrence of temporary international, national, or regional product or services
 318 shortages resulting from natural disaster; unavailability or scarcity of parts or service;
 319 labor strikes; supply chain disruptions; product recalls; or other factors and events
 320 beyond the control of the franchisor that temporarily reduce the supply of a franchisor
 321 or if a state or federal law, rule, or regulation necessitates modification of the allocation.

322 (C) Nothing contained in this paragraph shall relieve a manufacturer, franchise or
 323 distributor from its obligations under paragraph (9) of subsection (b) of Code
 324 Section 10-1-661;"

325 "(20) To take any materially adverse action against a dealer, including a dealer's ability
 326 to participate in or receive a benefit or payment owed from any incentive or
 327 reimbursement program, based on criteria it has established, implemented, or enforced
 328 for measuring the performance, including, but not limited to, sales or service
 329 performance, of a dealer unless such criteria:

330 (A) Is fair, reasonable, and equitable; and

331 (B) Is based on accurate and relevant information; ~~or~~
 332 (21) To deny, delay payment for, restrict, or bill back a claim by a dealer for payment
 333 or reimbursement for incentives, hold-backs, sales or service promotion or other special
 334 program money, or any other amount owed to such dealer by the franchisor, if based
 335 solely on the dealer's compliance with a specific program requirement of the franchisor
 336 that would cause the dealer to violate a law or any properly promulgated rule or
 337 regulation of this state; or
 338 (22) To fail to provide to the dealer a written disclosure, which may be provided to a
 339 potential consumer of a new motor vehicle, of each accessory or function of the motor
 340 vehicle that may be initiated, updated, changed, or maintained by the manufacturer or
 341 distributor through remote means, and the charge to the consumer for the initiation,
 342 update, change, or maintenance that is known at the time of the transaction. A
 343 manufacturer or distributor may comply with this paragraph by notifying the dealer that
 344 the information is available on a public website or by other digital means."

345 **SECTION 6.**

346 Code Section 40-2-39 of the Official Code of Georgia Annotated, relating to registration and
 347 licensing of new motor vehicle dealers, temporary site permits, administrative fines, and
 348 penalty, is amended by revising paragraph (2) of subsection (b) as follows:

349 "(2)(A) It shall be unlawful for any person to engage in any activity as a new motor
 350 vehicle dealer except at an established place of business which has been registered as
 351 such under this Code section and Code Section 40-2-38 or at a temporary site.

352 (B) For purposes of this Code section, activity as a new motor vehicle dealer shall
 353 include:

354 (i) Selling, leasing, offering to sell or lease, or negotiating binding terms with a retail
 355 consumer for the purchase or lease of a new motor vehicle;

356 (ii) Soliciting, accepting, or receiving a deposit or other payment for the retail
357 purchase or lease of a new motor vehicle;

358 (iii) Soliciting, accepting, or processing a reservation from a retail consumer for a
359 specific motor vehicle; or

360 (iv) Soliciting, accepting, offering, or negotiating with a retail consumer a binding
361 value for a motor vehicle being traded in as part of the purchase or lease of a new
362 motor vehicle.

363 (C) For purposes of this Code section, activity as a new motor vehicle dealer shall not
364 include:

365 (i) Facilitating the receipt of a deposit or a payment under a retail installment sale
366 contract or lease on behalf of a dealer;

367 (ii) The disclosure of a manufacturer's suggested retail price;

368 (iii) The display of new motor vehicles for information or demonstration purposes
369 only;

370 (iv) The operation of a public website or other means of electronic communication
371 that identifies to a consumer any conditional prices or financing rates, available
372 financing sources, add-on product prices, or conditional trade-in values that are not
373 binding on a dealer; or

374 (v) Sales, leasing, marketing, or advertising activities of manufacturers, franchisors,
375 and distributors by or through their line-make dealers in accordance with Article 22
376 of Chapter 1 of Title 10."

377 **SECTION 7.**

378 All laws and parts of laws in conflict with this Act are repealed.