

§ 20-308.1. Civil actions for violations.

(a) Notwithstanding the terms, provisions or conditions of any agreement or franchise or other terms or provisions of any novation, waiver or other written instrument, any motor vehicle dealer who is or may be injured by a violation of a provision of this Article, or any party to a franchise who is so injured in his business or property by a violation of a provision of this Article relating to that franchise, or an arrangement which, if consummated, would be in violation of this Article may, notwithstanding the initiation or pendency of, or failure to initiate an administrative proceeding before the Commissioner concerning the same parties or subject matter, bring an action for damages and equitable relief, including injunctive relief, in any court of competent jurisdiction with regard to any matter not within the jurisdiction of the Commissioner or that seeks relief wholly outside the authority or jurisdiction of the Commissioner to award.

(b) Where the violation of a provision of this Article can be shown to be willful, malicious, or wanton, or if continued multiple violations of a provision or provisions of this Article occur, the court may award punitive damages, attorneys' fees and costs in addition to any other damages under this Article.

(c) A new motor vehicle dealer, if he has not suffered any loss of money or property, may obtain final equitable relief if it can be shown that the violation of a provision of this Article by a manufacturer or distributor may have the effect of causing a loss of money or property.

(d) In order to prevent injury or harm to all or a substantial number of its members or to prevent injury or harm to the franchise distribution system of new motor vehicles within this State, any association that is comprised of a minimum of 400 new motor vehicle dealers, or a minimum of 10 motorcycle dealers or recreational vehicle dealers, substantially all of whom are new motor vehicle dealers located within North Carolina, and which represents the collective interests of its members, shall have standing to intervene as a party in any civil or administrative proceeding in any of the courts or administrative agencies of this State, or to file a petition before the Commissioner or a civil action or cause of action in any court of competent jurisdiction for itself, or on behalf of any or all of its members, seeking declaratory and injunctive relief. An action brought pursuant to this subsection may seek a determination whether one or more manufacturers, factory branches, distributors, or distributor branches doing business in this State have violated any of the provisions of this Article, or for the determination of any rights created or defined by this Article, so long as the association alleges an injury to the collective interest of its members cognizable under this section. A cognizable injury to the collective interest of the members of the association shall be deemed to occur if a manufacturer, factory branch, distributor, or distributor branch doing business in this State, or seeking to be licensed by the Division in any capacity or to otherwise engage in business in this State, applies for licensure to own, operate, or control a motor vehicle dealership in this State in violation of this Article or engages in any conduct or takes any action that either: (i) has harmed or would harm or which has adversely affected or would adversely affect a majority of its franchised new motor vehicle dealers in this State or a majority of all franchised new motor vehicle dealers in this State, or (ii) would erode or cause any other damage or injury to the franchise system of distribution of new motor vehicles within this State, whether or not the manufacturer, factory branch, distributor, or distributor branch currently has or proposes to have any franchised dealer in this State. Notwithstanding the foregoing, nothing in this subsection shall be construed to convey standing for an association to intervene in the denial of a renewal license or revocation of existing licenses issued by the Division pursuant to this Chapter or other enforcement actions taken against individual dealers or other individual licensees that may be initiated by the Division pursuant to G.S. 20-294 or other statute. Intervention by the association shall be limited to seeking declaratory relief, injunctive relief, or both declaratory and injunctive relief. With respect to any administrative or civil action filed by an association pursuant to this subsection, the relief granted shall be limited to declaratory and injunctive relief and in no event shall the Commissioner or

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court enter an award of monetary damages. In the event that, in any civil action before a court of this State in which an association has exercised standing in accordance with this subsection and becomes a party to the action, the court enters a declaratory ruling as to the facial applicability of any of the provisions contained in this Article, or interpreting the rights and obligations of one or more manufacturers or distributors or the rights and obligations of one or more dealers, the court's determination shall be collateral estoppel in any subsequent civil action or administrative proceeding involving the same manufacturer or manufacturers, or the same distributor or distributors, or the same dealer or dealers on all issues of fact and law decided in the original civil action in which the association was a party, provided the same decision or specific portion of the decision qualifies for application of collateral estoppel under North Carolina law. Notwithstanding anything contained herein, this subsection shall not be applicable to motor vehicle dealer licenses issued by the Division to a manufacturer pursuant to G.S. 20-305.2(a)(4a), provided that this exclusion from association standing shall not be applicable in the event the manufacturer applies for or is issued more than the maximum total number of motor vehicle dealer licenses permitted in G.S. 20-305.2(a)(4a) or upon the occurrence of any of the events listed in sub-subdivisions a. through d. of G.S. 20-305.2(a)(4a). (1983, c. 704, s. 16; 1991, c. 510, s. 5; 2001-510, s. 5; 2007-513, s. 8; 2019-125, s. 8.)